

# Northern Ireland Affairs Committee

## Oral evidence: The effectiveness of the institutions of the Belfast/Good Friday Agreement, HC 781

Wednesday 7 June 2023

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Members present: Simon Hoare (Chair); Stephen Farry; Mary Kelly Foy; Sir Robert Goodwill; Claire Hanna; Carla Lockhart; Jim Shannon; Bob Stewart; Mr Robin Walker.

Questions 241-284

### Witnesses

I: Mark Durkan, Former Deputy First Minister of Northern Ireland, Baroness Foster of Aghadrumsee DBE, PC, Former First Minister of Northern Ireland, and Lord Alderdice, Former Speaker of the Northern Ireland Assembly.

## Examination of witnesses

Witnesses: Lord Alderdice, Mark Durkan and Baroness Foster.

Q241 **Chair:** Good morning, colleagues and distinguished panel—we often use the word “distinguished”, but today is a distinguished panel as far as the operation of Stormont is concerned. We are joined by Lord Alderdice, Mark Durkan and Lady Foster. The three of you are hugely welcome, and the Committee is grateful to you for finding the time to appear before us and for appearing as an experienced triumvirate—I will describe you in that way—to help us with our inquiry into the effectiveness of the institutions of the Belfast/Good Friday agreement.

We have a lot of ground to cover, so I will begin with my usual *cri de coeur* for short questions and pithy answers to allow us to cover it all. I will kick off the questions by asking the three of you who have been there, in the top chairs as it were: did you ever have that Columbo moment when you kicked yourselves and thought, “If only when we were writing the rules or setting it all up, we had done it like this rather than like that, then things would work a whole lot better, or differently, or we would be able to achieve outcomes in a better way to help the operational ability of the institution of Stormont”? Or did you all think that it was beyond improvement? I do not think that anyone will find it beyond improvement. I will go to Lord Alderdice first, as a former Speaker.

**Lord Alderdice:** Thank you, Chair and members of the Committee, for the invitation.

From the beginning, there were two issues that I was unhappy about and unable to deliver on in the negotiations. One was on the question of the weapons: I thought that decommissioning should be related to prisoner releases. The other was a more long-standing issue: the formation of the Executive. I was never happy about the idea of what we in Northern Ireland terms characterised as “super-Prod” and “super-Taig”, where you would have the two main designations and the rest would be other. It seemed to me that that would push us to deeper polarisation.

Although I think John Hume and David Trimble thought that their parties would always be the two large parties, it was clear to me that that would not necessarily be the case. The proposition that I had made at the time was for a weighted or qualified majority of 67% to 70%, the idea being that to form a Government you would need to reach out across the community division—no one community or section of it could form the Government. Instead of appealing only to those who adhered to your perspective, which was the dynamic of the construction that we had, you would be forced to reach out across the divide and establish relationships and appeal to people there.

I was always unhappy about that dynamic and I could see how it operated even during my time in the Speaker’s Chair; subsequently, I think it got



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worse. At the start, there was a fair momentum. Some of the parties had not signed up for the agreement, but you got a sense that those that had and even some of those that hadn't—Dr Paisley, for example—were trying to make the thing work. We had been through a bad time, and here was a chance—"Let's try to make it work." But as time went on, that vulnerability in particular and some others began to emerge. But that would be the one I would particularly focus on. I hope it can be returned to and revised at some point, so that things can be held together.

**Baroness Foster:** Obviously, I was not in from the beginning; I was only elected in 2003. I became a Minister in 2007 and then remained a Minister until I left.

To pick up on John's point, there was a problem of collegiality—I hope that the member of your Committee who was in the Executive as well will agree with me about collegiality. When a programme for government is agreed, the budget should be in accordance with it; I know you recently heard evidence from distinguished permanent secretaries, who made the point that the budget and Programme for Government should sit alongside each other, as they should.

**Chair:** Yes.

**Baroness Foster:** The challenge has always been to have an overarching view, instead of people just operating in their silos or different Departments—"If making the Programme for Government work means my Department loses some funding, that is the correct way forward." That did not happen. Maybe that is a big ask in a mandatory coalition; in such a coalition there are people with very different perspectives on how society should run—politics, constitutional issues—and therein lies the problem. So the Programme for Government agreement is key, but sticking to it and defending it and the budget has been the big challenge.

Q242 **Chair:** On that budget point, we have always gleaned the impression over several inquiries that, because of the siloed approach that Lord Alderdice has referenced, as long as there has been a balance between Orange spending and Green spending, if you will, the quality of the outputs has almost been secondary. The flexibility of budget setting to turbo-charge certain programmes has not been deliverable because of the need for both major communities to say, "Look, we've had as close to 50% of public expenditure that we could expect to receive." Has that been a problem? If it has, how did you navigate around it?

**Baroness Foster:** In the 2016 Programme for Government, we changed the methodology to look at outcomes rather than it being about hitting targets—it was outcomes-focused. I think that was a good way forward. Had we been able to continue with the Programme for Government and the outcomes basis, which was led by the Carnegie organisation and was very helpful to us, I think it would have changed that mindset, and the outcomes would have delivered for the people of Northern Ireland. We are all politicians. We all like to deliver for the people who elect us. We have to be realistic about that, but I think the outcomes focus in the Programme



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for Government was a good way forward, and I hope that when the Executive is resolved they continue with that.

**Mark Durkan:** Picking up on John's point about the whole question of designation, as the person who drafted that paragraph I can see exactly the problems, and I could see them at the time. In all this we have to be honest about what we were thinking at the time, so that people in a different generation in a different time can see what is and is not valid in the light of events and experience. It needs to be remembered that the ground rules for the talks contained the rule of sufficient consensus, which was something that all parties agreed to borrow from the South African process, and both Governments did.

The rule of sufficient consensus in the talks, unlike in the South African negotiations, which of course were not election-based, was given an arithmetic formula of a proposition that was supported by parties who represented a majority of the electorate and also majorities respectively of nationalists and Unionists. That was a key safeguard that was agreed by the DUP, which was in the talks at the time the rules were negotiated, as well as everybody else. It became not quite inevitable but very understandable that a similar safeguard would carry into what would emerge from those negotiations.

In particular, that then raised the question about how you do that. Do you do that by designating parties? We did not want to designate parties. People like John Hume were saying, "We can't define a system in which parties are defined solely by Unionism and nationalism. We have to allow for the fact that there could be political change. Different parties could form or emerge." That got us into the question of individuals and independents. We ended up, because we were trying to say that we did not want party politics permanently on Unionism and nationalism, and people elected to the Assembly only according to that index and not other public policy choices— we got ourselves into individual designation, which has now become inordinate and disproportionate.

It is not just people who are asked to designate as "other" who do not like it; there are lots of other people who say that they do not like that the first thing that they have to do as an elected MLA is reduce their wide policy platform to just the label of Unionist or nationalist. Our thinking was maybe inside out. It was well motivated in terms of what we did not want to do with party politics. That is something that should be looked at.

It is not the case that everybody said that there should not be any form of designation. I remember that there was one point when John's party was suggesting that the First Minister could come from the largest designation— the Second Minister, as he was calling it at that stage, could come from the second largest designation, and the Speaker could come from the third largest. We did not like the idea of a hierarchy of designations. Also, that idea suggested that the First Minister would co-ordinate internal government, and the Second Minister would co-ordinate lateral relations, and we were not sure where those begin and end, and how well you do that.



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There were different choices being made. We also need to remember that a lot of this moved very fast in the last couple of weeks of the talks. There was not agreement that there would be Ministers. We only put the idea of the joint First Ministers to David Trimble two weeks before Good Friday. That is how fast things moved. Up until that point, the Ulster Unionist party was not agreeing with Ministers. They were not agreeing that there would be a collective Executive or anything else, so things did move very fast. You can see from reading the agreement that there are things that are ungrammatical. There are glitches that were not caught between the language used across the different strands. The question of designation is one that validly needs to be looked at in terms of how it works, and how it imposes on people.

There is also the linked issue of the petition of concern, which was drafted very differently in the agreement than it appears in the 1998 Act. It is a very different version of the petition of concern. John and I worked very closely on drafting the terms around the petition of concern. John's whole point was that he did not want a veto and, in particular, he did not want tit-for-tat vetoes, which is, of course, what has ended up happening.

**Q243 Chair:** What strikes me are two thematic questions, which I will raise with you briefly and ask for a brief word from the three of you, if possible. This was all part of a peace process that, for many, just became a peace event, rather than a sort of iterative, organic, evolutionary thing. Does Stormont see itself as a driver of the process, or just a product of it? That is part A of the question.

Part B is that, particularly as the bandwidth of Government here got caught up in middle eastern issues, there is a charge—which certainly Tony Blair did not plead guilty to when he appeared before us—that it was slightly “devolve and forget”. There was an expectation that the deep taproots in Edinburgh were being sunk and the deep taproots in Cardiff were being sunk, forgetting the sort of historical fragility, if you will, of Northern Ireland.

Without the mothership beaming in and without the pincer movement of Westminster and Dublin, was enough done by the senior joint signatories, if you will—Dublin and Westminster, as the two respective Governments—to, and I do not use this term in its pejorative sense, hold hands, guide, lead, bring together and forge conversations, or was the mindset, “Well, we have set it up; let them get on with it”? Lady Foster, I appreciate that you were not there at the start, but your observations on that coming in as a Member of the Stormont Assembly in the early years will be equally valid. Mr Durkan?

**Mark Durkan:** I do not remember, in those early years of the workings of the agreement, often telling Tony Blair that I wished parties were not running in and out of Downing Street, and that we did not have situations where people decided a problem was not worth solving or avoiding ourselves; instead, we had to wait for those helicopters landing on the lawns of Stormont before we could do anything.



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Our peace process has run for many years. It has been a learning process. In part of the period post agreement, it is almost as though we have been going through an unlearning process; it is as though we have been unlearning how much we need each other, how much we need to work things out for each other and how much depends on mutual adjustment, rather than just mutual engagement, which can be fascinating and very animated and all the rest of it, but quite sterile as well. It is that test of mutual adjustment to be able to move positions so that it is better for everybody.

At times, we have lost the sense of our own agency in many of these things. I have often used the example of the Wizard of Oz syndrome. We look to the Americans and the EU to help us with things, and we ask the two Governments to do things—things that we could be sorting out for ourselves. The Wizard of Oz did not give anybody courage and he did not give anybody intelligence; he just told people what their own capacity was, and maybe pointed at a bit of—

**Q244 Chair:** And then we realise that there was not a Wizard of Oz; it was an old man behind a curtain with a bit of smoke.

**Mark Durkan:** Exactly. A lot of this is performative politics being used. I used to joke with David Trimble that he could not pass a brink without teetering on it, and we all had to share in the drama. That is all good political stuff for its time, but the fact is that if people are electing an Assembly and, in turn, an Executive is serving in that Assembly, it must live up to its own responsibilities a lot more.

John mentioned the whole stand-off around decommissioning and decommissioning being used as a precondition for establishing the institutions, which is not what was in the agreement. I think the two Governments failed in that first year and a half to show good authority. They should have made it very clear to the Ulster Unionist party that the agreement is explicit, and the institutions must be up and running by 31 October 1998, with decommissioning as a target—for me—in 2000. Equally, they needed to say to Sinn Féin, “Stop saying decommissioning isn’t a requirement of this agreement. It is clearly an objective and a requirement under the agreement.” They should have shown good authority in saying that to those two parties.

Instead, we were caught in a complete stand-off, and a lot of damage was done there. A moral hazard was created, in that you can somehow have the peace process but not have the institutions. That has created the lax attitude that, at times, we can let the institutions go, or go on ice, or whatever, so long as we can still say that we are making motions around a peace process. I think that is a moral hazard that we have to eradicate.

**Chair:** Arlene; I’m sorry—Lady Foster. I was saying to myself, “Don’t call her Arlene; call her Lady Foster.” I am overthinking it.

**Baroness Foster:** I’m sure everybody else on the Committee will absolutely call me Lady Foster as well.

**Claire Hanna:** I'm just trying to avoid pronouncing "Aghadrumsee".

**Baroness Foster:** I have to say, Claire, that is very good. You've been taking lessons.

**Chair:** Don't draw attention to that, Claire. Lady Foster.

**Baroness Foster:** Do you know, I've forgotten the question.

Q245 **Chair:** It was about an agent of the process, or a product, and the devolve and forget.

**Baroness Foster:** I think the Governments, to be fair, wanted those of us in the Executive and in the Assembly to, as Mark says, find that working together and to allow us to get on with things. However, sometimes warning signs go up, and sometimes those warning signs were missed. As a result, then, we had collapse, even right from the beginning. Mark made the point about decommissioning, and although I wasn't elected at the time, we all lived through that very difficult point. The Unionist community at that point was feeling very sore as well in and around some of the victims' issues, and the fact that prisoners were being released, or had been released, and that victims hadn't really been given a voice in the whole process. There was a morality issue there. Therefore, David Trimble started to lose the Unionist community and then the DUP became the largest party. I left the Ulster Unionist party and went to the DUP.

There was a realpolitik piece around that at the beginning that the Governments, and particularly the UK Government, should have been aware of at that time. That has continued, unfortunately Chair, when warning signs go up. I do believe, like Mark, that we should have a situation where we work together and get on with things, as other devolved Administrations do across the UK. But when warning signs go up—one of those warning signs, and no doubt we will come to talk about this in the future, is the use of petition of concern and things around that—there should be interventions, not in a dramatic way, but in a "How can we help? What can we do?" way. Sometimes that hasn't happened.

**Lord Alderdice:** To take a slightly different perspective—although I am not disagreeing with colleagues at all—for me, there were two processes that overlap. One was a peace process and the other was a political process. The peace process has been very successful. Hardly anybody has been killed over a very long period of time, so it has been very successful from that point of view. That is not to be sniffed at, and not just because of the effect that it has on people. Once you have people killing each other, the dynamic of everything changes. We are seeing this globally at the moment, so stopping the killing of people was really, really important for every conceivable reason. That is over. For me, one of the failings was people continuing to talk about a peace process when, actually, we were talking about a political process, which is a different kind of thing altogether.

The second thing is that the driver through all of that period—going way back long before the agreement and all the talks that went on before, and



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so on—was always the two Governments. It was not the parties. When I got involved in political life, the parties weren't even talking to each other. It was always a question of the two Governments being the driver to sort this out.

Of course, we established that there were three key sets of relationships: within Northern Ireland, between north and south, and British and Irish Governments. Europe was important, America was important, but there were those three. That is why there were three strands. That is why there were three sets of institutions. One of them was the British-Irish Intergovernmental Conference, and it did not meet at all between 2007 and 2018, despite the fact that we had had the whole Brexit referendum in between times.

Can we imagine how different it would have been if we had a Prime Minister and a Taoiseach like John Major and Albert Reynolds, or Tony Blair and Bertie Ahern, who could lift the phone to each other during the whole period coming up to the Brexit referendum and say, "Look, we've got a problem here. I know you don't like what we're going to be doing, but can we sit down and talk about how we might manage this?" It didn't happen, because the two Governments were not fulfilling their responsibilities under the Good Friday agreement. They could turn to other people and say, "No, the Assembly is not working, so the north/south bodies can't meet." They were not meeting. They were not doing their job.

Apart from the historic role of being the engine that drove the whole process way back into the '70s, they were also Governments that had their own responsibilities that they signed up for under the Good Friday agreement, and they did not fulfil them. That did not just have a consequence for Northern Ireland; it had a consequence for the rest of the United Kingdom and for the relationship between Britain and Ireland beyond the question of Northern Ireland. I really do think that they need to reflect on not only what they have done—that can be a bit sterile sometimes—but what they need to do if they really are committed signatories of the agreement.

**Chair:** Thank you.

**Q246 Stephen Farry:** Good morning, everyone. You may have touched upon this already, but feel free to expand. All three of you have considerable experience in different roles inside the institutions at different times over the past 25 years, so I am just looking for your perspective on the overall effectiveness of the institutions and the impact on how Northern Ireland has been governed as a consequence.

**Lord Alderdice:** Thanks, Stephen. If I reflect back, at the time when we started off there was a lot of enthusiasm, and a lot of people got involved from different parts of society. I remember at that time I think there were four doctors in the Assembly. Apart from myself, there was Ian Adamson, Joe Hendron and Alasdair McDonnell, and then much later Kieran Deeny was elected for West Tyrone. I may be wrong about this, but I do not think there is a medical practitioner now. It is not that having doctors



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there is hugely important, but it seemed to me to represent an opting out rather than an opting in.

At the start, we knew that many parts of society were not involved in politics, and we hoped that they would—I think it has moved in the opposite direction. It could be interesting for the Committee to look at the profile. I remember one debate about finance when Mark was the Minister of Finance, and James Leslie, a representative from the Unionist party, was on the Finance Committee. James was a Cambridge-educated merchant banker, and I sat listening to the two of them thinking—

**Chair:** Let us not hold that against him.

**Lord Alderdice:** I was thinking, “I suspect the rest of the Assembly barely understands what Mark and James are talking about.” But you did have people there with wider experience. I think it would be worthwhile for the Committee to look at the breadth of academic, professional, business and other experience of the current elected Members, because I suspect that it is more limited than was the case at an earlier time. Many of those people do not feel that it is something they want to commit themselves to.

**Chair:** One could say precisely the same thing about this place.

**Lord Alderdice:** It is quite true.

Q247 **Chair:** Look at changing the profile of who is coming into politics. Whether it is the social media stuff and all the rest of it that is putting people off, I do not know, but—

**Lord Alderdice:** I completely agree. It is a problem with public life in general, but I think it means that the Assembly has not functioned in the way that it might, and I think that that is one of the contributors—I agree that it is a contributor elsewhere as well.

Q248 **Stephen Farry:** A good example of that, John, would be the mental capacity legislation that went through in about 2015. It was about 500 pages long, and it went through in a couple of hours, because it was just too big and too complicated. It is an area you know well, of course.

**Lord Alderdice:** Absolutely, and I think at that early time, civil society in general was looking to the Assembly quite enthusiastically, wanting to get involved and to collaborate. I think they have gradually lost heart, and that is going to take substantial rebuilding.

**Stephen Farry:** What are your thoughts, Baroness Foster?

**Baroness Foster:** I think there are lots of reasons for that. Social media is one of them. Our own local media is another. Young women have said to me, “Why would I get involved in politics?” Their whole life is open to scrutiny, they are trolled, and they are attacked, so they stay away from politics. I think that that is wrong, and it is one of the reasons why we really need to tackle the whole issue of more women in public life, because they do get attacked disproportionately on social media. Anyway, that is a totally different scenario to what we are talking about.

**Stephen Farry:** It is a valid point.

**Baroness Foster:** It is important that we have good people who want to enter into public life. There is no doubt about that.

Stephen, you and I know very well that we did not have the best, effective Government in Northern Ireland, because we had a mandatory coalition and different people were looking for different things out of government, and therefore there were all of those battles. There are battles that go on in Westminster about government, but we had an extra layer to all of that. It was, to quote one of my predecessors, a battle a day in relation to what way and how government functioned. No, it was not the most efficient form of government, but it was the form of government that was voted.

I did not vote for the Belfast agreement—I think everyone knows that—but it was voted for by 72% of the people, so it therefore has legitimacy, and therefore it was implemented in that way. There have been attempts to reform and change different parts of it. There was, of course, the St Andrews agreement, and then Fresh Start and “New Decade, New Approach”. There has been a range of attempts to try to deal with things that have been obvious in the governance as we went along. When the Executive comes back, hopefully we will see some of those reforms kick in and make a difference, but it is a process.

On the Chair’s point—is it a product or is it a process?—David Trimble sold the agreement to Unionists as a deal, and it was a deal. For republicans, it was a process; it was a stepping-stone to their next destination. Therefore, there was always that tension evident in how the Belfast agreement was viewed in the different communities.

**Stephen Farry:** Mark?

**Mark Durkan:** That brings me back to the talks many, many years ago, even long before the agreement, about how the different mindsets—the inductive mindset and the deductive mindset—align with the different political traditions in Northern Ireland. In terms of the workings and operations of the agreement, mention was made earlier of the Programme for Government and the budget, which should be aligned. Let’s be very clear: one of the reasons the Programme for Government and the linkage with the budget were specifically written into the agreement was that we were trying to answer concerns that other parties had about the idea of elective inclusion.

When we negotiated the agreement, we never used the term “mandatory coalition”. That term was introduced by the DUP in opposing the agreement. The term we used during the talks was “elective inclusion”—the idea that parties could be included according to their mandate without anybody else vetting or vetoing them. That was the principle of elective inclusion. It helped to bring about the talks. It mandated 10 parties to be allowed to be at the table. We moved to this idea of appointing by d’Hondt or some other distributive method as a way of achieving elective inclusion.



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We said to all parties, "You can have the right by mandate to be in government. You don't have to be; you can opt out if you want."

Part of the motivation for that was that we had agreed in the talks rules that if there was an agreement, it was going to go to a referendum, and we wanted to maximise the votes in the referendum. I am quite up front about that: the need to maximise votes in the referendum and make it as "yesable" a proposition to as many people, as many parties, and as many voters of as many parties as possible was partly a motive behind this whole format of elective inclusion that we came up with. Parties were concerned about it, because people said, "If you have Ministers and they have executive authority, they will go off on solo runs. We will have rogue Ministers. Where's the accountability? There's a democratic deficit. You are not electing this Government."

That is why we had things like the petition of concern as a call-in mechanism to say that people won't be able to do whatever the heck they want; the Assembly can hold people to account. Ministers won't be acting entirely on their own; there will have to be an agreed programme of government. It is not going to be the case that a Minister of Finance is going to tell everybody what they are getting. The Minister of Finance is going to be proposing and recommending, and the Executive will have to agree, so it is going to be truly power sharing in that sense.

That is why the agreement was written in the terms in which it was written. In the first years of the institutions, we were able to do the budget and the Programme for Government. I remember saying at the time to the Civic Forum and others that I thought people were being too gentle with us on the Programme for Government. People were just glad to see one; it was great that we were all there and working together. People should have been more critical and maybe more ambitious in the questions they raised. The Civic Forum itself was a very good and useful device, and very helpful. It is something that we miss; we miss that level of civic input in our processes.

In terms of the budget, we did fall into a bit of a rut. I would table proposals to the Executive, giving indicative figures for three years, but departmental Ministers—I am not saying this was Ministers in other parties—look at indicative budget allocations for three years and their question is, "Does my budget look big in this?" If the answer isn't yes, there is a problem.

We could get agreement on publishing the figures for the next financial year, but other parties, other Ministers, would not agree that we could publish indicative figures. So, we got into this thing of publishing the budgetary figures purely on an annual basis because people did not want that—even though the indicative figures for years two and three were not going to be set in stone, but we got into that sort of rut.

We did have useful devices, things like the Executive programme funds. The money wasn't just going into Departments and disappearing into the woodwork; we created funding so that the Executive could set particular



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priorities in a number of different and creative areas. The Executive programme funds worked best when Departments were asked to work together to bring forward proposals and bids and with partners outside of Government. In many cases, it was partners outside of Government who initiated a lot of the ideas that were funded by the Executive programme funds.

The institutions can work well if we allow them to and commit them, and also if we allow some stimulus and involvement outside and from civic society. Remember, one reason why the Policing Board was so successful, particularly in its early phases, was the fact that it was not just 10 MLAs running it. You had independent members on the Policing Board as well. If that had been just left between the parties, the Policing Board would have got into big, big difficulty. There was a period where the shining success, institutionally, of our process was the continuing work of the PSNI, the new beginning for policing and the Policing Board, at a time when the Assembly was down.

We should not underestimate good civic input, as well, which helps to alter the behaviour of parties.

**Q249 Stephen Farry:** On a more general level, in terms of your own respective experiences, what sort of lessons would you apply to the current political deadlock in terms of a breakthrough and getting the Assembly restored? We will go the opposite way this time and start with Mr Durkan.

**Mark Durkan:** We have seen this *déjà vu* before so we know what it is going to take. There will be a bit of performative politics, no doubt, over the next couple of months, but we need to realise, just as we did when we went round and round in the talks before the Good Friday agreement, that there comes a point when you realise that you can't just keep talking past each other and you can't just keep criticising each other's position. As I say, there has to be a bit of mutual adjustment to accept that things need to move if we are all going to be able to move on.

There has obviously been significant adjustment in the context of the Windsor framework. Is that enough for some people? Obviously, some people are saying no, but people told us before if there was some progress there would be a graduated response, so I think we will maybe hear phrases like "graduated response" coming back into vogue over the next period. We might see people moving to say that they can maybe allow some things to happen at an Assembly level, and test the waters about other things. No doubt there will be questions then—I know there will—about what can be done for other optics, and is it just optics or is it substance? I imagine that there will be something by way of legislation, and that some of us will look at it and say, "That is basically editorial dressed up as a clause," and other people will say, "No, that is something significant, and something that is now named on the face of the legislation, and that will be enough."

As I say, we have been through this before with different things. Things were put into legislation, were addressed or mentioned in legislation or



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were namedly repealed in legislation, not because it changed any basic reality but because it gave people cover and allowed people to say, "We can now accept this and move on."

**Baroness Foster:** What Mark is referring to is constructive ambiguity, which was one of the phrases from his period of time—

**Mark Durkan:** Collective ambiguity.

**Baroness Foster:** I think it was constructive ambiguity.

**Mark Durkan:** A bit of both—but collective ambiguity was the original phrase.

**Baroness Foster:** I am not going to get into the details, because I am not in the Democratic Unionist party any more, and I am sure that there will be conversations going on to try to find a way forward. The DUP and their Members who are here today are a devolutionist party. They want to see devolution back again, and so it is about how we can make that happen with the support of the community who elect their Members to the Assembly and to make Northern Ireland work. As Unionists, it is important that Northern Ireland does work and that the Assembly returns in a sustainable and fair way. I am sure those conversations will continue, Stephen, and they will get to a point where they can come back to the Assembly again, because it is important to have Ministers making those decisions, as you know, for the good of the people in Northern Ireland.

**Lord Alderdice:** I do not disagree at all with what Mark and Arlene have said, but I will say two things. First, the whole process that we embarked on and got some way with was a recognition of disturbed historical relationships between communities. Fundamentally, it is about relationships. The way the Assembly worked in the early days was because people had established relationships with each other during the talks process and were prepared to cut each other a bit of slack and do things because "I know I can trust you. If you do that, I'll do this." We tend, in a discussion like this, to focus on the institutional, regulatory and constitutional questions, and they are very important, but they are not actually what makes it work. You can have a pretty ropey structure that works because people establish working relationships; you can have a marvellous structure that does not work, because people do not have working relationships. To me, that is absolutely the key thing, and at the moment, my perspective would be that the relationships are not in a good place at all—at all. That is not just between Unionists and nationalists; it is within those communities as well. There is a major piece of work to be done there.

There is another element to it, which is that time does move on and has to move on. I remember talking many years ago to one of my predecessors, Oliver Napier, about how things had been in much earlier times. In fact, I brought him into the negotiations to explain to Tony Blair why the 1974 situation collapsed and that he was about to make the same mistake again as had been made in '74 in the Council of Ireland. Oliver said to me that



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he had asked Brian Faulkner at that time, "Brian, why did you do the deal?" He had been the Ulster Unionist leader. "Oh," he said, "it's very simple, Oliver. The Prime Minister told me that that was the price of the Union. If we didn't accept it, 'That's the door.'"

There is one aspect of negotiation that is about saying, "Let's try to find a way. We're all agreeable," and so on. But there are also certain boundaries that need to be set down, for all the players, because without boundaries there is no structure and no agreement and it doesn't work. I think that part of the reason why the relationships are in a problem is that people are not setting down certain kinds of key constitutional and other boundaries and saying, "Look, folks, that's the way it is now. It's not the way it was 25 or 50 years ago; it's the way it is now."

**Q250 Chair:** This is a point that Tony Blair made to us. Stormont is part of the governance fabric of the United Kingdom. It is part, therefore, of the status quo. If the status quo is not deemed to be working or workable, the status quo has to change. That seems to be almost a message that Prime Ministers have echoed to different Northern Ireland politicians over the decades, doesn't it?

**Lord Alderdice:** I think that is true, and I think that is the position we are in. The real question is whether the status quo is something that can continue to be managed. The Britain that Unionists wanted to be united with doesn't exist any more. This country is a very, very different place from what it was 25 years ago, never mind 50 years ago. It is a different community. It has different sets of values. It is a different place. Some people in Northern Ireland do not understand that and do not appreciate the change that has taken place.

One can be misled. When you talk to republicans, for example—I still keep talking to and have contact with all sections of the community—they say, "If there was a united Ireland tomorrow, we would still want a Northern Ireland Assembly. We think that that's really important." Sometimes people get fixated on the question of the Northern Ireland Assembly as though that was something that was about it being within the United Kingdom. That is not necessarily the case. There needs to be further deepening of these questions, but, in my view, the situation has changed and is changing, and that is true within the United Kingdom and its relationships.

**Baroness Foster:** The reason why the Belfast agreement was able to be sold to a proportion of Unionism was that the constitutional position was spelled out very clearly in the Belfast agreement; that is there. I know John has made some comments recently about joint authority. There is no space for joint authority in the Belfast agreement; it is not there. If John is advocating moving away from the Belfast agreement, towards that position, that is a different scenario. But under the Belfast agreement, it is very clear; the constitutional position of Northern Ireland is spelled out—unless and until there is a majority that decide that they want to go in a different direction.



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In terms of Unionism, I think John is trying to portray Unionism as a very traditional force. There are very many progressive Unionists. Unionism is not a monolith; there are many people in it—

Q251 **Chair:** It is a broad church, like the Tory party.

**Baroness Foster:** Correct.

**Chair:** There are dinosaurs and there are progressives, and you could put different labels on all of us.

**Bob Stewart:** Which are you?

**Chair:** Oh, I'm a progressive.

**Baroness Foster:** There are many different reasons why Unionists are Unionists—culturally, politically, socially, economically, whatever—and it is not right to say that we are all just traditional in our bunkers. I think it is the case that many of us want to remain within the United Kingdom because it is the United Kingdom of today. That is just the reality.

Q252 **Chair:** Lady Foster, on that point about the constitutional settlement, I think it was David Trimble who said that the Union had never been firmer, or never been more secure. Lord Alderdice was referencing that we should never forget the value of peace—that it has got slightly priced in and accepted, as one just accepts central heating or fitted carpets; it is just always there. Do you think the Unionist community, in all of its manifestations, has forgotten the enormous step that the Republic made of constitutionally giving up its territorial claim?

**Baroness Foster:** Well, you see, Chair, for a lot of Unionists, including myself, it was an illegal claim that should have been challenged on many, many occasions, including by the European Union, but it wasn't.

**Chair:** I appreciate that, but—

**Baroness Foster:** If something is wrong and shouldn't have been there in the first place, ab initio—it shouldn't have been there to start with. Getting rid of something that shouldn't have been there in the first place isn't really a big thing. It is a bit like, "When did you stop beating your wife?"—that sort of thing. It should never have been there in the first place.

Q253 **Chair:** A malignant tumour in the body shouldn't be there; it is taken away and we think, "Well, that's rather good news. We would have preferred that it hadn't been there in the first place." But from the Republic's point of view, that was a huge step, which did give credence, did it not, to the Trimble assertion that, as a result of that, the unity of the Union was—

**Baroness Foster:** I have never disagreed that, in terms of the constitutional position of Northern Ireland, the Belfast agreement did no violence to the Unionist position. What were very difficult for Unionists were all the other add-ons, including the morality of allowing terrorist prisoners out of prison. That was a huge kick in the teeth not just



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Unionists, actually, but for many in the community who felt that it was morally wrong. That was why people voted against it.

**Bob Stewart:** It was morally wrong.

**Baroness Foster:** It was morally wrong—yes. And that is the reason why I voted against the Belfast agreement myself. Therein lies the problem.

Q254 **Claire Hanna:** There is lots that we could pick up on there, but you have touched a little on the consociational model and the designations. I think it is important that we remember that those systems were designed essentially to create a framework to resolve a centuries-old tension between two equally legitimate but in-tension traditions, in the very challenging environment that you set out, and ultimately to stop killing and to remove the fig leaf.

I think sometimes that with the changed Northern Ireland, it is easy to be a bit glib about phrases like “super-prod”, implying that there was a motive and that people were trying to protect the strength, or otherwise, of political parties. It is a bit like when people say, “Well, I don’t see colour”; that doesn’t wish away the structural imbalances in race, for example. I think it is important that when we try to evolve the structures, we do not imply that they were put there by people who wanted to stay in sectarian trenches. Mark has indicated that there are many people with concerns. I know that the three times I signed in, it was always as, “social democrat, nationalist”, and I would have liked each of those to be reflected.

I want to ask about where we go with that. You have addressed the genesis of designation, and I know that colleagues will pick up on how we equalise the strength of designations if we persist with them, but I want to ask specifically how we might go about unpicking that. We are talking about changes to the agreement, whether it is keyhole surgery or wholesale. From the SDLP’s perspective, we have already put down amendments to MEPOC around enshrining the two-thirds majority and practical ways of evolving away from designation, but what, for example, would we do with the concept of First Ministers? If there is not a designation—if there are not two sets of identities, or more—how would we address some of those legacy issues, such as allocation of justice? Should we just allocate normally? How would we manage things like the joint First Ministers?

**Lord Alderdice:** I have already described my own view that the Assembly could operate without designations, but requiring that the negotiated—rather than mandatory, as Arlene has said—Government would have to command the support of 67% or 70%. That, frankly, does away with an awful lot of the issues, including the question of a separate negotiation of a Minister of Justice and so on.

But the question from me, as distinct from many of my liberal colleagues, has always been not, “What do you try to do?” but, “How is it possible to do it?” One of the difficulties is that trying to negotiate constitutional and institutional change is very difficult because those who have been elected



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under a system are often very chary to change it to another system that might not benefit them so much. It seems to me that that is the major problem. It is not difficult to put down the proposals you are describing of joint First Ministers and 67%. We debated those at the other end of the building at the end of 2021 as well. The problem is delivering them, because the parties in Northern Ireland say, "Hey, wait a minute. This doesn't benefit us. We're suffering from this."

As I have looked at how things might progress over the next period of time—and if I could pick up the comments that Arlene made about some of the things I have said publicly—I have never said "joint authority"; I have always said "de facto joint authority". The reason I say that is this. There are three strands to the agreement; there are three sets of institutions. If strand 1 and the Assembly is not operational, strand 2 cannot be operational, but strand 3 does not depend on the Northern Ireland parties; it is the British and Irish Governments in the intergovernmental conference. If there is no effective devolution, things devolve upwards to the two Governments to operate.

The point that I have been making is that there is no way that the British Government, for example, in the absence of an Assembly, is simply going to go back to old-style direct rule. It is just not going to happen politically—it is not going to happen. Therefore, you move into a situation where the British Government will not operate things in Northern Ireland without consultation with the Irish Government. Although I would like to see the changes that you describe, I suspect that politically, delivering them is going to be very difficult, unless there is the kind of development that Mark and Arlene have pointed to and, in the autumn of this year, there is some kind of cover and so on. I hope there is.

**Q255 Claire Hanna:** I do not disagree with a lot of that. Obviously, I made very similar points at length last year about the alternative to a one-sided direct rule, and I know colleagues will pick that up with you. I agree that people who are benefiting from the structures, as they are, are less incentivised, but part of what we are trying to do is to suggest and model some changes and point the way to how we can change the agreement. If we toned down or completely removed designation, would we do away with the concept of a First Minister and Deputy First Minister and just have a First Minister? That is what I am asking about. There is an understandable discourse, because many of us would wish to move away from those strictures. What we are trying to do is point out how it can be done or some of the challenges. Is there a way to resolve that one in particular?

**Lord Alderdice:** I think there is. There is no particular reason why there should not be an agreement to have joint First Ministers.

**Q256 Claire Hanna:** But how do you have joint First Ministers if there is no designation? That is what I am asking.



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**Lord Alderdice:** Simply by agreement of the largest parties. Like any other coalition agreement, you have a coalition agreement, and if it is going to deliver 67% of the Assembly Members—

Q257 **Claire Hanna:** But if you think of other coalitions, the Republic, for example, has the Taoiseach and Tánaiste, not co-Taoiseachs or whatever. Anyway, we may be getting bogged down in the detail. I am just trying to establish how we can point to some of these evolutions and say that they are possible, and to move away from what can be a fairly glib conversation about how it is only sectarians who want designation. It is trying to tease out the fact that it is quite complicated when you start to unpick it. Arlene, is there anything you want to pick up on issues around designation in particular? I do not want to stray into other questions.

**Baroness Foster:** I think you are right to say that it is attractive to say, “We’ll get rid of designations so that people don’t have to designate when they go in on their first day,” but that has repercussive implications for the whole structure in terms of joint First Ministers. When I was First Minister, the Deputy First Minister rejoiced in calling herself the joint Head of Government all of the time. I am not so sure she will be as keen to do that now that she is going to be the First Minister. The reality is that the Office of the First Minister and Deputy First Minister, as it used to be known, is a joint office. One cannot act without the other. That is key to how things have developed over the past 25 years.

It is attractive to look at weighted majorities and at issues to deal with things rather than have designations, but the key to all of this will be finding sufficient consensus—that overall consensus—to moving forward and not leaving behind a bloc. Once you leave behind a bloc, it will not work. We do recognise in Northern Ireland now that the blocs are slightly different. You more or less have three blocs now: Unionism, nationalism and other. How you deal with those blocs moving forward is something that I think there will be a lot of focus on in the next five to 10 years.

The constitutional change issue, which John mentioned, is totally different from the designation matter. The designation matter is how you become more mature in your politics in Northern Ireland and leave behind labels and just get into government and make things work. I go back to the point that whatever happens has to have the consensus of the people that they are there to represent. That is what, as I understand it, the Belfast agreement was about, and it is therefore what any fundamental changes should have as well.

Q258 **Claire Hanna:** Mark, do you have anything to say, particularly on the consociational aspects?

**Mark Durkan:** I think there is tremendous positive symbolism in having joint First Ministers. I think it should be equally titled. When we came up with the idea—remember that this was only in the final weeks of the talks. I have spoken before about how the images from points past helped to stimulate the idea of joint First Ministers, to answer some of the problems that we had with John’s proposals about the First Minister, the Second



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Minister and the Speaker, etc., and to answer the argument about democratic deficit, that if Ministers are just appointed by parties according to their mandate, there is no collective mandate given.

Of course, the idea of the Assembly jointly electing First Ministers was thrown out at St Andrews. I think St Andrews did big damage. It reduced the true jointness of the office. It also relegated the Assembly's corporate standing under the Good Friday agreement text. The Assembly is meant to be the prime source of authority over all devolved responsibilities. That ended up getting quite badly damaged. After St Andrews the Assembly got increasingly relegated.

There is power in the symbolism of having the joint First Ministers. As I say, I think they should be equally titled. Let's remember that when we faced some big challenges, having joint First Ministers worked very significantly. When we remember the murder of Stephen Carroll and the Massereene murders, it wasn't just that we had a very united response in the Chamber in the Assembly; that was then symbolised very powerfully when you saw Martin McGuinness, Peter Robinson and Hugh Orde, who represented the new beginning to policing. There was powerful symbolism in that as an answer, in a united, democratic way. We should not devalue the symbolism that there can be in joint First Ministers.

The text of the Good Friday agreement did not require that one had to be Unionist and one had to be nationalist. Under the terms of the Good Friday agreement and the '98 Act, the Alliance party could have proposed joint First Ministers, because it was in the Act that the Speaker, if there were several joint nominations, would have to decide the order in which the vote would be taken or whatever. While cross-community support was needed for the joint election, there was no specificity as to the designations, partly because we were saying, "A party might decide it doesn't want to do something, but it doesn't want to stop the Government altogether."

I think we should go back to the idea of joint election—joint First Ministers, equally titled and jointly elected by the Assembly. I think there could be a menu of options, including parallel consent as in the agreement. I do not think we should outlaw that and say, "If there are two big parties that are willing to get their act together and do it, that should be outlawed. They shouldn't be allowed to do it."

Then there is the alternative: the qualified weighted majority allowed in the agreement, or something like a two-thirds majority. The fact is that all parties have accepted a majority of two thirds of all MLAs without reference to designation as the basis on which an Assembly can be dissolved and an election called. That was in the '98 Act and it has never been challenged; nobody has ever sought to amend it. It has been repeated in the recent legislation that you passed here in the past few years.

It is also the case that, in the legislation you passed in the last few years in this House, you said that a party's designation is determined by how a



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majority of the MLAs designate. You have actually built into the legislation that individual MLAs can designate themselves differently in different parties, but it is the party designation that counts. Maybe we can look at doing away with the individual designation of MLAs, but rely on some sort of card vote system, a bit like the one that is used in the Business Committee of the Assembly. Parties might occasionally say, "This is a significant vote, and we want to do this with reference to designation," so we have moved towards more of a party basis for designation. We originally got ourselves on to a hook in the agreement because we did not want to do it as parties; we wanted to do it as individuals.

Parties have now accepted that they are doing it as parties. That started at St Andrews, because the tribe algorithm that was introduced to replace the joint election was based on party designation—the largest party of one designation, the largest party of another designation and so on. People have maybe already found a way to turn down the dimmer switch on designation, in terms of how it impacts on individual MLAs.

**Q259 Mary Kelly Foy:** In that case, what weight do you give to the suggestion of having a First Minister and a Deputy First Minister?

**Mark Durkan:** I would just equalise the titles and make them joint First Ministers. I gave an example of where that was powerful at the time of a significant violent challenge to the institutions and the process. We also saw that during covid. Arlene and Michelle O'Neill were able to jointly handle a lot of the controversies during covid, hold press conferences and stand together in the Assembly when some very difficult choices were being made. That worked very well. I don't think it would have worked as well—we would have navigated our way through those issues, but we would have got bogged down in a lot more controversy—if we didn't have that level of joint working. There are ways of positively manifesting that. It also works well when it comes to trying to sell Northern Ireland abroad. We increasingly want to be promoting Northern Ireland as a special place, rather than always lobbying for it as a special case. When you have joint Ministers acting in that way, it is powerful.

**Q260 Mary Kelly Foy:** Lord Alderdice, do you agree with that suggestion?

**Lord Alderdice:** It has been mentioned a couple of times that I had suggested that the other designation might have the speakership. Let me just clarify that. I raised that question at the point when it became clear that in practical terms, First and Deputy First Ministers were going to be representing Unionist and nationalist parties. I raised it because it seemed to me that that whole drift was going to marginalise people who did not want to designate as Unionist or nationalist. Nobody, by the way, liked the term "other"—all of them protested against it—but as Speaker I had no alternative but to go with it, because that is what was there. It was clear, however, that their votes, support and mandate were not being recognised in the way that Unionist and nationalist party mandates were being recognised, in terms of senior position. That was helped a little bit by the negotiation of the Minister of Justice, but that was much later.



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I put forward the proposal, quite correctly, that the other designation should have the speakership; Mark referred to that a couple of times. That was done to make it clear that this was not just rag, tag and bobtail; this was a body of people who very conscientiously took a position that was not Unionist and not nationalist. But that was not accepted, and I am not sure whether the thing to do is to revisit it or the alternative models that we have been describing.

In terms of First and Deputy First, it seems to me that it has to move to being joint First Ministers. Prior to Sinn Féin becoming the largest party, in the other place I advised Unionists to make that proposition. I said, "If you make the proposition now that it is joint First Minister, after they become the larger party, you can legitimately claim it," but I was told by one of the senior Unionists of the time, "You're jumping the gun; it's not going to happen." Of course it has happened, and I hope that it moves to joint First Minister.

Q261 **Mary Kelly Foy:** Baroness Foster, I take it that you feel the same.

**Baroness Foster:** The reality is that it is a joint ministry. To give confidence at a particular point in the process, it was important for Unionists to identify with the First Minister. We talk a lot about technicalities and negotiations—we have talked a lot about that today—but the reality was that it gave comfort to a lot of Unionists when they saw that the First Minister was a Unionist. However, the reality has always been—I have always been very open about this—that the office is a joint one. People may now feel that joint First Ministers is a good move. For what it is worth, I absolutely agree with Mark that the symbolism of two people from two different backgrounds going out to sell Northern Ireland as a place to invest in, to visit and to be educated in is very powerful. I have been involved in many of those trips, both as Tourism and Enterprise Minister supporting the then First and Deputy First Ministers, and as First Minister myself. It was important to have that collegiality at the top when going out to do that. If it helps with that, yes, I would be supportive of it.

Q262 **Chair:** This is not a criticism, but most of your answers to the questions have had an awful lot of "if" and "may", and "I proposed and nothing came of", "we discussed", "we suggested", and so on.

**Mark Durkan:** I have to confess that some of my stuff has given us that problem.

**Chair:** We will take the mea culpa. When the Committee talks to "ordinary men and women in the street"—we have had a town hall and an event in the MAC in Belfast—we are always struck by the fact they are just interested in a better Northern Ireland. Do you agree that to do politics and make change, you do not need to love or like each other, or to agree with each other all the time, but we all need to trust each other and each other's instincts? No one goes into public service to make people less healthy or wealthy, or worse educated. The public seem to be five or 10 years ahead. I take Lord Alderdice's point—I think it was his—that the agents of change should be the DUP and Sinn Féin, but what need is there



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for change when the two largest parties benefit the most from the current construct?

With the exception of the ultras on both wings, everyone accepts that Unionist and nationalist politicians are striving for better health and education across Northern Ireland, but your successors do not trust themselves enough to deliver the bold reform that most of the public have already settled in their mind that they want, would welcome and would think beneficial. There is a lack of nerve.

**Baroness Foster:** Part of the difficulty in politics in general, but more specifically in Northern Ireland, is that we have been buffeted by events that have not been in our control—

**Chair:** Try being a Tory MP for the past five years! I empathise.

**Baroness Foster:** Well, I am thinking particularly of the taking down of the flag in Belfast city hall in 2012 after what had been the most wonderful year for Northern Ireland. We had celebrated “Our Time, Our Place”; our tourism had really risen; we had new visitor centres at the Giant’s Causeway and for the Titanic; and Her Majesty the Queen had been to visit. We had had a wonderful year of tourism success and inward investment. Then, we had the taking down of the flag from the city hall, which led to flag protests, which led to disorder, which led to a lot of unrest right across the community. The good will there had been in the Executive faded away at that point, and that was hugely disappointing.

Q263 **Chair:** But that was 11 years ago, wasn’t it?

**Baroness Foster:** Then we had the welfare reform crisis; we had signed up to welfare reform and Sinn Féin decided that they were not going along with it. We had a complete hiatus around that. Then, in 2015, we had the murder of Kevin McGuigan, which caused a lot of unrest, as you can imagine. I had to do reports on the ceasefires. All along the way, there have been difficulties that we have had to deal with, so criticising—

Q264 **Chair:** But some would say that that is politics.

**Baroness Foster:** Yes, but in Northern Ireland there is a different level to it, in my view, although people may disagree with that. In a coalition—an elected coalition or a mandatory coalition, call it what you will—people get pressure points, and then those pressure points begin to manifest themselves. I said earlier that alarm bells ring at points in time and support is needed, and, at those points in time, we needed support.

**Chair:** Jim Shannon.

Q265 **Jim Shannon:** Thank you very much, Mr Chairman. It is nice to see you all. I have missed your whimsical comments, by the way, Mark. I didn’t always agree with them, but they did illustrate the point of view that you wanted to illustrate, so thank you for that. It is good to see you, and Arlene as well—and yourself, John.



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I suppose that the Good Friday agreement set a strategy and a way forward, and while we may have agreed with some of it—perhaps maybe not all of it—it did set a standard for the way forward. The improvement that came forward then was, I would say, the St Andrew's agreement. I know that you have a different opinion on that, Mark, but quite clearly we see that as a way forward. "New Decade, New Approach" took it to another stage. I think there has been improvement as we have tried to go forward to find a workable solution. What are your thoughts on the effectiveness of the Assembly, and what improvements could be made?

John, I say this respectfully to you: while I suspect that your comments on Unionism were not meant to be difficult or awkward, they were seen by Unionism to be that. With that in mind, I think that you need to be aware that Unionism has a very strong, clear position on where we are. There seems to be an unfortunate lack of understanding about Unionism's position, so your comments, while personal—and it is quite okay to have those views—are not helpful, I think, in trying to find a way forward for a political decision.

I want to comment on where we are with the Assembly, and where we're going forward. This is maybe specifically to Arlene and Mark, regarding the roles that you held. I am always of the opinion that, when it comes to the cross-border relationship, there should be co-operation and understanding. It is not about interference; it is not about a legal process that gives the Republic of Ireland a say in the affairs of Northern Ireland, which is against the constitution. Just for the two of you, what would your opinions be on the effectiveness of the cross-border relationship that we have?

**Mark Durkan:** Thank you for your kind comments, Jim. It is useful that you have raised other strands of the agreement. Strands 2 and 3 are important. As John mentioned, the agreement is based on addressing three sets of relationships; that is the agenda first created by Peter Brooke, based on John Hume's analysis that there are three sets of relationships involved in the problem. He created the first agenda of three strands, which meant that we did not have to negotiate all of that when it came to creating the talks in 1996 to 1998.

Having institutions in each of the three strands was hugely important. There was a stage during the negotiations when the Ulster Unionist party said that we did not really need strand 2, and that strand 2 should not be political, but should be purely technocratic and a sub-strand of the wider British-Irish relationship. That was David Trimble's public position, even up to a few weeks before the agreement. We needed to get balance across those strands. Do we have it now? I would say that we don't.

Post agreement, we negotiated the first six implementation bodies that would be set up, and the first 12 areas of co-operation. In those negotiations post agreement, David Trimble's people were saying very clearly that they would find it easier to agree bodies that were doing a lot of EU business, areas of co-operation where we were discussing how the north and south would transpose EU directives, or where we were



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channelling EU money. That is why you have the Special EU Programmes Body—think of Waterways Ireland and the environment sector. They felt that gave them a more defensive narrative within Unionism.

Now, in the context of Brexit, you would have to say, “Well, if those bodies were only agreed on the basis that there was relevant EU business, what is the rationale now? The remit does not stand”. For some of us it is hard to pretend that the tyre is flat only at the bottom. Strand 2 does not have the standing and the substance that it maybe should have, but I don’t want to make that sound threatening or ominous to Unionism. When strand 2 has worked well, it has been to everybody’s benefit.

We maybe need to move away from the “keep it low, take it slow” approach to strand 2. If we can get some sort of restoration, can we move to a renewal review of the agreement, where we look at improving the operation of the Assembly and the Executive? Particularly in the light of Brexit, are there new areas of co-operation that we need to look at in strand 2? Are there things that we should do to some of the existing bodies? For instance, if there is to be a trusted trader scheme, why not look at InterTradeIreland? That is an oversized body that could help to oversee that trusted trader scheme. It could vouch to the EU for different classes of trade, whether that is consumer goods coming in and staying on one side of the border, goods moving across, or goods coming in as part of a value chain in a production or processing line.

We could look at existing arrangements when we consider north/south bodies, and at the challenges we have with Brexit around food and so on. You could repoint and repurpose some of those bodies in a meaningful way. Maybe as well as having to take account of trade on the island of Ireland, they could have regard to trade in the context of the UK. That could be done.

Similarly, strand 3 has never really developed in the way that it should have. There should be much more dynamism there. At the very first British-Irish Council meeting, we were saying, “We might second civil servants to each other. We might sit in on each other’s policy pilots,” and the late Donald Dewar used the line, “I have always said that plagiarism is an undervalued art form.” We have never really done that through the British-Irish Council in a dynamic way. We should be doing that now.

Remember that you have Administrations in Scotland and Wales that could make live, significant contributions to a renewal review of the agreement. When we designed the agreement, devolution in Scotland and Wales was only a coming attraction; they had no input or hand in shaping it. In the context of a renewal review, they could. I know that there have been changes in intergovernmental relations in the UK, and the idea is that the new arrangements will work better than the joint ministerial committees did, but I am not sure that they will. The reality is that Scotland and Wales might have more interest in dealing with some issues in a British-Irish Council context than in just having internal intergovernmental relations, particularly on policy areas where they are trying to maintain some degree of alignment with the EU for their own policy reasons.



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It could be that Whitehall, no longer sending people over to Brussels all the time, has more time to give to the British-Irish Council than it did in the past. It was often very hard to get Whitehall to give a significant commitment to or show any real interest in the British-Irish Council. Maybe if Whitehall thought about conducting a large part of its relations with Scotland, Wales and Northern Ireland through the British-Irish Council and not just through Whitehall machinery it could work in a very positive way.

We do not just have to look at this on a purely north-south basis; it can be looked at on a new east/west basis as well, where there is a bit more dynamism and more contributions from more people. Remember that it does not have to be all eight Administrations in the British-Irish Council, which is a rut that we fell into. People thought you need all eight to do anything, but the agreement allows things to happen between a few of them; it allows people to opt in and opt out of things as well. I think there is room for creative and lateral thinking around the British-Irish Council, as well as that needed for the NSMC and the implementation machinery there.

**Baroness Foster:** Thanks for asking about the other strands, Jim. The north-south strands have worked best when there has been mutual respect and mutual benefit for each of the jurisdictions. One of the things that I was tangentially involved in was the paediatric coronary care between Dublin and Belfast, which worked so well. That is mutually beneficial for our citizens and for the citizens of the Republic of Ireland. That is north and south working together in a very good way for the people of both Northern Ireland and the Republic of Ireland. The thing that I get tetchy about is politics for the sake of politics in terms of the north-south stuff. If it is for the benefit of our people then of course we should be engaging in it, and that is what I believed was very strong.

To take up Mark's point, I have always felt very strongly that the BIC has not been utilised in the way that it should have been. I tried to take policy decisions from the BIC—the £100 voucher scheme during covid was taken from an idea in Jersey, and our colleagues in the BIC. There are policy decisions that you can take from other jurisdictions and implement them; we do not have a monopoly on wisdom, so it is important to have that policy exchange. That was a really useful thing, and I would love to see the BIC being more robust. We now have a standing secretariat in Edinburgh as a result of the St Andrews agreement, and that was a really important thing to do under St Andrews.

The intergovernmental conference is not an executive body, to John's point about joint authority; it is only a consultative body. It does not take decisions; the UK Government take decisions in relation to Northern Ireland, not the Republic of Ireland.

**Lord Alderdice:** I have a couple of comments. I remember frequently being criticised as being all things to all people, so it is refreshingly to find somebody disagreeing substantially with what I have said.



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**Jim Shannon:** It is not the first time.

**Lord Alderdice:** I am not at all surprised that Unionists were unhappy with what I said, but I was trying to point out what I perceived to be the reality of a trajectory that is continuing and will continue. Arlene quite rightly identified a series of things that were, to put it at the lowest level, upsetting to Unionists—things that had happened that were in some cases offensive and deeply disturbing. We also have to remember the way people who are not from the Unionist tradition—not just nationalists—look at things. They say, “Wait a minute. The DUP walked out of the talks that led to the Belfast agreement. They never supported the Belfast agreement, and of course they did support Brexit, which was deeply offensive to many Northern Ireland people who wanted to remain part of the European Union.” The truth is that each side has found itself doing things that have disturbed—

**Baroness Foster:** I do not think that that is on a par with murdering somebody, John, but that is beside the point.

**Lord Alderdice:** I did not mention anything about anybody murdering anybody.

**Baroness Foster:** Well, I did. That was the point.

**Lord Alderdice:** You did, but people from both sides got murdered in this.

**Chair:** This may be how you conduct yourselves in the House of Lords, but we are far more polite here.

**Baroness Foster:** Oh, really?

**Chair:** Oh yes.

**Lord Alderdice:** You mentioned the question of trust, Chair. Trust is not a prerequisite for negotiations; it is an outcome of agreements reached and implemented and delivered on. One of the major problems in Northern Ireland is that, to some degree, both of the major parties took the view that if they sufficiently disagreed with what was happening politically, they could bring the Assembly down rather than find other ways to protest about things that they did not agree with while keeping the Assembly operational. It seems to me that that is the fundamental problem: unless you say that the structures are sacrosanct and that we will make our protests within the structures, you destroy the structures. It is like two juggernauts driving down a narrow road towards each other and each of the drivers throws the steering wheel out the window and says, “Now who’s going to get it sorted out?”

We have to hold on to responsibility as colleagues, but that means that the Assembly has to be running; strand 2 has to be operational, and strand 3 has to be operational as well. I think we need to be a little careful. The world will continue on. We talk about the Windsor framework as though it was about sorting out the Northern Ireland problem. They were not; the purpose of the Windsor framework was that the Prime



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Minister could reset relations with Europe and the United States. That was the real purpose of it, and he was extremely successful in doing that.

What then happens to Northern Ireland is another question. I do not think that you will get fundamental changes in the Windsor framework; that has now been bedded in with the European Union and I do not think that is going to change. I rather subscribe to the view that Mark represented earlier on: you may get some kind of decoration, in terms of bits of legislation, but then people will have to be prepared to go back into an Assembly and maintain that come what way. Or we will be back into the same problem, and politics will move on, including the constitutional question, in my view.

**Q266 Jim Shannon:** With great respect, you fail to acknowledge the important role that Unionism has and the parties that represent it have when it comes to their mandate. Going forward with any agreement with Unionism not on board is the unfortunate thing, from a Unionist point of view. I say it with great respect to you, but, honestly, you fail to understand that.

**Lord Alderdice:** I understand it very well, Jim. I understand it very well. In fact, I remember my grandmother saying, "It's great that John's going to do politics, but it's a pity he didn't go into it in the Unionist party."

**Jim Shannon:** That's right.

**Lord Alderdice:** But the problem is this: Unionism no longer has the majority. It is no longer a dominant majority. That is the thing that has changed.

**Jim Shannon:** John, we have great differences in that. You have your opinion in relation to it, and we will have a different opinion. We'd probably have to provide the data and the facts that show something completely different.

**Chair:** I am not necessarily sure how productive it will be to go down that particular rabbit hole, because one could argue about demographics, turnout, designations and numbers. Let's get back to the subject in hand, and I turn to Carla Lockhart to help us do so.

**Q267 Carla Lockhart:** My question is about the institutions and their effectiveness. I will pick up on the joint authority and particularly what Jim has said in relation to the complete disregard that you have given to Unionists. Implying that they do not represent a large bloc in Northern Ireland is quite something.

In relation to the effectiveness of the institutions, my question is to Baroness Foster. When we think of the hysteria around the 25th anniversary of the Belfast agreement, you will know that much of it has been sugar-coated in terms of some of the out-workings of it and that in today's society it is looked at through rose-tinted glasses. When we think of what actually was legislated for, in terms of the dismantlement of the best police force in the world, letting terrorists out of Government—



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**Baroness Foster:** Into Government.

**Carla Lockhart:** Sorry, out of prison and into Government—letting terrorists out of prison. That agreement certainly was flawed. You were one of the biggest advocates of the no campaign. I know the answer to this, but would you like to remind us why that was the case and whether today, 25 years on, you would still take that stance?

**Baroness Foster:** I would. I think I have said this, and I said it to David Trimble at the time. Although I felt that the constitutional position was spelt out in the Belfast agreement, from a moral point of view, allowing prisoners out of jail—people who had committed some of the most heinous crimes—without serving their due sentence was morally wrong. I did not feel I could support it. I did not agree with the Patten commission either. I come from a policing family. I am very proud of what they did during the Troubles, standing between—frankly—anarchy and the community. When I say the community, I mean the whole community. As one who comes from a border area, I knew precisely what had gone on. Obviously, there were technical issues as well. The Ministers could engage in solo runs, so it brought accountability through the St Andrews agreement, which was important. That was an important thing to achieve at that time.

I absolutely understand that the greater number of people in Northern Ireland voted for the Belfast agreement. As such, it has to be accepted; I am a democrat. That does not mean to say that I wouldn't still vote against it. I would, because of the prisoner release scheme, which frankly did not end there. It has led to the issues that we have today in terms of legacy. We are still struggling with legacy today. When I see people continuing to glorify some of the things that happened in the '70s and '80s today, it is not just about the past and it is not just about remembering "our dead"; it is actually about sending a message to young people today that what happened in the past was okay, and somehow justified. It wasn't justified. Whether you are a loyalist paramilitary or a republican paramilitary, taking up arms is always wrong. Therefore, I do get very concerned when senior members of Sinn Féin are involved in glorifying events. As we know, it is going to happen very soon. I think it sends a really difficult message to law-abiding citizens right across Northern Ireland. For me, it sends an alarming message to young people in Northern Ireland.

We talk about reconciliation. The difficult conversations about reconciliation still need to happen in Northern Ireland. When you see that sort of thing happening with a Sinn Féin MP going to a glorification—a "family fun day"—it's wrong. It has to be called out. For the future, we need to have a conversation about that. I hope that in any talks or negotiations, which I won't be involved in, there is a strong focus on not sending negative messages to the future. They result in violence and the normalisation of violence, and people thinking it's okay to come up and say to a victim, "Ooh ah, up the 'Ra!" That is wrong, and I think we really have a problem around the glorification of terrorism in Northern Ireland. We can ignore it and it will continue, or we can deal with it.

Q268 **Chair:** You have intimated, but just for clarity, you would see that as applicable to both sides, if I can use that phrase?

**Baroness Foster:** Absolutely. I have said that very clearly. If a member of the Democratic Unionist Party was going along to honour UVF volunteers, I would be equally as outraged as I am about a member of Sinn Féin going along to honour IRA volunteers. It is wrong. People will say, "Oh, you met somebody from the UVF in the past." Yes, I also met somebody from the IRA in the past. It doesn't mean that I glorify what they did. Let me say this: loyalist paramilitaries are weighing down heavily on loyalist communities in Belfast, in particular at the moment, and using power to control those areas and those young people in a horrific way.

**Chair:** We are doing an inquiry on that—

**Baroness Foster:** Therefore, glorifying these people, whether they are from the loyalist community or the republican community, is wrong. We have to break that cycle. We definitely have to break that cycle.

**Carla Lockhart:** Thank you, Arlene, for your comments. In truth, the Belfast agreement really gave more to paramilitaries than to victims, who make up an important part of our society. You yourself are a victim of terrorist activity. You have had your own journey with that. The effectiveness of the institutions—quite often victims are forgotten; we only have to look at the legislation that is going through this place.

You mentioned the glorification of terrorism. We have sought to bring amendments to the legislation here in this place and they have not been backed by the Government on each occasion, which is very disappointing, and you are right to call out the attendance at events but we also have a Member of this place who calls his constituency office after a terrorist. However, going back to the victims—

**Chair:** Carla, let me just make this point: these are important issues and, as we know, we have a big inquiry going on with regards to paramilitarism. These are important topics; I appreciate that. This session is not the place to discuss them, so I am now going to bring us back the agenda.

Q269 **Carla Lockhart:** Yes, but you yourself had a question on this issue. In terms of victims and the effectiveness of the institutions, have the institutions catered for the needs and, indeed, the voice of victims, and do victims have any trust in the institutions?

**Baroness Foster:** I think that the fact that we were able, eventually, to deliver a victims' pension was something that was very good for the victims community. That took a court intervention, unfortunately, but it did happen and I think it was important that it did happen.

John has referenced civic voices. I think civic voices are important. We are not on an island when we are elected into an institution. We have to listen to the voices around us and who we represent and interact with, and victims' groups are a very important part of that civic voice. I think, in the



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past, their voices haven't been heard, but, I have to say, they do have some very strong advocacy groups now and I think they are being heard. What I worry about is the individual victims who do not engage in groups and then do not have a voice, as it were. I am concerned about that.

To answer your question about effectiveness, I think the victims' pension was a good move for victims and I think we have been effective from that perspective, eventually, but there is an important role for victims' advocacy, I think, in Northern Ireland.

**Q270 Carla Lockhart:** There is the other point around the effectiveness of the institutions. Obviously, the Government and the Executive are not functioning at the moment, but what we have seen coming from this place is interference in some of the devolved issues. We witnessed just yesterday another coach-and-horses story—the devolution settlement in the bringing forward of legislation around education for abortion. Can you just articulate the damage that does in your experience to devolution and the fact that it completely undermines it, particularly whenever a large section of the community do not agree with the legislation that has been brought forward? We only have to look at the legislation yesterday. There has been absolutely no consultation with local parties. There has been absolutely no consultation with parents and no consultation with teachers, who are deeply concerned about having to teach about abortion. Can you just articulate your concerns around that?

**Baroness Foster:** I speak as a member of the board of governors for a grammar school, and I know that they are very concerned. It would have been much better—I will just say this because I know, Chair, that we are running out of time—for the Secretary of State to have engaged with schools around their funding issues, which are absolutely critical at this point in time and I know that as a member of a board of governors, than to push through something without consultation. We recognise that there are international obligations. We know that. We know that there is a need to have conversations about these issues. However, to just implement it without any consultation with the professionals who have to deliver this sort of teaching is quite scandalous, actually.

**Lord Alderdice:** May I make just one comment about the question of victims? My professional background is as a psychiatrist, and one of the things I discovered at an early stage when I was a junior psychiatrist was that there were very few services for the bereaved in Northern Ireland. So I helped to set up Cruse in Northern Ireland, and subsequently I established a centre for psychotherapy. One of the difficulties we had was getting funding, and I pressed the Secretary of State on whether the Secretary of State had looked at victims' needs for counselling and therapy, as was clearly required in other parts of the world. The response was that the British Government had not even looked at the question.

Very little funding has come to NHS facilities, as distinct from community facilities, to address the needs of victims. As Arlene quite rightly says, those needs are not just for pensions or support for victims' groups; many victims do not want to be part of groups, but have a clear need for



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psychological help and assistance. Over the years, both devolved Governments—currently in great difficulties financially with the NHS in Northern Ireland—and central Governments have not been good at providing the sort of therapeutic facilities that are required for victims and others. I wanted to flag that up, because the point made about victims is an important one.

**Mark Durkan:** I would like to add to that point. Parties are rightly critical of the legislation on legacy questions that is currently before Parliament, but they have to be honest about the fact that, time and again, whenever the question of dealing with legacy and the needs of victims was raised, parties conspired to resile from options.

Consider Eames-Bradley, the seven drafts of Haass-O’Sullivan, the Stormont House agreement and people resiling from that, and even go back to the early days of the agreement and the impasse talks that took place in 1999 and subsequently. I remember saying we needed to address the question of legacy and victims, but the two Governments were very iffy about it. I recall one senior political figure saying, “To tell you the truth, Mark, I don’t have a lot of time for the past. I hate it when the country is dug up looking for the disappeared.” I can understand why people were averse to trying to deal with the past and why they believed parties were not ready for it.

Parties themselves had their own reasons for ducking the question. At times, Sinn Féin did not want to address the issue because they thought it would be rolled in with the question of policing, when they were still holding out against the new beginning to policing; or people thought it would be used to link adversely with decommissioning. Different parties had different reasons, but not too many parties can say that they did not at some point object to some of the options. We need to be honest about that. All parties need to be honest about that. I know how often Unionist parties—the DUP in particular—were saying no to different options and killing off different ideas, in a way that would not have helped victims. We need to be honest about that, so if we are being critical of the British Government for its legislation, we must also lament the record of the parties collectively.

Q271 **Chair:** Lord Alderdice, I was wondering whether you thought a psychiatric qualification was a prerequisite to be Speaker at Stormont.

**Lord Alderdice:** It was not a prerequisite, but it certainly helped.

**Chair:** Maybe it should be a prerequisite.

**Lord Alderdice:** In all seriousness, one of the reasons I went into psychiatry and psychoanalysis was that I did not believe that the political science explanations for the difficulties we had were “real” or evidence based. It seemed quite clear to me that a huge proportion of our difficulties were to do with psychological issues about communities. When Anwar Sadat went and spoke in the Knesset—the President of Egypt speaking in Israel—he said, “Seventy percent of the problems between



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Arabs and Israelis are to do with the psychology of our communities. It is how we feel about each other. It is how we relate with each other. It is not fundamentally about institutions and constitutions and all the other things." That is why I went into psychiatry.

When I became Speaker, the job, to me, was to see how I could help people who had the deepest, deepest differences and bad memories of what had happened to find a way to live with each other. Arlene put it beautifully when she described some of the difficulties she had as First Minister working with a Deputy First Minister from a very different background and with a very different kind of past, but it was necessary to do. Dealing with those things was really important. When we resort back to law, legislation, constitutions and so on, we have already failed. That is why the thing you pick up is indeed very important.

Q272 **Claire Hanna:** We have established that everything is not perfect with the agreement operationally, and that it is time to think about when and how to evolve. The point is well made that we are talking a lot about strand 1, but strands 2 and 3 most certainly need reform and enhancement as well. I think there is a sense that we will be going back in September, and that it is quite clear that there is not going to be an intervention from the Governments to make any of these changes prior to our return. How does this get done, notwithstanding the fact that there will be resistance? How does this conversation about reforming to progress the institutions best happen? What does the Assembly need to do? What do the Governments and political parties need to do? I will start with you, Mark.

**Mark Durkan:** We have to continue to be upfront that things do need to change. The agreement provided for review mechanisms—we were very clear in building review mechanisms into the agreement. That included wholesale review, and it also included giving the capacity to the different institutions to review themselves. There was meant to be a full review after five years; that did not really happen. St Andrews ended up being called a review, but it was not really a collectively agreed outcome. Interestingly, the DUP were very happy for the Irish Government to lean in very heavily in strand 1 at St Andrews and to try to get some of us to shift our position and change from resisting some of the changes that were afoot there.

The fact is that the two Governments need to be up front as well. I can understand their position: they are just saying that they do not want to create a negotiation around these things before restoration, because that could take on a whole new life of its own, and they want the focus on restoration first, but I think when we get restoration, we should be shaping up, essentially, for a renewal review. Yes, there are parts and precepts of the agreement that we need to renew, but there are other things that we need to adjust, flex and improve—I mentioned earlier about improving the work of the Assembly and also including more civic voices.

The reduction in the size of the Assembly opens the room when it comes to something like pre-legislative scrutiny. We could also do with a bit more



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post-legislative scrutiny, because of the amount of legislation in Northern Ireland that has passed that subsequently does not particularly go anywhere and only gets part-implemented. I think there is room for bringing in civil society to be involved in that, whether it is lay people or people selected in the form of a citizens' jury, who would be joining some of the Assembly Committees in their pre-legislative or post-legislative scrutiny and asking questions that need to be asked. Something like that could have happened, for instance, whenever the RHA legislation was going through.

Part of the problem is that with what we wrote into the agreement for the Committees, we thought we were writing in a powerful role for the Committees to show that it was not the case that Ministers would evolve powers, so we gave the Committees this very wide-ranging remit. The problem is that they have ended up jack of all trades and master of none. We allowed them to do the Committee stage of legislation as well as secondary legislation, but too often that became the constant format, whereas I think we should use more Public Bill Committees. When you just have people on a departmental Committee who have been lobbying for something for a long time, they are glad when the legislation comes and maybe they do not look at it so well. I think there was a lesson in that around the RHA legislation, for instance.

There are things that we can do to improve. We are conscious that we are talking about democratic improvement and enhancement; we should not be looking at this as a tug of war just between parties—whose wording gets moved, whose wording gets shifted and whose wording gets overtaken by new ideas. If we have all agreed that things have not worked as well as they should, why don't we make them better?

There was a danger with a lot of the Good Friday agreement 25th anniversary events of a culture of contentment—you know, "Things aren't as bad as they were" or "Things can't go back to being as bad as they were," as though that absolves us from the duty to make things as good as they should be. The fact is, there has been under-fulfilment of the agreement. Adherence has not mattered very much as far as parties are concerned at times, and also as far as Governments are concerned. We need to be very honest about that as an agenda, and we need to be open in how we source some of those ideas. That means using things like citizens assemblies and other things to float some of the ideas, because sometimes parties find it quite hard to accept ideas that are tabled by each other. They do find it easier to talk about other ideas in the round.

**Baroness Foster:** To pick up on that, one of the reasons why the outcomes-focused Programme for Government was accepted by everybody was because it came from Carnegie. I see here engagement from organisations that have expertise, such as with the Online Safety Bill, where Barnardo's, NSPCC and all of those people will engage in a very proactive way with Members to help them formulate their ideas. I think that is something that you should be very much open to having in open Government. The agreement has a section on review. I was doing an



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event with Bertie Ahern recently and he was very keen to point out that he was the one—I hope you are not going to contradict him now, Mark—who wanted the review clause put in place.

**Mark Durkan:** I think everybody backed it.

**Baroness Foster:** Okay. It says, “there will be a review of these arrangements, including the details of electoral arrangements and of the Assembly’s procedures, with a view to agreeing any adjustments necessary in the interests of efficiency and fairness.” That is what we have been talking about today.

I have not said for definite that things will come back in September/October time. I hope we can find the space so that the Executive does come back. As someone who was First Minister and was in the Executive for a long time, I think it is good to have the Executive up and running. I hope we can get to that place. Then there can be a parallel process where you look at how things are working. Don’t forget, under “New Decade, New Approach” we were supposed to be looking through a party leaders forum at issues that were affecting the parties and things that would come forward so that we had an early warning system, whereby if things were causing problems we could then have conversations about them early on and not resort to other issues. There are things in “New Decade, New Approach” that still need to be implemented. Those should be implemented, and then if there is a further need, you can have a review after that, I think.

**Lord Alderdice:** The first thing is that the British Government have a responsibility to ensure proper governance in Northern Ireland—primary responsibility. There is not proper governance in Northern Ireland by any account. It is a disaster with its health, education and almost anything else. It is a disaster, and it is getting worse all the time. The British Government have a responsibility to step in and do something. The question for me is, how long do the British Government stand back from their responsibilities in respect of ensuring proper governance for the people of part of the United Kingdom? They need to think carefully about how long they allow this to drift on. We are assuming the Assembly will come back at the end of this year. Fair enough. If it does, fine. If it does not, how long does this continue on? How long do civil servants not have proper legal cover and so on?

The second point I would make is that through all of this—long before the Belfast agreement—the engine of progress was always the British and Irish Governments. That was always the engine for the last 40 or 50 years. The two Governments need to take responsibility. You talk about a conversation; there needs to be a conversation between the two Governments. Then others need to be engaged in the conversation. I agree about parties and civil society and so on, but somebody somewhere has to start making decisions about things, not just having endless conversations. It seems to me that that responsibility devolves back to the British Government to ensure proper governance, and to the British and



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Irish Governments together to fulfil the agreement in so far as that is possible.

**Chair:** Carla, do you want to come in on that point?

Q273 **Carla Lockhart:** Thank you, Chair. In relation to the joint authority issue, obviously strand 1 of the Good Friday agreement does not give any responsibility to a foreign Government for internal affairs of Northern Ireland. It really does feel from your comments that the Good Friday agreement is good in some cases and you will use it in some cases, but if it doesn't suit you, you will throw it out. My understanding, having read paragraph 5 of the declaration of support, is that it is about all strands. You have tried to highlight today that strand 3 is the only one that is really operational, so it is therefore de facto, but the Belfast agreement is interlocking and interdependent, so how can you say that, actually, it is just going to happen and we just allow it to happen?

**Lord Alderdice:** First of all, I was one of the people who negotiated the Belfast agreement. The DUP opted out of the negotiations and never supported the Belfast agreement. I continue to support the Belfast agreement, but I cannot make something work if some of those who have responsibility refuse to make it work.

The Northern Ireland Assembly—of which I was the Speaker for some years and worked extremely hard to try to make it work, including with all the parties—is not working now, is not functioning and has not been functioning for quite a while. At the moment, there is no particular reason to believe that it will be back functioning. That is the reality.

Without the Northern Ireland Assembly functioning, it is very hard to see how the north/south bodies, as in strand 2, will function. So that is two of the elements that do not function. But the fact that they do not function does not negate the Belfast agreement: it simply means that the only functional part of it, potentially, is the British-Irish Intergovernmental Conference. That is the point I have been making.

The further point that I have been making is that not only is Sinn Féin advancing in Northern Ireland—we will not argue about the facts and figures—but it is also advancing in the Republic of Ireland, and there is a pretty good chance that in the next 10 years or so it will form part of the Government of the Republic of Ireland, in which case it will be part of the British-Irish Intergovernmental Conference.

All I have been doing in the last little while is trying to point out some realities that are welcome to some people in Northern Ireland and very, very unwelcome to other people. I am not surprised that they are unwelcome, but these are facts. I support the Belfast agreement. I still support it. I want to see it operational. But it cannot be made to operate if some of those who have responsibility for it, in each of the three sets of relationships, don't operate it.

**Carla Lockhart:** But the reality is that all three strands in the Belfast agreement work together, and they are interlocking and so on. In relation



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to Unionists, I think your comments earlier disregarding Unionists as a larger bloc were really disingenuous to Unionists.

**Chair:** Carla, I am going to turn to Robin Walker now.

Q274 **Mr Walker:** This panel has been very illuminating. We have had a lot of discussion about some of the problems and some of the reasons why the Executive and the Assembly aren't always functioning. We have talked about the difficulties of working in a mandatory coalition—we have all seen that—and the difficulties of people being able to walk out of it, as well.

Mark has talked about the moral hazard of functioning without the institutions; we seem to have got into a situation in which we have spent far too long over the years since the agreement functioning without the institutions. Isn't part of the answer to that to allow people to work in government or in opposition more effectively?

Given that structures are now in place for parties to be able to work as part of the Opposition, I was quite struck by something you said, Mark, about the negotiation of the agreement in the first place, with 10 parties around the table. Since that period, Northern Irish politics has been dominated by five parties, and the balance of power has shifted between them and so on and so forth, but surely a functioning, healthy, mature democracy ought to be able to have those cross-community discussions and consociation arrangements functioning in both the Government and the Opposition. Shouldn't any reform try to take that into account and try to build a means for that kind of working to be part of the system as we move forward?

**Mark Durkan:** Yes, and remember that we didn't just create an inclusive Government when we negotiated the agreement; in a sense, we were creating an inclusive Opposition, in terms of the Assembly's role and the role that was given to Assembly Committees. The idea was that there was going to be joined-up scrutiny across parties as well, maybe a bit like the cabinet and scrutiny system that people see in local government over here.

That was the theory, anyway; it maybe hasn't worked out that well in practice. Particularly as parties become more dominant, you see more of a whipping system being used. That is why I would open it up to make sure that there was more lay input and citizen input, particularly with the like of pre-legislative and post-legislative scrutiny.

Look at how well the all-party parliamentary groups work in the Assembly. Parties behave differently when civil society are in there and when people from the relevant policy communities are there, and it's not just the traditional ding-dong that people see going on. That certainly can work in a very positive way.

I just wanted to take up one point about the interlocking and interdependent bit. The agreement is particularly specific that the Assembly and the Executive are interlocking and interdependent with the



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NSMC and its functioning. That is why, whenever the Assembly was suspended, the NSMC could not meet, and the north/south implementation bodies were put on what was called a care and maintenance basis, but the British-Irish Council continued to meet and the British-Irish Intergovernmental Conference was allowed to continue to meet as well. So they were not deemed to be parked alongside the Assembly and the Executive.

**Baroness Foster:** That is probably because of the accountability mechanism around the NSMC: Ministers were accountable for what happened at the NSMC, so that is probably—

**Mark Durkan:** Oh, yes. There was a clear logic to it, but the British-Irish Council did continue, as did the British-Irish Intergovernmental Conference, although, as John says, it should have met more often than it did.

We had a bizarre situation. When Enda Kenny was Taoiseach, he and David Cameron negotiated a concordat and announced it in Downing Street, and then they came over to Parliament for an event about the UK city of culture. I asked Enda Kenny, “Why wasn’t this done as the British-Irish Intergovernmental Conference?” He said, “We didn’t do that, because we thought it might annoy the DUP.”

**Baroness Foster:** Oh, those days when the Irish Government cared about the DUP—[*Laughter.*]

**Mark Durkan:** This was 2012, so some of the avoidance was supposedly in the name of not frightening the Unionist horses. Remember that the terms for the British-Irish Intergovernmental Conference are written in the agreement in such a way that devolved Ministers could be invited in; devolved Ministers could attend, albeit that it does not say, “devolved Ministers”—there is very clunky language about those with executive authority on behalf of the Northern Ireland Administration. That is because, at that stage, we still had not agreed Ministers or what they would be called, but that was one of the textual bits that we did not iron out once we had got agreement in strand 1.

Q275 **Mr Walker:** Baroness Foster, the DUP have, effectively, been in government more recently, but in the period immediately after the agreement they were, effectively, in opposition, so they have experience of both. Do you think that there is a role for a more robust cross-community Opposition in Northern Ireland and that the institutions might be more stable if parties were able to go into opposition without bringing down the Assembly?

**Baroness Foster:** We had an effective Opposition in 2016 after the election. I think that things were working pretty well then. I know that the Opposition rules need to be better developed, including funding. However, I think that it is one of the areas where we could develop further. Obviously, we didn’t see how that would end up, because Sinn Féin left the Government in 2017 and then we were out of office for three years, so we



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were not able to see whether that Opposition was going to work in the way that we thought it was going to work.

At that time, we had just Sinn Féin, DUP and the Justice Minister—Claire—and that was the way it worked. I thought it was functioning quite well at that time, but then it collapsed under RHI, and Martin McGuinness took unwell, and the rest, as they say, is history.

**Q276 Mr Walker:** Feel free to come in, Lord Alderdice, if you have further comments on that, but in terms of the British-Irish Council one of the things that was a frustration for me when I was at the NIO was trying to make sure that there was sufficient senior buy-in. One of the very welcome developments around the formation of the Windsor framework has been a Prime Minister attending the British-Irish Council again and giving it that importance. Presumably, when it was envisaged, it was always assumed that it would be at prime ministerial level of engagement.

**Mark Durkan:** At summit level, it would be the Prime Minister and the Taoiseach, and it was to be at summit level at least once a year.

**Mr Walker:** That seems to me one of the important elements of making things work going forward. We need to have that top level—

**Mark Durkan:** Sorry, the summit level was at the intergovernmental conference, but the idea was that Prime Ministers would be there and involved. It used to be the case that the Cabinet Office, whenever it produced the list of ministerial responsibilities, identified who the senior Minister responsible for the British-Irish Council was. I remember having to raise who was responsible as a parliamentary question, because it was not in the list. At that stage I was told, "Oh, it will be the Deputy Prime Minister."

**Q277 Mr Walker:** There was quite a long period when it was either the Deputy Prime Minister or the CDL. I remember, when I was attending merely as a PPS, that Martin McGuinness took great exception to that in the last British-Irish Council under Enda Kenny. It was something that I felt needed to be telegraphed back to Downing Street.

**Baroness Foster:** I joked about Enda Kenny caring about what the DUP thought. Those were the glory days of the Irish Government. It is important that both Administrations—the Administration in Dublin and the Administration in London—take notice of the British-Irish Council and spend time on it. You may find this strange coming from me, but post Brexit it is really important, because people need to have those relationships. They need to have those conversations, and they are not going to have them in Brussels any more, so the BIC could perform as a very good structure for engagement for UK Ministers and Ministers in the Republic of Ireland. That should be very keenly looked at.

**Lord Alderdice:** A final comment on the two questions that you raised. Sometimes people get a bit confused between the British-Irish Council and the British-Irish Intergovernmental Conference. The British-Irish



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Intergovernmental Conference is the one that I have been speaking mostly about, and it only met three or four times at summit level. For a period of 10 years, it did not meet at any kind of level, despite having staff and so on. What I have been saying is that it has to shoulder its responsibility.

In terms of a cross-community Opposition in the Assembly, there is nothing to stop parties deciding to go into opposition. The problem at the moment is that the Assembly itself cannot even sit because it cannot elect a Speaker, and it cannot elect a Speaker because the DUP refuses to elect a Speaker.

**Mark Durkan:** There's a hole in the bucket, dear Liza.

**Lord Alderdice:** There is. If there were a Speaker in place, a series of things could be done. Of course, the question is who would form the Government and who would form the Opposition. The only way that you can have an Opposition at the moment that is cross-community, or at all, is if relatively smaller parties decide that they are prepared to go into opposition. You cannot have a form of Government without the two large parties being there, because that is the structure. That is one of the things that could be mended if parties were prepared to find another way of forming the Executive, but under the current rules you cannot really have one of the major parties in opposition. The way things are going at the moment, the two larger parties are swallowing up the other two parties on each side of the community.

**Mr Walker:** Which is not a new process.

Q278 **Chair:** One of the great joys of my job is that lots of people across Northern Ireland drop me notes, messages, thoughts and ideas. Some of those people follow quite closely the workings of this Committee and the evidence that we hear. A bit of a theme has come through recently, which I will try to summarise. An issue comes to pass and instead of trying to wend a way through it, the "collapse" button is pressed. The way to get out of that is that there is a period in which people can go away, reflect, make the points that they wish to, and so on. Then there is a bit of negotiation with the Secretary of State. The Treasury steps in with a sum of money, investment or whatever. Things get back up and running. Agreements are signed up to, really as a means to an end—getting the resurrection of the Executive and the function up. Then, sometime afterwards, almost with a scratch of their head, people say, "We only signed that as a means to an end, rather than as something that we actually thought that we had to do."

Then it is up and running. I think all the questions—certainly all of your answers—have indicated that there is scope for reform, room for change, an appetite to deliver it and some benefits to so doing. The point that people have been making to me is that, as that is the historic *modus operandi*, if the Assembly gets back up and running through, let's say, a repetition of that mechanism, people will say, "Right, it is up and running and all a bit fragile. We won't touch it now institutionally and



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reformationally. We won't think about that, because, if we do, we run the risk of party X or party Y taking umbrage, taking their ball off the pitch and collapsing things, and then it is groundhog day." How does the Assembly, as a cross-party entity, come to self-authored reform and take, on that issue, the "collapse" button off the dashboard? There is a growing anxiety that it sort of creaks along because it has to, but without the efficacy that it could and should be delivering.

**Mark Durkan:** One of the presentational claims that was made at the time of the St Andrews agreement was about the fact that the Assembly was going to have established an Assembly and Executive Review Committee. That allowed the DUP to say, "This shows that, in doing this agreement, we haven't just accepted the Good Friday agreement; we are going to be permanently in pursuit of changing it."

**Chair:** It is a process. It is a bit like our Procedure Committee here.

**Mark Durkan:** In theory, there is a mandate for continuous review and adjustment, but whenever propositions came forward around trying to fix the petition of concern to make it work in the way it was written in the agreement, not the way it was miscast in the '98 Act, there was always resistance. You can try to fix the physics, and then you discover the problem is the chemistry between people and parties. Or the chemistry is right, but then the physics of the rules is what gets in the way, trips people up or allows other parties to trip each other up. We really need to fix the lot, if we are honest about the sort of appraisals that have taken place in the context of the 25th anniversary. We know that there are problems to be sorted. We know that there are problems with the way politics is conducted and discharged. The fact that we have all this stop-go, up-down with the institutions should scandalise any democracy.

A few years ago, there was a demand that the Scottish Parliament had to be recognised as permanent. There had to be a sense of permanence because it was argued that Westminster could suddenly stand down the Scottish Parliament in the name of the sovereign UK Parliament at any time. There needs to be a sense of the permanence of the Assembly and the institutions, and that has to come from the parties in Northern Ireland. It is not the British Government that is going to be able to guarantee that permanence or the Irish Government. There needs to be something that says, "These are so interlinked and interdependent that we can't claim to have democracy and be elected representatives unless we are actually working these institutions." That has to be absolutely clear.

Q279 **Chair:** I am very struck that the SNP are furious with the courts for striking down the legitimacy of a self-authored independence referendum, and furious with the British Government for not allowing a second referendum on independence, but they are still continuing with the day job—walking and chewing gum. There is a fierce row on one constitutional issue, but they are still delivering health, education, infrastructure and so on and so forth. That is the step change that needs to be made, isn't it? To go back to Lord Alderdice, it is almost psychological. Maybe we need a physicist, a chemist and a psychologist—



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that is the start of a very bad joke.

**Mark Durkan:** It has to be made un-doable and unthinkable. The problem at the minute is that it is too readily thinkable, and it is doable. If it isn't according to the parties themselves, other people are saying, "The parties should show they are serious by saying they will walk out and pull things down." That needs to be removed as too cheap a temptation.

**Baroness Foster:** That goes back right to the beginning of the Belfast agreement, the difficulties with decommissioning, and the fact that David Trimble had to come out of the Assembly at that time because it was the only way he felt he could make progress. We have talked about chemistry, physics and what have you, but in terms of the Assembly, what is needed is a vision for Northern Ireland. Some people will want Northern Ireland to remain in the UK—I do. Some people will want it to move in a different direction—put your hand up. But if we are serious about representing the people that elect us to the Assembly, we have to be, first and foremost, concerned about those people in Northern Ireland. That is what we are missing—that sense of wanting to make things work. John talked about the NHS, education, support services and housing. All of those things need to be fixed, and we need to focus on that. During those years that the Assembly worked, it worked because we were focusing on Northern Ireland.

Q280 **Chair:** Is there any merit in this as a consideration? The contemporary practitioners will need to get on with the day job. Is there a role for the three of you—former First and Deputy First Ministers—

**Mark Durkan:** The formers union.

**Chair:** The formers union. Is there are case for you getting together and coming up with a template—a menu, if you will—to say to those who are discharging functions and duties today, "We have combined our thoughts and experiences—the battle scars, the victories, the defeats—and this is how we think it might be made better. These are the tools that we wish we had had when we were in the driving seats"? Does that provide a degree of separation, but experience?

**Lord Alderdice:** There can be value in something of that kind, but ultimately it is the people who have been elected who will make the decisions about it.

Q281 **Chair:** I am not suggesting you are decision makers, but a sort of Speaker's Conference type of thing.

**Lord Alderdice:** And that suggestion has been made to me by a number of people, but there is still a nervousness on the part of the elected leaders about allowing any kind of body or engagement—

Q282 **Chair:** Is that because, in your assessment, if you are the leadership of Sinn Féin and of the DUP—the SDLP vote is dropping, the UUP vote is dropping, the Alliance party is the one that is not aligned but growing, and then the other two wings are either holding steady or moving forward—you will ask, "What's in it for us? There's only a downside to



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reform, because this system is serving our interests”—I don’t mean that disparagingly—“It is serving our interests pretty well. Why would we want to change that?”

**Lord Alderdice:** There are two things I would say. The first thing is this: I only see two options for moving things forward. One is effectively a self-denying ordinance by the Northern Ireland parties that they will not, on any account, bring down the Northern Ireland Assembly or put it into suspension. I appreciate absolutely that, in the past, these things were done for understandable reasons, but I think your analogy of the Scottish Parliament is a really good one—that there is a self-denying ordinance. If there is not that, it is a question of the British and Irish Governments taking responsibility as the co-signatories and co-guarantors of the Belfast agreement.

But here’s the other bit, and I really take encouragement from what Arlene has said. It seems to me really important for both the major elements in the community to start looking more seriously at what this is about for their people and their community. What is it to be a republican in Northern Ireland, as distinct from wanting a united Ireland? On the other hand, what is it to be a Unionist without going on about the Union all the time? Is there something else about being a Unionist in Northern Ireland, separate from the question of the Union? And similarly for a nationalist and republican. We started to tiptoe into that territory in the early days post the Belfast agreement, but when we ran into difficulties, we regressed back to the polarisation again.

I think, and you would expect me to say this, that the fact that the Alliance party is growing tells us that there is a body of people in the community—young and also older—who want to pick up the agenda of how Northern Ireland can itself function. But they cannot do that in the face of the opposition of political leadership. This does not have to be driven by political leadership, but it cannot happen with the opposition of political leadership. The point is to think of these kinds of questions: what is it to be a Unionist without going on about the Union, or a nationalist without looking all the time only to a united Ireland? But it is either a self-denying ordinance or it is the British and Irish Governments.

Q283 **Chair:** I am sure that in this session we could send out for sandwiches and possibly a pre-dinner sherry—something along those lines—but I am conscious of time. Nobody is indicating that they need to come in on anything.

**Mark Durkan:** Chair, can I make one point? You mentioned earlier how part of the Good Friday agreement had seen the change in the Irish constitution. I think that there is a real point in looking at the actual language of the Irish constitution, in particular the new article 3, which expresses the “firm will” of the nation to unite the people of the island, but which also fully expresses the principle of consent and professes full respect for the diversity of identities and traditions. It is couched in the language of reconciliation.



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It seems to me that one of the things that has not happened since the agreement is the creation of understanding of that sort of language and that sort of concept. There are institutional adjustments that need to be made, and all the priorities around tackling key public services and public policy issues in Northern Ireland, and a conversation needs to take place around people's constitutional preferences. There are two equally legitimate aspirations recognised in the Good Friday agreement, and therefore any future referendum has to be a contest between those two equal aspirations. It is not yes or no to one—there has to be the other. Alongside that, there is room to have a different form of dialogue.

That would probably have to be led at an Irish democratic level to create the understanding of that language. That conversation can happen in terms that would mean it is not just open and of interest to those who believe in a united Ireland. It can equally be of interest to those who believe in the Union and to those who say that they want to be persuaded either way and want to protect the rights and promises of the agreement when it comes to any such debate.

**Q284 Sir Robert Goodwill:** I am following on from Lord Alderdice's point. If the DUP perhaps do not think about being a Unionist party so much, and the Sinn Féin are less nationalist, perhaps they will come to realise that the DUP is actually a conservative party and Sinn Féin is actually a socialist party. That might even make it harder to work together, because they realise that there are fundamental political differences in this country that often—

**Chair:** Are you using conservative and socialist with small "c" and small "s"?

**Sir Robert Goodwill:** Possibly.

**Chair:** If you are not, can I advise you so to do?

**Lord Alderdice:** The problem is not that we disagree. All communities everywhere in the world disagree on these important issues. The question is, how do we find ways of disagreeing with each other in a civilised way? We have taken step 1, which is to disagree with each other without killing each other. That is a very important step. Now we have to take the next step, which is the political step beyond the peace process: finding ways of disagreeing—there is, as the philosopher Isaiah Berlin said, no agreement on the good, so the question is how we find a civilised way of disagreeing with each other, whether over the issues you describe or others.

**Chair:** I am going to be informal: Mark, Arlene and John, on behalf of the Committee, thank you very much indeed for sharing your thoughts and experiences. The one thing I take away—I hope everybody else does—is a trio of hope that things will come back, things will move forward and progress can be delivered for people, irrespective of which, if any, strand they believe in or support. We are very grateful to the three of you.