HOUSE OF LORDS

Northern Ireland Scrutiny Committee

Corrected oral evidence: Article 2 of the protocol/Windsor Framework

Wednesday 8 July 2026

10.45 am

Watch the meeting

Members present: Lord Carlile of Berriew (The Chair); Lord Dodds of Duncairn; Lord Elliott of Ballinamallard; Baroness Foster of Aghadrumsee; Baroness Goudie; Lord Hain; Baroness Ludford; Baroness O'Loan; Baroness Ritchie of Downpatrick.

Evidence Session No. 5 Heard in Public Questions 63 – 75

Witnesses

Professor Monica McWilliams, Emeritus Professor of Women's Studies, Ulster University, co-founder, Northern Ireland Women's Coalition[1]; Mark Durkan, former Deputy First Minister, negotiator, SDLP, during the multi-party talks leading to the Belfast Agreement.

[1] Professor McWilliams appeared before the Committee in a personal capacity, drawing on her relevant expertise as the Northern Ireland Women's Coalition negotiator to the multi-party talks that concluded in the Belfast/ Good Friday Agreement.

Examination of witnesses

Professor Monica McWilliams and Mark Durkan.

Q63 **The Chair:** Good morning, and welcome to this public meeting of the Northern Ireland Scrutiny Committee. We are today holding the fifth public evidence session of our inquiry into Article 2 of the protocol/Windsor Framework, the so-called non-diminution of rights provision. We are joined today by expert witnesses who were involved in the negotiations of the 1998 Belfast/Good Friday agreement and in particular in the rights, safeguards and equality of opportunity or RSEO chapter of the agreement, which is referenced explicitly in Article 2(1) of the protocol/Windsor Framework. You are all very welcome and we very much look forward to your evidence. We would be grateful if you would introduce yourselves briefly the first time you speak.

Today's meeting is being broadcast and a verbatim transcript will be taken for subsequent publication. That transcript will be sent to witnesses to check for accuracy. I refer to the register of members' interests as published on the committee's website.

We have Mark Durkan in the room here in Parliament. We have Professor Monica McWilliams on screen. Our third witness is not yet with us on screen, but I hope he will arrive fairly soon. I will start with the first question. What was the starting point for the negotiations on equality and human rights provisions during the multiparty talks, and how did this relate to the six rights listed in the joint Downing Street declaration of 1993?

Professor Monica McWilliams: I have reviewed the minutes of the negotiations and there was a sub-committee on human rights. I can provide those; I have given my papers to Queen's University and I think Chris McCrudden based his article on the origins of those rights on my papers and other work. I also had the opportunity to ask David Ervine and Gusty Spence, who were at the negotiations, where these rights came from. They reminded me that they had been involved in the Downing Street declaration at the request of John Major, who was then Prime Minister. They said that they had a long discussion about these rights and would argue that their origins were in a set of rights that they had drafted many years before.

I am also aware from Sheelagh Murnaghan's participation in the old Northern Ireland Parliament that, from the mid-1960s onwards, five times she put forward a set of rights through motions to the Northern Ireland Parliament, and five times they were rejected on the grounds that there should not be separate rights for Northern Ireland. Later in the 1970s we had the fair employment Act and given the unionist opposition, there was also a great deal of dispute over that legislation.

But I was also aware that some of these rights were related to the conflict—naturally, given that the purpose of the negotiations was to have no recurrence of the conflict we had come out of—and that therefore we

should base what would be a foundational document on human rights and equality. So there was a major discussion about the rights. Later I can talk about how we amended them, because we were involved in making suggestions for how the original six needed to be tweaked and we added a few more clauses. We had stood on the three principles of human rights, inclusion and equality, so you can imagine that our party was very focused on these particular rights.

Lord Hain: Do you mind saying who "we" was just for the record?

Professor Monica McWilliams: It was the Northern Ireland Women's Coalition, a political party that stood for election when the peace talks were declared in 1996.

The Chair: Your connection with the Women's Coalition is very well known.

Professor Monica McWilliams: We were a political party with a mandate to be at the negotiations. We actually had a delegate to that confidence- building sub-committee on human rights and I have the minutes of the lengthy discussions that took place. These were obviously discussed as part of the negotiations.

The Chair: Can I ask you a supplementary question about imperatives? Which was the real imperative? Was it securing a full range of human rights because of the Troubles, or was it having the human rights guaranteed although incidentally the Troubles were part of the question?

Professor Monica McWilliams: Actually, it was both. We were coming out of the Troubles and the concept of transitional justice had just started in the mid-1990s, but I was aware of it. Human rights being written into a peace agreement was exceptionally important, because other policies and legislation could be built from that. We were also aware that we were looking to the future, hence the addition of the seventh right. But it was not just that one—when we amended one of the bullet points, we realised that disability had not been added in the Downing Street declaration. We worked out that anybody voting on a peace agreement which would go to a referendum would obviously want to see themselves in this set of rights. Likewise, the word "colour" was changed to "ethnicity" because it was rather a general and archaic term to describe ethnic minorities. It was not just a question of religious or political identity being focused on. It was much wider.

The Chair: You will be aware that, very recently, the Supreme Court in the Dillon case focused entirely on the consequences of the Troubles, saying that Article 2 was to be interpreted as a consequence of the Troubles rather than as a free-standing human rights imperative.

Professor Monica McWilliams: I am, and I read the judgment. On the non-diminution of rights, I was a bit concerned about that interpretation because it certainly was not our party's interpretation—nor was it that of the Alliance Party, but it can speak for itself. Certainly the Progressive Unionist Party, which I had lengthy discussions with, was very much in

favour of looking to the future and basing these rights not just on making sure that we did not return to the past but on having a set of rights that would be respected by all, and therefore there would not be any cause to return to violence. We were future-looking. Later you will come to the question about being a member of the European Union. From the Women's Coalition perspective, we looked back at the Equal Pay Act, the Sex Discrimination Act and all the benefits that had come to women in particular but also to other minorities. That is what I will add later—we were also looking to how we would interpret, enshrine and enforce these rights.

The Chair: I was going to say at the beginning that I will ask my colleagues to ask short questions as we go through. I am not criticising you at all because you have not taken too long but, for the rest of this session, if we could have short answers, we will get through much more business. Mr Durkan, would you like to comment?

Mark Durkan: Thank you, Chair. As Monica said, the question centred on the appearance of the bullet points in the Downing Street declaration. A large part of the text of the Downing Street declaration was derived from the Hume-Adams talks. There was also a strong feed in—not least courtesy of Lord Eames and others—from some unionist and loyalist thinking. Those bullet points appear in paragraph 5, which is the Taoiseach paragraph. It was the Taoiseach pronouncing those which, as Monica suggested, sent a clear signal from both Governments that, while they might have derived some of that declaration from Hume-Adams, there was wider input and reflection.

When it came to the negotiations, parties came to them partly influenced by exposure to the South African experience. Many delegates had participated in various trips to South Africa and we had also been briefed by many visitors from South Africa on their process, including the centrality of the Bill of Rights there. Of course, the question of a Bill of Rights had appeared in previous negotiations—the possibility of one is in fact mentioned in the Anglo-Irish agreement in 1985.

It was also discussed in the Brooke and Mayhew talks; although they involved a more limited number of parties, there was agreement that, whatever political model was agreed, there was value in having a Bill of Rights alongside it. I will not pretend that there was deep agreement on what the character of that Bill of Rights would be. As we found during the negotiations that led to the 1998 agreement, there was a range of views. Some parties saw a Bill of Rights as a badge for the system, while others believed in it as more of a shield for the citizen. Mo Mowlam, whose fingerprints are all over the section on rights, safeguards and equality of opportunity, very much believed in the shield for the citizen.

Q64 **Baroness Ritchie of Downpatrick:** You are very welcome, Mark and Monica. What viewpoints concerning equality and human rights did you present to the negotiations on behalf of your party? How did these relate to the conflict, the future of Northern Ireland—north-south and east-west—and did you consider them to be forward-looking or simply conflict-

related?

Mark Durkan: Reflecting on not just the SDLP's own position, but the many ideas and issues that had come from others—there were many different academics and activists who had pointed out the potential value and significance of a Bill of Rights—we knew that, in political negotiations, it was questionable whether we would get agreement on political arrangements and structures.

We also knew that many people would then have doubts as to the reliability of those structures and would want to know what guarantees there would be for them as citizens or as a community. There were discussions at that time about group rights and communal rights. Some of that was coloured by the marching issues that were prevalent at the time, so people came in with different perspectives on that. There were also questions of language and culture and other issues.

There was the real question then of individual rights as well, because we were well informed that rights could not be looked at purely through a communal or group lens. We and other parties made very strong cases to make sure not only that we had rights listed in terms of the European convention and a possible Bill of Rights, but that there would be real instruments to safeguard and curate those rights and to provide independent oversight. Remember, it is significant that there were all-party negotiations on political structures where there was a lot of emphasis on the need for checks, balances and safeguards within those systems, but where people also agreed that there needed to be safeguards outside those political structures—you could not rely purely on the elective institutions alone.

That is why the Equality Commission, a single equality commission, was created. Again, Mo Mowlam was the big driver for that idea. Separately, there is the Human Rights Commission and, again, Mo was the person who was at pains to say that they needed to be two separate commissions. One was going to have a major job of work to do in bringing forward the ideas of a Bill of Rights, while the other was going to have a major job to do in curating and overseeing what became Section 75 of the Northern Ireland Act—the equality provisions.

Professor Monica McWilliams: I agree with Mark entirely. I suppose that you are really focusing on the point of whether these were guarantees or aspirations. I had a real concern at the time that they might be interpreted as aspirations but realised, when I read further down that section, that there would be two commissions established with strong mandates. It obviously fell to me at a later stage as chief commissioner of the Human Rights Commission that the mandate required us to draft the advice on a Bill of Rights.

There was a lot of debate about group versus individual rights, and Mark is quite correct that we were negotiating at a very difficult time, particularly with the marching season. There was also a lot of debate that civil rights, and the civil rights marches, were really led by one section of

the community. There was some feeling that giving rights would be for just one section of the community. We, the Women's Coalition, were determined for that not to happen. The narrative, and certainly the legacy, was that these rights were for all.

Indeed, a later section of the agreement between the two Governments further affirmed that. It did not matter if there would be constitutional change; these were the rights that would underwrite the future. Irrespective of which identity one claimed the new term BIEN is now being used—I think it is rather humorous: British and Irish, either or neither, hence the acronym BIEN—something that I was certainly focused on, as were some of the other parties, was that it did not matter which community you came from, nor which jurisdiction you were in. Underwriting the agreement was this set of fundamental rights, as well as others in later sections of the agreement. I had to pay attention to other sections that also referred to rights. It referred not just to civil and political rights, but to cultural, social and economic rights, which was quite forward-thinking in 1998. The economic rights would not have been a focus of many of the parties.

The Chair: Is it your view in general terms, not looking at particular cases, that the two commissions have been effective?

Professor Monica McWilliams: That is an interesting question to ask someone like me but, yes, there was also a mechanism to review the powers of the commissions. They were reviewed and powers were added. I was always concerned, at the later stage when I became chief commissioner, that the British Government had given stronger powers to Sierra Leone when it was established after a conflict than those that they gave to the Northern Ireland Human Rights Commission. But my answer is yes; both have been very effective and I am very pleased to see that they are part of the dedicated mechanism.

The Chair: Mr Durkan, my question?

Mark Durkan: Which are you talking about, the two commissions or the previous question?

The Chair: Yes, the two commissions.

Mark Durkan: I think the two commissions have tried to discharge their functions as best they can. Let us remember that we envisaged that these two commissions would have a very live and dynamic role. It was envisaged, for instance, that they would have a major input when it came to the Assembly considering legislation. The fact is that the petition of concern provisions in the text of the Good Friday agreement itself, as opposed to the subsequent 1998 Act, were about a trigger mechanism for a special procedure focusing on equality and human rights perspectives. It was believed that the two commissions would be very significant players or influencers in that sort of consideration. The idea was that there would be joined-up scrutiny and protection around rights and equality. That was the thinking.

The Chair: Has that worked?

Mark Durkan: That is not how it happened, because the legislation had to translate it and we got into a whole rut with petition of concern. The only difference between a rut and a grave is depth, so we will not dig into that any further today.

However, the two commissions had distinct roles. The Irish Government ended up creating a single commission for human rights and equality. The British Government rightly made the decision not to

The Chair: What I am really asking, Mr Durkan, is whether you feel now that the commissions are serving their purpose.

Mark Durkan: I think they are. There may be a question of whether they need to remain as two separate commissions, but we definitely need distinct commission capacity in that sort of role. If the focus here is about Article 2 of the Windsor Framework, it is significant that when it came to all the negotiations about the post-Brexit arrangements, those two commissions were two creatures of the agreement that were in existence and operating, and you can see their influence then coming through in the Windsor Framework. Of course, the political institutions were not actually in operation. You had the Assembly grounded for a large part of that period, the Executive were non-existent, and of course the NSMC was grounded. So the idea that we could say, "Well, the answer to a lot of these issues is to dispose of those creatures of the agreement that have actually survived and done their job" would be odd.

Professor Monica McWilliams: Can I just add to that? There is another piece in the agreement under strand 1, paragraph 11, which suggests that the Assembly should appoint a special committee on looking at these rights and anything to do with the European Convention on Human Rights/Bill of Rights, and that it would have the power to call people and papers, just as you do. But that committee was never established, and we were very disappointed that it was not established. There was also a piece in the agreement that suggested that there should be a department of equality. So, many mechanisms were referred to in the agreement that were to take those rights forward, but many of them were not established and have still not been established today.

Mark Durkan: On Monica's reference to paragraph 11, that was the mechanism that was to be triggered by a petition of concern. It was not to be a fixed standing committee; it was that, in the event of a petition of concern, there would be a special committee, and parties could then choose who was appropriate for that committee for that consideration. That was the device, but it never got properly translated either in legislation or in standing orders.

It is also important to recognise that the whole idea of a Bill of Rights was something that people recognised was important because we knew about the European Convention on Human Rights, hugely important as it was going to be, and the UK Government's commitment was hugely

important. It was also very convenient that we had the vehicle of the Human Rights Act going through this Parliament, so it meant that all that did not have to be covered as part of the subsequent Northern Ireland Act. What the Northern Ireland Act had to do then was to take the Human Rights Act and the incorporation of the ECHR as a given, and then concentrate on delivering the creation of the two commissions with their respective remits and competences.

Again, it is important to recognise that the creation vested both the setting of the incorporation of the European Convention on Human Rights and the creation of those two agencies on the UK Government, because we recognised that it was going to be difficult for the parties and the institutions to deliver that. But also, in the talks at the time, the word "entrenchment" was used—these ideas would be entrenched. The idea that this would be done by the Westminster Parliament—

The Chair: We have got the point. I want to move on.

Q65 **Baroness O'Loan:** What did your party view as the purpose and objectives of including these rights in what became the Belfast/Good Friday agreement? You strayed into this territory already, but Monica, can I ask you to start, please?

Professor Monica McWilliams: These rights were, as far as we were concerned, absolutely fundamental to any peace agreement. We wanted people to see themselves in the agreement, and that is why they are written the way they are. We added the seventh right in relation to women, so that when we read the entire document we said, "Would women actually see themselves under those rights?" But also, in that context, you needed to have to read-across, and Mark is right that paragraph 11 was contested. I remember putting forward a Motion, which was rejected, that that committee should be established, mainly because people in Northern Ireland disputed human rights so much depending on which party they belonged to. That is a sad reflection of where we were at the time.

I add that, knowing that, we added the consultative Civic Forum, because we knew there were issues that were going to be too hot to touch—untouchable issues. In the Agreement, it was written that it should be an advisory body on social, cultural and economic rights, and as you know, cultural rights to this day still create an enormous amount of division.

So that was the focus in trying to get over those divisions. You can see the way those rights were written at the time of the Downing Street declaration. Obviously, both Governments were very fixated on making sure that they were broader than just religious and political rights. Reading across, as I have done these last few days in preparation for this committee, I find it amazing how many times the issue of these rights comes up, not just in the safeguards section but in other parts of the Good Friday agreement.

Mark Durkan: As Monica said in her previous answer, there were those eight bullet-point rights. There were six from the previous text, the Downing Street declaration and the framework documents; then there were seven in the Mitchell draft; and then eight in the final agreement. They are framed as aspirational in that sense; they are very much "from now on".

In terms of what people wanted to see, it was about what participants were agreeing should be the characteristics and hallmarks of a transformed society. They are not a confessional list of rights in the sense that we are not listing or describing various rights that had been violated and broken in different ways by different actors and players in Northern Ireland's history, some of which had taken up a large part of the negotiations.

There was a lot of recrimination about different breaches of rights, whether by various armed groups or by previous Governments or Administrations, or whatever. The language in rights was not going to be specific and articulate about a number of very live rights considerations that parties had in mind. These are more generic and collective in that sense. It would therefore be wrong for anybody to think that those bullet points were in any way an exhaustive or fully prioritised list of rights that were to be protected. That was a shared statement for rights that could be realised and experienced by people and which we hoped would be the expectations in our society in the future, rather than a more specific list of a full catalogue of rights that we believed would be covered and addressed by the European convention and possibly supplemented by any Bill of Rights as well.

Professor Monica McWilliams: Chair, can I add to that? We were aware that they might be interpreted as aspirational rather than institutional guarantees. I write at length about that in my own memoir that, had I had to go back to the table—retrospect is a great person to have at the table—I would have firmed them up. Indeed, the right of women to full and equal political participation was perhaps going to be left to political good will, and maybe that was a mistake, but for opportunistic reasons, for parties to be seen to be more representative, that has taken on a bit of a life of its own. But certainly, in terms of affirmative action, which was already in documents that we were reading at the time and which was coming out of other peace treaties, we would have and should have put it in. You can look back and say that you made mistakes, and perhaps we left those more as aspirational; now, unfortunately, they are interpreted by the Dillon judgment and others as not being clear and concise.

The Chair: That brings us neatly to Lady Ludford's question.

Q66 **Baroness Ludford:** Indeed so. Professor McWilliams referred to wanting those rights to be more than aspirational—indeed, I think you used the term "institutional". I will come to Professor McWilliams first. How did you foresee that the rights ultimately included in the rights, safeguards and equality of opportunity—the RSEO chapter—would be enforced, given that

the Belfast/Good Friday agreement is a political text and not a legal text? I go on then to ask: was it anticipated that common membership of the EU by the UK and the Republic of Ireland would underpin those rights, and what did you and your party think about EU membership at the time of the peace talks in the late 1990s?

Professor Monica McWilliams: There were different pieces to your question. One was on what enforcement mechanisms would follow. Indeed, in the next section of that safeguards chapter there was a statutory obligation on equality, which later became known as the famous Section 75 of the Northern Ireland Act. Now I have that Act again, and that was the mechanism—the legislation that we anticipated would be passed at Westminster—so that we would know how to enforce these rights. Implementation is everything. However, as I discovered, probably the biggest mistake that we made in the Good Friday agreement was that we did not establish a validation committee, as have other peace treaties, such as Colombia. They have been overseen by the UN but we were not; we were overseen by the two Governments, who were the guarantors.

In answer to your question, yes, there was the legislation and the Act, but there were to be two commissions, and those commissions were the enforcement mechanisms, as they have been for many of those rights. Different parts of them fall to the Human Rights Commission, which is a reserved body, and some to the devolved body, which is the Equality Commission. Therein lies a bit of a dilemma, because I had to respond to Westminster and make my reports to the Human Rights Committee at Westminster, your cross-party committee, and was glad to do so, but never had the opportunity to do so at the Assembly, while the Equality Commission does present evidence at the Assembly. I am saying that because of the differences in the establishment of those institutions.

On the question about the European Union, I looked at our agreement to see how often there was a reference. One of the most important references is the agreement between the two Governments. It is not enumerated as a bullet point, but it is the third point down. I will read it to you: "Wishing to develop still further the unique relationship between their peoples and the close co-operation between their countries as friendly neighbours and as partners in the European Union". We were partners in the European Union until 2016. It was really important that all of us, as we signed and put up our hands on the last day of 10 April 1998 to agree this peace treaty, we got up from that table knowing that we were still members of the European Union. That was another guarantor for us.

Mark Durkan: Taking the EU question first, obviously the EU is specifically referenced in a matter-of-fact way in strands 1, 2 and 3. It is not referenced in the section of the agreement regarding the participants. That is unfortunate—John Hume certainly wanted it in there—but we need to remember that there was a Eurosceptic strand in the Ulster Unionist Party at the time, and maybe in unionism more generally, while Sinn Fein had consistently voted against every EU treaty in the south. Remember, if we had an agreement that was going to a referendum,

there was going to be a referendum on the Amsterdam treaty on the same day, so the Taoiseach was not particularly pushed about overthinking EU membership into the agreement. He was being careful about conflating those. Unfortunately I was one of those who told John Hume, "You can't have chips with everything. We can't have EU references everywhere. You would add language, but you won't add votes in a referendum". Remember, maximising the vote in the referendum was hugely important.

To go back to a point I tried to touch on earlier, it should also be remembered that, whenever it came to enacting the agreement via the Northern Ireland Bill, all parties were agreed that it would be specified that the Assembly and the Executive could not breach EU law or the European Convention on Human Rights. Indeed, Section 7 of the Northern Ireland Act was actually tagged "Entrenched enactments". While the word "entrenched" did not appear in the agreement itself, it was part of the currency and the understanding about the protection of rights. Those entrenched enactments included EU legislation, such as the European Communities Act. EU law and community law are specifically protected in the Act as well because that was seen as a faithful translation of the agreement.

In subsequent discussions, there came a point where some Labour Government Ministers were telling those of us who were saying we still needed the additionality of a Bill of Rights, "What additional rights would a Bill cover? You already have the European Convention on Human Rights, all the EU rights and the charter of fundamental rights in the EU. They are all there anyway. You don't not need the addition of a Bill of Rights". But of course Brexit and various suggestions about the ECHR have fundamentally altered or removed that complacent argument that there is no need to have a Bill of Rights per se.

Q67 **Lord Hain:** How would you assess the success of the implementation of the provisions of the RSEO chapter of the Belfast Good Friday agreement? Is it different from what you expected or argued for during the negotiations, and would you suggest any improvements?

Professor Monica McWilliams: It is good to hear your voice again, Peter, after all this time. Yes, it has been a major disappointment in how they were taken forward. It did not surprise me that the Assembly had difficulties in taking them forward, given the disputes over rights in the Assembly at that time, but I was disappointed in the way that Westminster would not take them forward, particularly the advice on the Bill of Rights. I have gone back to look at all of the letters of correspondence, and eventually, when the Conservative Government came into power, the Secretary of State in Westminster wrote to the parties and asked them if the Assembly would take up the Bill of Rights when in fact it fell to Westminster to legislate, as was agreed in the Hillsborough declaration of 2006, when you were Secretary of State. So it was changed. Needless to say, I knew then that that was the end of the Bill of Rights. Had that happened with Patten and the police reforms, we

would never have got consensus in the Northern Ireland Assembly on the Patten commission's recommendations.

Lord Hain: Sorry to interrupt, but is the absence of a Bill of Rights your major disappointment, or are there others?

Professor Monica McWilliams: Another is the fact that the consultative Civic Forum did not remain in place to discuss this. As you know, civic society in Northern Ireland had a huge voice. It was one of the largest participation exercises ever around equality and human rights. I have to say that, when I knocked the doors for the referendum, people said to me, "This is a terrorist charter". I said, "What do you mean?", and they said, "You're letting prisoners out. You're emasculating our police, and you're standing down the criminal justice system as we once knew it". So I pointed to these sections in the agreement but then I realised that we needed to translate English into English so that people could understand what we had written in the agreement.

I also have to say that the sections on victims' rights and reconciliation changed some minds. Again, looking back, the parties should have stayed together. They should have sat on panels and talked about what we had promised and what we were going to deliver. It is not entirely the Government's fault, but if the mandate fell to the Government to produce legislation then they did not do so, nor did they do it on the Equality Act that Britain already had. There are a number of gaps.

The Chair: To pick up on the second part of Lord Hain's question, we were hoping to have Dermot Nesbitt in this session but there was a technical problem that has stopped him joining us, at least so far. He sent us a written submission that has his lengthy bullet-point list for a Bill of Rights at the end. Can you explain to us what the deficiencies are in the rights that are available? If I wanted to enforce a human right, or what I believe to be a human right, in Northern Ireland, what deficiencies are there compared with, say, Great Britain?

Professor Monica McWilliams: You have asked for quick responses but I could not answer that quickly. Certainly the document and the advice that we handed to 10 Downing Street in 2008 would tell you which ones were supplementary.

But the piece that people forget is that that section of the agreement asked the Northern Ireland Human Rights Commission also to pay attention to international standards, not just the European convention rights. We did both, but people have a short memory, in that they constantly say, "Sure, everything was in the European convention", but in fact not everything was.

Let me give the Committee one example: the right to be British, Irish or both. That is probably still an aspiration. It is not a judicable right. The case Emma DeSouza took against the Home Office showed the lengthy proceedings she had to go through in order to establish that right for her husband. That is just one minor example. There are others. We do not

have a Bill of Rights, which many other places have, including Commonwealth countries; I studied Canada and Australia and all the parliamentary systems. The biggest dispute was about two reasons: that Parliament is sovereign and that Northern Ireland does not need a Bill of Rights because it would create a separateness that did not exist and should not exist. That was probably not even correct, as we did not have parity with many of the rights that existed in Britain. That is the first dispute.

The second was on social and economic rights and environmental rights. The European convention is probably pretty mild on those rights. We were in a modern day of 1998 and going forward to 2008, we did not just look at the rights in the convention from fifty years before and include them. That was advice. It was for the parties and the Government to discuss how it should end up. As an international human rights commission accredited by the International Coordinating committee based in Geneva, we could not have done anything other than supplement the convention rights, to include any international standards that applied to the conflict and no recurrence of the conflict as we moved forward.

Q68 **The Chair:** Mr Durkan, I am trying to tease out the question I asked supplementary to Lord Hain's question. What are any deficiencies? We do not have a Bill of Rights, as is being discussed, in Great Britain. There is no such thing. We have a Human Rights Act. We subscribe to all sorts of international treaties, and we use the tools that are available to enforce our human rights through the courts. Are there any human rights that we are able to enforce through the courts in Great Britain that are not enforceable in Northern Ireland as a result of the arrangements that have been made and their practical application?

Mark Durkan: At the time we were negotiating the agreement, it was a point of convenient coincidence that the UK Government were going to be legislating to incorporate the ECHR into UK law. The agreement articulates that very specifically in relation to Northern Ireland, making it clear that people would be able to access the domestic courts in Northern Ireland—for instance, to challenge legislation by the Assembly. That was hugely important. It was the Northern Ireland-specific aspect that concerned us. It was a point of convenience that the Human Rights Act was a very good vehicle for delivering that protection, but we also recognised that it may not cover all issues of rights. That is why, without being able to agree and specify what those other issues would be, it was remitted to the Human Rights Commission to draw up proposals for additional rights, which, taken together with the European Convention on Human Rights, could be incorporated into a Bill of Rights. Some people talk about a Bill of Rights as though it would be separate from the European convention. The agreement talks about a Bill of Rights that would subsume the European convention and whatever additional rights were legislated for as a result of the commission's advice.

In circumstances where issues of international standards might be somewhat fluid at the minute in terms of what is the norm and what is

the given, there could be particular issues, and people are suggesting that the UK should leave the ECHR or deviate from it in certain respects. The Good Friday agreement makes specific commitments about Northern Ireland. Perhaps about the whole of the UK or Great Britain it is a different matter, but the agreement makes specific commitments about Northern Ireland so, whatever decisions are made about the ECHR in respect of other parts of the UK, Northern Ireland has to be treated distinctly. People found out in relation to leaving the European Union that there are certain matters on which, because of the Good Friday agreement and other things, Northern Ireland has to be treated differently from the rest of the UK.

The Chair: That is an interesting question.

Professor Monica McWilliams: I recently visited Westminster and went round the parties on the issue of derogation from Article 3 and Article 8 in relation to small boats and immigration. My evidence to most of the parties was that that would infringe the Good Friday agreement and the Human Rights Act that was current, and that if Westminster were to change that, it would have a read-across. That is where a Bill of Rights would have been important.

The Chair: Forgive me for asking another question on this very point. Would it infringe the Good Friday agreement or is it simply a question of subsidiarity which can properly be applied under the subsidiarity freedoms that are available to any member of the Council of Europe?

Professor Monica McWilliams: I missed the first part of your question.

The Chair: Would it really be an infringement of the Good Friday agreement, or would the example you have given simply be an example of legitimate subsidiarity that any member state can apply as part of its membership of the Council of Europe?

Professor Monica McWilliams: That is hypothetical, obviously, because it has not been tested. My only answer to that is that if we had a judicable Bill of Rights, it would be difficult to derogate from it.

Q69 **Lord Elliott of Ballinamallard:** Thank you for your attendance. I am just checking: what role have the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission played in protecting and promoting rights and equalities in Northern Ireland? Twenty years on from the Belfast agreement, has there been positive progress in that area? Were human rights and equality equally strong prior to the Belfast agreement or do you think there has been significant progress?

Mark Durkan: I think there has been progress at a number of levels. It does not mean everything is perfect by any means. There are challenges and issues, and there will always be considerations. Each time it comes to looking at possible changes in policies and laws or services, there will be issues around human rights and equality considerations. That is why various impact assessments are done.

It has been difficult enough at times to see significant legislation progress through the Northern Ireland Assembly, and all sorts of arguments are used to stand in the way of different advances. The situation would be much worse if we did not have the benefit of competent, credible commissions that are able to wade through some of the sensitivities and various claims and contentions around rights and equality issues. They have been able to provide authoritative advice, insight, and, in some cases where cases have been taken, support in relation to those issues. We would be in a much worse situation if those were all matters of political conjecture and contest, adding to the gridlock and the underperformance that we have seen in regional governance.

The Chair: Earlier, you raised a question about whether there should be two commissions or one. What is your view on that question?

Mark Durkan: I would obviously need to hear from people who are more directly experienced or concerned—

The Chair: Like Professor McWilliams.

Mark Durkan: The original rationale for having two separate commissions has maybe been overtaken by events and history. Many of the issues that vex people about different policy moves or possible laws obviously straddle both rights and equality considerations. It might be that, similar to the south and elsewhere, a combined commission would be possible, but it might be that within that combined commission you would have very clear dedicated streams of concentration.

Baroness Ritchie of Downpatrick: I have a very short question, Mark. If we were to go down that road of a single commission, would that mean legislation or would it mean discussions, and, if so, who with?

The Chair: I think Professor McWilliams could probably answer that question very knowledgeably.

Professor Monica McWilliams: In response to Margaret's question, indeed, it would require legislation. The Human Rights Commission falls to Westminster, because international standards are not devolved. For other reasons, the Equality Commission—Lord Hain will know this, because he was responsible for appointing me—

Lord Hain: A very controversial appointment it was too.

Professor Monica McWilliams: I hope it proved not to be, during my term. In relation to that, it is not the Secretary of State who appoints the commissioners to the Equality Commission, and the commissioners have to be as representative of the community as practicable, which is a really important point in relation to the differences in Northern Ireland compared to the rest of the UK.

Should there be two commissions? I think so. They both have very different powers. I think the Human Rights Commission has a very strong power of scrutinising the legislation in the Northern Ireland Assembly in

keeping with the European Convention on Human Rights. So all the legislation that goes through the Northern Ireland Assembly comes to the Northern Ireland Human Rights Commission, which has done an excellent job in putting forward suggestions for amendments or keeping it in compliance with the human rights of the convention, and that is really important. That is an answer to Lord Elliott's question.

It can also take cases in its own name, and that is important for people to embed a culture of rights. We have not really discussed that; we have discussed the whole point of protection. But, as we go forward in Northern Ireland, it is really important that people understand what a culture of equality, non-discrimination and human rights truly means. It has that educational function. I have been reading recent newsletters, and it has been going out around schools and youth clubs. It is really important for the next generation to understand that they must not do what happened in Northern Ireland, in terms of the causes of the conflict, but go a different path. This path is about treating each other with dignity, respect and equality. That is the power of both commissions. Sometimes it comes out as a result of court cases, but it also comes out as a result of their educational functions.

Lord Elliott of Ballinamallard: This is just a point of clarification for Professor McWilliams. She was asked whether there should be two commissions, and she said, "No, there shouldn't". I assume she meant, "No, there should not be one; there should still be two."

The Chair: Thank you for that clarification.

Professor Monica McWilliams: Thank you for clarifying that.

Lord Elliott of Ballinamallard: Far be it from me to put Professor McWilliams right.

The Chair: No—you are absolutely right.

Professor Monica McWilliams: I would have had the opportunity to correct that in the transcript, but I am very grateful for your correction at this stage.

Q70 **Lord Dodds of Duncairn:** I apologise for my late arrival due to travel disruption this morning. Thank you for giving evidence this morning, Mark and Professor McWilliams. Can I ask about the view that is held in certain quarters in Northern Ireland that the Human Rights Commission primarily, and it is also sometimes said of the Equality Commission, takes a sort of expansionist approach to its role, beyond even the remit that it has been given? People point to the article that appeared in the *News Letter* in September 2024, which said that, in the recent report on Article 2 of the Windsor Framework, the Northern Ireland Human Rights Commission, in conjunction with the Irish Human Rights and Equality Commission and the Equality Commission for Northern Ireland, demanded that the UK Government and the Northern Ireland Executive should "ensure North-South equivalence of rights"—leaving aside the

EU—"by aligning with changes to EU equality and human rights law, even where not required to under the Windsor Framework". How do you address the concern that people have that that is overstepping the remit given to those bodies under the Belfast agreement?

Mark Durkan: I think Lord Dodds's question in some ways touches on the root motive behind the whole notion of non-diminution. The point was that, in the Good Friday agreement, we were trying to make sure that rights provisions would be absolutely bulwarked and not merely ephemeral; they would be built-in structures, both on a statutory basis with the incorporation of the ECHR and then by the creation of the oversight and challenge capacity that both the Human Rights Commission and the Equality Commission have.

Both commissions feed into legislation. It is not just the Human Rights Commission that gives advice and offers scrutiny when there is Assembly legislation. Both do, because they have to be live to the protection both of the rights and the equality commitments and standards that are laid down in the agreement, the Northern Ireland Act and other legislation.

In the Brexit context, there were questions around whether this removes the fundamental rights that were covered by the EU charter. Would there be jeopardy for some convention rights or other rights under union or community law? The whole question of non-diminution is about saying that the rights that were pledged in the Good Friday agreement are to be safeguarded regardless of any future events.

Monica touched earlier on the fact that the agreement, remember, states that a number of its key rights protections not just are contingent on the current constitutional status of Northern Ireland but would endure in the event of any change of constitutional status. The same rights protections would be at least equal in that context. That is where the whole question of non-diminution actually comes from; it is a key motive. The durability and justiciability of rights was a core intention of the Good Friday agreement, and I think that that is what commissions reflected when they referred to how people, at the time of the Good Friday agreement, expected and were given confidence about the equivalence of those rights on the island of Ireland—remember strand 2, the all-Ireland dimension to the Good Friday agreement—and that that would stay and still stand.

It should be remembered that many of the people who advocated for Brexit told us that Brexit itself would not affect the spirit or letter of the Good Friday agreement and that not one piece or consequence of it would be jeopardised, eroded or compromised by Brexit. So people cannot complain whenever bodies like those two commissions try to make sure that that is the case, and that that is translated into whatever mechanisms are agreed between the EU and the UK on foot of Brexit.

Lord Dodds of Duncairn: You have spoken eloquently about non-diminution. I was referring to the other side of it, which is about increasing. I take the point about non-diminution, but the point that is

raised by the commissions here is one of expansion of the rights of north-south equivalence, even where not required to under the Windsor Framework. Could you address that point?

Mark Durkan: I have no particular fears or apprehensions in that regard, and I am not sure what specifics might emerge from those terms that would be in any way threatening to anyone. As someone who lives in a city very close to the border, I think it is very natural and acceptable that there would be such equivalence of rights into the future.

Professor Monica McWilliams: Lord Dodds knows that it is not the first time that either commission has been criticised for being expansionist, but the commissions have to keep within their mandate and the accreditation that they are given—in the case of the Human Rights Commission, by the Geneva Internation Coordinating Committee. If it did not do that, it would be accused of undermining its mandate and would lose its accreditation. But it is important to say that they are the dedicated mechanisms. It is good that the human rights commissions in Northern Ireland and the Republic of Ireland are mandated—I am speaking here about the two human rights commissions, which I know best—by the agreement to meet on a quarterly basis and discuss these issues.

I say that because there is another issue that we have not raised, which is not specific to this particular question, about the charter of rights for the island of Ireland. I was very focused on that in thinking about this question of the differences between how the Irish Government brought their human rights Act into law compared to the British Government. They were criticised by Members of the House of Lords for watering down some of the convention rights, hence the reason for a charter of rights for the future that was to be agreed by political parties. It was more a declaration: what are the gaps and where is the vacuum?

I will give you one example. There is an enormous vacuum in how the coronial system is run. It is much, much better in Northern Ireland in relation to inquests, and much, much weaker in the Republic of Ireland where it is a local doctor who hears these contentious inquests, as we know in the case of Denis Donaldson. That is one of many examples of where we differ, hence the reason for drafting the advice, as they did when I was chief commissioner, and handing it to Lord Dodds's colleague William Hay, who was the Speaker in the Assembly, and to the Speaker of the Oireachtas at the time in Dáil Éireann.

The charter of rights is sitting gathering dust in the Assembly and Dáil Éireann libraries. I have said more recently it would be really useful to have a look at where human rights compliance in the two jurisdictions differs. It is more the case that they are not so expansionist as looking at where they differ and how the charter of rights can address that gap.

Baroness Goudie: It is nice to see you, Monica.

Professor Monica McWilliams: You too.

Baroness Goudie: I will ask Mark the first question.

The Chair: Could you speak up a little bit?

Q71 **Baroness Goudie:** Sorry, it is the heat. What was the significance of the UK's vote to leave the EU for the RSEO chapter of the Belfast Good Friday agreement?

Mark Durkan: The vote to leave had significance for the whole Good Friday agreement. The fact is that joint membership of the EU was taken as a given. It was something that was very formative to the context of the agreement. Many people forget the significance. The Single European Act and the removal of customs borders and the trade border in 1992 very much facilitated the context in which ceasefire subsequently took place. John Hume's argument in the Hume-Adams dialogue had been all along that when the Single European Act came in, the only thing that would maintain a profile at the border would be security, and that that would be in response to the IRA campaign. If you wanted to remove the visibility and obtrusion of the border, the EU was the context in which that would be achieved.

Of course, the EU provided many other supports in kind as well, such as the special EU programmes for peace and reconciliation et cetera. On structures that relied on an assumed common EU membership, when it came to negotiating strand 2, I recall that David Trimble's negotiators and many Ulster Unionists said it was easier for them to agree on bodies and areas of co-operation that had a strong EU remit either in handling funds or comparing notes on how to transpose directives, because that was more defensible for them than some of the other suggestions.

On the question of rights, specifically, obviously much of what is in the RSEO chapter—much of which is written almost in the style of a manifesto; it is more the "manifesto section" of the agreement than some of the other sections of the agreement—we are, again, very much dependent and reliant on the context of continued EU membership. There were going to be strains. Many of us said at the time that leaving the EU would drive fissures into different aspects of the Good Friday agreement and create tensions, difficulties and doubts where they previously had not existed.

Professor Monica McWilliams: I do not have anything much to add to that other than to say that it has a huge impact, hence the reason for the dedicated mechanism. We never anticipated that we would leave the EU. In fact, Northern Ireland voted to remain. It came as quite a shock, and it reads across. I have just given you an example of where the two commissions are mandated to look at rights that may be infringed on in the north and the south in terms of convention rights. It should not have impacted on the convention rights, but it would impact on European Union law. One part remains in the European Union; the other part does not, hence the reason why the two commissions have addressed that.

They must have thought of this at the time of the withdrawal agreement, because the whole rationale for the dedicated mechanism was obviously to protect those rights. How the rights would be interpreted in the future was a concern to me, and that has clearly come across in the Dillon judgment.

The Dillon judgment protects the non-diminution, but it is the interpretation that has now left a question. That is of concern because now you will have various interpretations and perhaps a conflict in that the judgment argued that those rights were dealing with the past. I would argue, as a person who was present at the final stages of the negotiations, that we were very much focused on how we wanted to live in the future, trusting each other that there would be a basis built on human rights.

Q72 **The Chair:** We are going to move now to the interesting question of the Dillon case. But before we get there, can I just ask you a general question? Proportionately, there are far fewer human rights cases taken to the High Court in Northern Ireland than in GB. Obviously, the Dillon case is spectacular in this context, but can you give an indication as to why that might be?

Professor Monica McWilliams: It could be that our judiciary in Northern Ireland is very diligent on compliance with the European convention. It was for a reason that for two years the Human Rights Act did not come into force. It was passed in 1998, but the judiciary needed to be trained. In those two years it was well trained and the Judicial Studies Board continually meets, talks about any gaps, and updates it.

In my time, we took a case on Article 2 to the European court. It was a very good case because it made enforcement much stronger for inquests in Northern Ireland. Since I left in 2010, I am not familiar with the cases, but I know about them because they are covered in the media.

That is a very interesting observation and that is my simple answer: there is much less conflict in Northern Ireland among the courts and the Court of Appeal. Rarely do they have to go either to the Supreme Court or the court in Strasbourg.

The Chair: Do you want to comment on that, Mr Durkan?

Mark Durkan: The differential in the rate and weight of legislation might be one factor in comparing the devolved region with GB. There is also the fact that the commissions may be able to reflect that they have helped to set the weather in many ways, in that their work has been part of informing and conditioning various government departments and parties to equality-proof and rights-proof different measures and actions that they are taking and bringing forward. If that means that there is less contention about such outcomes and measures, and they do not find their way to the courts, I see that as a sign, potentially, of progress and a potential indicator of the efficacy of the commissions.

Q73 **Baroness Foster of Aghadrumsee:** I declare my interests as chair of

InterTrade UK and a board member of Co-operation Ireland. Baroness Ludford referred to the RSEO section of the Belfast Good Friday agreement as a political text, not a legal text. We have heard from both of you very fully what your particular view was when you were negotiating the RSEO text at that time. I greatly regret the fact that we do not have Dermot Nesbitt online, Chair, because I think he would take a different view in some areas. He has given us his written evidence, which has been helpful.

Mark, you said that it was a shared statement at the time, and of course it was a negotiated part of the Belfast agreement, as it all was. The Chair has already mentioned the Supreme Court's commentary in Dillon, in and around the RSEO chapter. At paragraph 119 of the judgment, as you know, it says: "The rights listed with bullet points are all concerned with ending sectarian conflict". In the chapter I think it refers to communal rights as part of the preamble. I am interested to hear your contemporary understanding at the time we were negotiating that. I think Monica has made her view clear on that it was dealing with the Troubles but it was also looking to the future. I want to get on the record what both of you think about that.

Mark Durkan: Contrary to what the Supreme Court has said, I do not believe that some of us regarded it as being concerned with ending sectarian conflict. We saw them as indicators that would manifest that we had moved on and successfully ended sectarian and other forms of conflict, and that we were talking about a transformed society where people could expect and experience very different life choices and circumstances than heretofore. As I said earlier, it was not done to say, "These are all the rights that now have to be vindicated". It was not asking anybody to renounce their own past behaviours or decisions in respect of rights, because, with an agreement of that kind, you are not going to get an agreement that is confessional, with recrimination and cross-recrimination or whatever. So it was written in a forward-looking sense. Similar issues apply to the question of legacy. There were always going to be limitations on what could be in the text in respect of legacy and the experience of victims, which is why, again, that was written in a forward-looking sense.

Part of the problem is that people may have got overfocused on the RSEO section of the agreement. That is partly because of the way Article 2 was written. While I think what is in Article 2 is absolutely necessary in terms of reflecting and bulwarking aspects of the Good Friday agreement, I do not believe that it is actually sufficient. I felt at the time that it would not achieve as much for the protection of the agreement as some people were saying. I know that some people say that the Windsor Framework was oversold to unionists in one respect. I think, in other aspects, the Windsor Framework was oversold to other people as well and maybe we are realising that now.

Lord Hain: If Mark Durkan and Monica would not mind, could you write to us afterwards? For my benefit, it would be really helpful to have a list of rights that you think should still be part of the set-up that are not.

The Chair: Yes, that is why I asked some of the earlier questions. I think that would be helpful, if you do not mind a bit of homework.

Mark Durkan: That was meant to be the job of the Human Rights Commission.

The Chair: You could add to it. Professor McWilliams, you may have particular experience that helps to answer Baroness Foster's question.

Professor Monica McWilliams: In relation to the Dillon judgment, it is useful that it is saying "no diminution"; that is very good in terms of protection. But then it went on to say that the particular rights in relation to the victims directive were in relation to the past and the sectarian conflict. I think it is both addressing the past as well as future looking. We never sat down and said it had to be either/or; it is both. It clearly was in relation to the past that we were looking at what we needed to do for the future—indeed, even for the present. That remains a discussion.

I have always been of the view that they were written in that way because it would fall to different parts of the Government and the institutions to take them forward—I said that earlier—and many of those mechanisms have yet to be established.

It was a disappointment as a member of the first Assembly that we did not have—I know some of it falls to the executive committee—a particular committee that could have taken evidence, testimony and expert witnesses to really discuss and flesh out what was meant by the rights, safeguards and equality of opportunity. As they talk about in the States, these are the guardrails. Northern Ireland certainly needed those guardrails for both communities, but also for ethnic minorities, as we saw recently—and we have never had that.

That remains a disappointment, but still, there was gain and there was pain. It is the interpretation of the Dillon judgment and different people have different views on it. Some are more relaxed and say it probably will not affect decisions in the courts or how EU directives apply to Northern Ireland and others say, "No, it fundamentally changes it". We will have to see how it plays out.

Baroness Foster of Aghadrumsee: I just have a comment, and I crave your indulgence to put it on the record. Mr Durkan has said the section on victims and reconciliation was forward-looking. I think the difficulty was that a lot of the victims and those who seek reconciliation felt that, to look to the future, they had to deal with the past. Unfortunately, that has been left there. We are still grappling with that whole issue in Northern Ireland at the moment, and we will do until we have a discussion about dealing with the past and looking to the future.

Professor Monica McWilliams: Can I just add to Baroness Foster's comment? We were very fortunate to get that section into the agreement at all. It was 3 am on Good Friday when we looked at the agreement as the Women's Coalition and said, "How are we going to go to the people in

a referendum, especially the victims, and ask them if they see themselves in this document?" It was drafted in that way. If we were to go back now, we would draft it differently. In fact, when I got out my papers from those committee discussions at the negotiations, I discovered we had put forward a commission on the legacy. We did not get much support and we let it fall off the table. That is another regret. Had we established that commission, we would be much further forward today.

Q74 **The Chair:** You have your own academic and political communities, but in the general community in Northern Ireland, what do you think is the understanding of the Dillon judgment? I put in brackets "if any".

Professor Monica McWilliams: Well, you are asking someone who had difficulty going through all the paragraphs of that judgment. Obviously other academics have put forward papers, and I have read those, saying that there is good and bad, which I have already said. They say it agrees with Article 2, but it can only be interpreted if the rights are concise and definitive. They were not intended to be definitive, so how do we take that forward? You ask about the public; I do not think the public understand it. The academics and the commissions understand it. The people whose job it is in terms of the legal profession understand it, but the public would not have a clue about what it is—hence my earlier point. There is the educational function of those commissions. That is a job they will have.

The Chair: Mr Durkan, if my colleagues will forgive me, I would like to repeat a question I have asked before in these meetings. If, say, a trade union official somewhere in Northern Ireland was faced by one of his or her members saying, "My human rights have been broken in my employment", do you think that trade union officer would have been helped or hindered or neither by the Dillon judgment?

Mark Durkan: I am not quite sure whether the trade unions would be in a position to advise their officer yet. As Monica has implied, the Dillon judgment will take some perusing and absorbing. It may point to the fact that some people expected that Article 2, by its reference to the RSEO chapter, was going to cover it and that it was going to provide reliable recourse in respect of the whole gamut of human rights. It clearly turns out to be more limited. An umbrella can perform the function of a parasol; the parasol cannot perform the function of an umbrella. Maybe that is what has been found out; it cannot be relied on in all rights cases as people may think.

I think I agree with Monica as well that it is difficult. There is difficulty in trying to say that RSEO was all about dealing with past issues, particularly when it is written in such a future-facing way. But it is not future facing in a way that says, "We are going to ignore any past transgressions, and any issue of rights about past experiences or actions goes by the bye".

On the Dillon judgment, I think people have sympathy with the families who have taken that case, because of all the other experiences they have been through. People will be concerned about what its implications will be. They are probably concerned that they may not be able to decipher all the arguments and conflicting jargon going on as a result of it. There will be a lot of political conjecture around this, so I think people would appreciate clarity.

Maybe it points to the fact that there is a case for looking again at the whole question of the Windsor Framework, not just from the point of view of whatever unionist concerns remain about its adequacy but more widely. The fact is that, post Brexit, there were many difficult negotiations, and not all the choices have been as perfect or even as people hoped they would be.

The Chair: I will take to heart your suggestion that lawyers like me talk in jargon. It is always a good idea to remind us of that risk.

Professor Monica McWilliams: With some humility, I would like to respond to your question about the complexity of such a trade union case. You could only take a human rights case as a complainant against a statutory authority, not a private business or employer. It falls to the Equality Commission to take that case on non-discrimination against a private employer. The powers are very different, and the way the mandates were given was very clear. I say that only because of the question: where would you get a definitive answer? Obviously, that would happen if someone decided to go to arbitration on the judgment, and that is where you and others from the legal profession would come in.

The Chair: I am very sorry that Mr Nesbitt has not been able to join us because of some communication problems. Efforts will be made to enable him to give evidence next week, if we can fit it in. He has sent a detailed submission, which I encourage all my colleagues to read, if they have not read it.

Mark Durkan: I imagine that the framework convention features in it.

The Chair: It does—quite frequently.

Baroness Ritchie of Downpatrick: Our three participants will be sending us further details. Mark referred to certain deficiencies in the Windsor Framework. It would be helpful if he could look at those in relation to Article 2. Sorry for the work.

The Chair: Thank you. Does any member of the committee have a question they are burning to ask before we bring this session to a close?

Mark Durkan: Lord Chair, does any of us have a right not to be so burdened?

Lord Hain: The question that I asked, which I think you endorsed, was about whether either Mark or Monica could write to us with a list that the public might understand. This is very complex stuff. That would apply to

Dermot as well.

The Chair: I was going to ask Mr Nesbitt a question. He set out a long list of rights. Which of those are not enforceable in Northern Ireland? I suspect the answer is: none of them—they may all be enforceable in Northern Ireland, albeit by a different mechanism. The commissions—one of which you led, Professor McWilliams—are probably playing a very valuable role in helping to avoid litigation by answering the difficult questions that my fictional trade union official might want to ask them. Is that fair, Professor McWilliams?

Professor Monica McWilliams: That is very fair.

Q75 **Lord Elliott of Ballinamallard:** Lord Chair, I do not want to get into it today, but I suppose the one aspect that we have not touched on is competing rights: where one body or one group feels that it has a right to something and another feels that it has a competing right. I do not think we want to get into it today, but maybe the witnesses could touch on that in their correspondence on those lists of rights.

The Chair: I think this is one for Professor McWilliams.

Professor Monica McWilliams: In response to Lord Elliott's question, that is why different commissions were established. I am thinking here of the Commission on Flags, Identity, Culture and Tradition, which looked at the competing rights, the right to process and the right to protest. Those rights are all of course proportionate and relative to other human rights. There are no absolute rights other than the right not to be subjected to inhumane and degrading treatment; all of the other rights are dependent and relative. That is really important. The right not to be enslaved is the only other absolute right. Competing rights is an issue not just in Northern Ireland but elsewhere, but the FICT commission attempted to address them.

I declare an interest here because I am on the commission overseeing the measures to end paramilitarism in Northern Ireland. Again, the independent report commission has addressed the issue of competing rights in terms of how some paramilitaries see themselves as no longer belonging to proscribed organisations. That has been a real issue, and it will not go away. It really does need a lot of discussion between those who believe that the two commissions protect their rights, as well as the institutions. Flags, identity, culture and tradition will remain in competition in Northern Ireland for some considerable time.

Mark Durkan: Lord Chair, I will make a point in response to the homework that Lady Ritchie was trying to assign to me. My point was not just about Article 2 of the Windsor Framework—I hope I am not giving myself a bigger job of work here—it was about the Windsor Framework at large. The fact is we have had a lot of lip service from British Governments, the EU, Irish Governments, American players, et cetera about them being committed to upholding the Good Friday agreement in all its parts, all its aspects and all its dimensions—the RSEO is only one of

those. It has been a problem in that, post Brexit—not least because we did not have functioning institutions at times—the machinery of the Good Friday agreement was not actually looked at as a way of answering a lot of the vexed problems that gave rise to Brexit.

I am reminded that Lord Empey and I both made the point at a Hume Foundation event that there could be the possibility of creating some new north-south bodies—or reappointing existing north-south bodies, such as InterTradeIreland—to deal with some of those questions. Because of the positions that were taken by respective Governments and the EU, where there was a lot of lip service about different aspects of the Good Friday agreement, there was not a lot of lateral thinking about actually using or deploying it. That may have been different if we had had the Assembly, Executive and the NSMC as live players. There could be revision and positive progress there, as well as addressing whatever outstanding concerns there are from a different direction.

The Chair: Thank you very much. I thank both our witnesses for the very interesting evidence you have given this morning. I know I speak on behalf of the whole committee in saying that it is extraordinarily fascinating to have two witnesses who were there when it happened, as it were, and who have memories that help this committee enormously. I remind you that you will receive a transcript. Please check it for accuracy; Lord Elliott has already illustrated why that should happen, for which I give much thanks. I now bring the public session to a conclusion.