

Northern Ireland Affairs Committee

Oral evidence: [Citizenship and Passport Processes in Northern Ireland](#), HC 1111

Wednesday 10 March 2021

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Members present: Simon Hoare (Chair); Scott Benton; Mr Gregory Campbell; Stephen Farry; Mary Kelly Foy; Mr Robert Goodwill; Claire Hanna; Fay Jones.

Questions 1 - 35

Witnesses

I: Les Allamby, Chief Commissioner, Northern Ireland Human Rights Commission; Éilis Haughey, Head of Service to Dedicated Mechanism, Northern Ireland Human Rights Commission.

Written evidence from witnesses:

– [Northern Ireland Human Rights Commission](#)



Examination of witnesses

Witnesses: Les Allamby and Éilis Haughey.

Q1 **Chair:** Good morning, colleagues, and good morning to our witnesses. It is nice to see you all this morning for our first session on a new inquiry on issues of citizenship. We are very pleased to welcome two representatives from the Northern Ireland Human Rights Commission: the chief commissioner Les Allamby, and the head of service to dedicated mechanism, Éilis Haughey. You are both very welcome.

You are in a fortunate position, as the first witnesses on the first day of a new inquiry. Can I ask you to set the scene as to the issues, the problems, the hurdles, the opportunities and the direction of travel that you would like to see this inquiry go in? That is your starter for 10. It is a nice bit of gentle bowling for a damp, chilly Wednesday morning.

Les Allamby: The commission welcomes this inquiry. It is on a longstanding particular interest of the commission. It comes from our desire to see how you translate the identity birthright provisions in the Belfast/Good Friday agreement into practical value—that is, the idea that the people of Northern Ireland should be able to identify as British or Irish, or both. Whatever the constitutional future of Northern Ireland, that will remain so. Implicit in that is the notion that you should be able to identify in any one of those three ways without any adverse consequences.

It was before my time, but the commission in 2008, in its advice to the UK Government about this, suggested that you should enshrine in the Bill of Rights the identity provisions around immigration and nationality law. At that time, in what was frankly a pretty flint-faced response by the UK Government to most of what the commission had to say, the one shaft of light was an acceptance that that would be a good idea and something that was worth doing. It never happened in immigration and nationality law. We do not have a Bill of Rights. It has come into sharp relief partly because of legal judgments and a case called McCarthy, prior to which your dual nationality as a British or Irish citizen had some value in immigration and nationality law terms for family reunion. The Emma DeSouza case obviously put it back in the spotlight.

In February 2019, Theresa May's speech in Belfast made it clear that she recognised and acknowledged the centrality of identity provisions to the Good Friday/Belfast agreement and that the issue of family reunion was causing significant problems. She talked about a review that would lead to a long-lasting and durable solution. What we got, frankly, was a quick fix. I would love to be able to join the dots between the speech in February 2019 and the "New Decade, New Approach" agreement in January 2020.

We never saw the fruits of the review. It was never published, but we got a commitment that was then much more short term. That was reflected,



of course, in the change to immigration rules that are tied to the EU settlement scheme. We know that that will end in June 2021, so it will be fine if you get your applications in before then. But we have still not grasped the issue long term and found a durable solution, as the former Prime Minister suggested. It is in that light that we commissioned a piece of work from Alison Harvey to try to find a durable solution to this, which we might want to talk about that in due course.

That is the lineage of the issue for us. Your inquiry is very useful. We have tried to be in solution-finding mode in terms of the work we have done with the joint committee of the Irish Human Rights and Equality Commission, which itself is part of the Belfast/Good Friday agreement. I hope that is a potted history as to why we are interested in this and why we see some value in your inquiry.

Q2 Chair: Mr Allamby, I am going to promote you and make you Home Secretary for the day. I have to say that that is not within my gift, so do not worry, but let us say you were Home Secretary. You have a blank sheet of paper. What would you do and how would you do it to address the concerns that you have?

Les Allamby: Let me turn to the piece of work that we commissioned from Alison Harvey. We asked her to do a legal analysis of the current law and how you could deal with this. We accept that this is a solution; it does not have to be the solution, but I have yet to see anyone come up with a better plan. What we asked her to do—if I was sitting at the Home Secretary's desk, I would look at the document very carefully—was, first, to make sure that any provision prevented statelessness, secondly, to ensure that those people who are born in Northern Ireland who do not identify as British citizens are not ascribed British citizenship against their will and, thirdly, to ensure that those people born in Northern Ireland who do identify as British hold the citizenship that is the same as that held by those born elsewhere in the UK.

There are a number of important ancillary principles, but those were the essential ones. In essence, what Alison came up with was the idea of the current law, section 1(1) of the British Nationality Act, which effectively says that you are born British regardless of how you identify yourself. It would continue to recognise that you remain a British citizen, but it would amend the law to say that no assumption may be made to the British citizenship of a person born in Northern Ireland without that person having had the opportunity to assert the right not to be identified as a British citizen.

Everyone would still be born British, which I suspect would not go far enough for some in Northern Ireland, so you would not change that. A person identifying as British in Northern Ireland would need to do nothing. They could assert the right to be British, but they would be British and remain so. A person identifying as Irish could declare in writing or take some other action, but they would not be left stateless. Having done that, they could declare for a child. That could be changed



once during the child's lifetime. It sets out a number of provisions to protect the child. If there were a change, both of those with parental responsibility would have to give permission. Once you reached the age of majority, you could again make a choice, and that choice could be changed once.

For a person who was born British or identified as British, his or her circumstances would not change, but it would provide a basis for those who identified otherwise to recognise that in reality. At the moment, the agreement says you can identify as British or Irish, or both. What does that mean in practice? I suspect I could turn up with a Brazilian football shirt with "Pele" and "10" on the back of it and identify myself as Brazilian. My footballing skills do not justify that, but it is rather meaningless. I am not Brazilian. The point is about how you turn this into something meaningful.

Q3 Chair: Can I ask you two brief follow-up questions on that? This is in your scenario, for those born in Northern Ireland who effectively opt out of, or revoke, British citizenship and assert Irish citizenship. They do not have dual nationality; they are sole citizens, but they decide to reside in Northern Ireland. What impact, if any, does that have on their rights, access to welfare, tax, voting, et cetera? Are there concomitant knock-ons from that decision of exclusivity?

Les Allamby: No. Assuming they resided in Northern Ireland, they would still pay their tax and national insurance to the UK economy. They would access public services that did not require a payment of national insurance, et cetera. It would be a recognition of their identity as an Irish citizen. A part of Alison's suggestions is the right of abode, which everybody in Northern Ireland has at the moment if they are a person of Northern Ireland and fall within the parameters of the 1998 agreement. They would make it clear that people who identified as Irish had a right of abode.

It would potentially make some difference to family reunion and the right to bring people in, which is obviously what was at the heart of this. That takes you back to before the McCarthy judgment. You would have had dual nationality, and therefore could have asserted a right as an Irish national. You used to be able to do that regardless of whether you identified as British. It would now in effect allow your Irish identity to be recognised formally without taking anything away from anyone who wished to be identified, and continue to be identified, as British.

Q4 Chair: To continue with a bit of blue-sky thinking, take us past a reunification referendum that has been approved in Northern Ireland and the Republic. A cohort of people in Northern Ireland would wish to continue to assert their British citizenship. Would there be any knock-on effects or requirements for legislative change, either in Westminster or in Dublin, to accommodate that? I appreciate that this casts us potentially way into the future, if at all. How in practice does that operate?



Les Allamby: One of the issues about a border poll will be whether we have a prospectus as to what will be the other side, depending on the outcome. It might be one of the issues that would be looked at beforehand. The commission is clear that the 1998 agreement says that, however you identify yourself as a person of Northern Ireland—British or Irish, or both—that right to continue to identify yourself in that way will continue regardless of the outcome of a border poll, whether we remain in the union or otherwise in the future.

You would have to find a way of making sure that you made good that promise in legislative terms. What you would have to do would presumably depend on all kinds of contingencies that may flow from the outcome of a border poll, but we would be very clear that the agreement is there. The right to retain your identity would be sacrosanct regardless of the outcome of a border poll.

Chair: Thank you. That has been a very helpful scene setter and planter of some thoughts, certainly for me, and I have no doubt for colleagues on the Committee.

Q5 **Claire Hanna:** Thanks to our witnesses. The UK Government say that they do not mandate or suggest any changes to UK nationality so that the acquisition of citizenship is based on choice of identity, and that “any desire to read the agreement in such a way is contrary to the agreed text”. How do you respond to that?

Les Allamby: The issue goes back to the thread that there was a time when your dual nationality had a value and impact in practical terms. Some of that went very significantly with the McCarthy judgment. The McCarthy judgment, when we were still in the EU, essentially said that, if you did not exercise, or had not exercised, your freedom of movement, whether you identified as an Irish or British citizen made no difference. You would not have rights. The UK Government then enshrined that in their own change to legislation. That became the issue with the case of Emma DeSouza, who wanted to bring her husband and get a residence card to allow him to come into Northern Ireland.

There are some practical issues. I am not sure that it simply sweeps this away to say that you can identify as British or Irish, or both, without it having any meaning on its own. The attempt in that case was to argue, in part, that the Good Friday agreement had a constitutional status through the Northern Ireland Act, and therefore it could be on that basis alone. In fairness, that was always a stretch as a legal argument. The difficulty is that, when that was being drafted, it clearly was not being drafted with necessary amendments to immigration and nationality law in mind.

I have never really understood this. The UK Government, in their response to the commission’s Bill of Rights, recognised that putting something on a proper legislative footing was a good thing to do in 2010. Finding a durable solution was an important thing to do in 2019. Yet—and I had the advantage of looking briefly at the evidence—they now seem to



have resiled from that position. I am not quite sure how the thinking has changed and on what basis.

- Q6 **Claire Hanna:** They seem to distinguish between the right to self-identify, feeling something, and the right to legal citizenship. Does it strike you as odd that there would be a recognition of identity without legal consequence? What is the point of those key words in the Good Friday agreement saying “Irish or British, or both, as they may so choose”, if it does not offer those distinct legal choices?

Les Allamby: The Irish Government made some changes to their law as a result of the commitment in the agreement; the UK Government chose not to do so for whatever reason. This issue is complex; I am not going to try to pretend otherwise.

I will give you an example that Éilis and I were involved in, during the negotiations for the tiny bit of the Ireland/Northern Ireland protocol for the dedicated mechanism. When we went over to meet the commission as well as the UK Government and the Irish Government, we made the point on several occasions that there was a commitment in the December 2017 document, for example, that people in Northern Ireland who identified as Irish would retain their EU law rights. We pointed out that that did not seem consonant with the Belfast/Good Friday agreement because we take it as implicit that how you identify, as British or Irish, or both, should not carry a specific advantage or adverse consequence. Some of the issues here are about recognising that the people of Northern Ireland, British or Irish, or both, should retain a set of rights that recognise what was intended, as we understood, in the 1998 agreement.

- Q7 **Claire Hanna:** You mentioned that it was raised in the Bill of Rights discussions and you mentioned the McCarthy case. Is this something that constitutional lawyers and academics had highlighted before? Was this essentially a principle awaiting testing in court? Had this been explored before the DeSouzas went forward to challenge it?

Les Allamby: The gamechanger was the McCarthy decision. Prior to that, the fact that you possessed dual nationality if you were a person of Northern Ireland, however you identified, carried with it some advantages in family reunion. The problem from where we stand is that, post 30 June 2021, it is very likely that another Emma DeSouza type case will occur and no doubt will make its way through the courts. Depending on the outcome, it will clarify further the law beyond an Upper Tribunal. If the changes to the law had not happened, the case would have gone to the Court of Appeal. I suspect it would have ended up in the Supreme Court.

That is one way to test the law. You can wait for that to happen, or you can, frankly, go on the front foot and try to resolve this through legal reform. We would prefer the latter. We have attempted to say, “We think it can be done. Here is how”. I suspect it will still raise some political hackles, but it is a genuine, administratively sensible legal reform that is



still very much up for discussion. I saw the Irish Government saying in their response that it was a helpful contribution. The Irish Government clearly are not signed up to it either, but there is a recognition that we will have to resolve this at some point. I would rather resolve it through an agreed parliamentary route than possibly go through the courts and await the outcome of judgment, which may take quite some time to come.

Q8 Claire Hanna: In the spirit of the Chair, I am thinking outside the box. I am not trying to be facetious. Obviously, the legislative framework is different from that of the Begum case. Say the Home Office wanted to strip somebody from here of their British citizenship. How would it determine whether somebody in Northern Ireland was an Irish citizen, if that person had never actively applied for an Irish passport?

Les Allamby: It is a bit of a stretch. I have not read the full judgment yet in Begum, but I have seen the summary. One reason for the suggestion of creating the right of abode for people who identify as Irish was that people in Northern Ireland had a right of abode already as British citizens, but it was a recognition of that. That would prevent, for example, deporting somebody who is Irish from the UK, but we deport very few such people. It is interesting. The Irish Government will not deport British nationals back to Britain. The UK Government reserve the right just in case, but in practice I do not think they have ever deported anybody.

The important thing for us is avoiding statelessness. The court in Emma DeSouza talked about the idea that somehow your child is born, and you then have a dilemma: "Shall I declare my son or daughter a British or an Irish citizen?" In practice, you cannot leave somebody stateless. You have to have a status from birth. Our suggestion is that that remains British, but you provide the option for somebody to then declare a son or daughter Irish if they so choose. Nobody would be stateless as a result of the proposals we have put forward.

Q9 Mr Campbell: I have a quick question for Mr Allamby. You have raised several times an issue regarding the statement flowing from successive agreements about people here being able to claim they are British, Irish or both. That has become almost a mantra over 20 years and we will come to that later in the session. But is there not a large, gaping hole in the premise that people can claim to be British, Irish or both, when there are Northern Ireland citizens who cannot claim British citizenship, i.e. getting a British passport, because they were born in the Irish Republic?

Les Allamby: We did address this. It was one of the three questions, as you know, that the committee asked. There is not a legal requirement to do this, but we could see no reason why, if the UK Government wanted to exercise their discretion to do so, they necessarily should not do it. There are no human rights impediments.

Q10 Chair: What is the "this" that you are referring to? You said the British



Government could do “this”, but could you just set out what the “this” is?

Les Allamby: If the UK Government wanted to offer a route to British citizenship for people born elsewhere in Ireland, not in Northern Ireland, who resided in Northern Ireland—born in the south, living in Northern Ireland—who wanted to become British citizens, they could offer a route. As I understand it, a person in that position, if he or she is married to a Northern Irish citizen, can seek British citizenship. Let us assume that you cannot do it by birth. I cannot see any reason why you could not bring that forward. There is no legal requirement, if you wanted to make a legal case to say, “I should be treated in this way”.

Chair: Surely, if we are to believe in equity, fairness, and parity, it should just be a simple exercise of personal assertion. Gregory, was that really where you were going?

Q11 **Mr Campbell:** It was. If the mantra of “British, Irish or both” is to have substance, people who are currently residing in Northern Ireland, and have done so for 40 or 50 years, are British citizens. They are United Kingdom citizens, residents and taxpayers. They simply want the same rights that others have.

Les Allamby: I apologise, Mr Campbell. The issue there is that somebody in that situation is not covered by the agreement. Being a person of Northern Ireland requires you to have been born in Northern Ireland—or slightly more than that. If you were born in the Republic, moved to Northern Ireland and wished to take British citizenship, the agreement would not cover you any more than it covers me. I was not born in Northern Ireland. I have lived 40 years in Northern Ireland, but I am not a person of Northern Ireland in terms of the agreement. The issue there is that you are not covered by the agreement.

In terms of a reciprocal arrangement outside the agreement in recognition of the wider issues, could the UK Government do it? The answer to that is yes. I would offer the caveat that it is an incredibly expensive process to become a British citizen. If the Committee were to suggest that that should be available, you would need to look at the fees.

Chair: We will come to that directly.

Q12 **Fay Jones:** Good morning. I wanted to ask about the review of immigration rules that Theresa May announced in 2019. Earlier on, Mr Allamby, you called them a quick fix. What were your expectations of that review?

Les Allamby: We took at face value what the then Prime Minister said in her speech. I do not think I am quoting quite verbatim, but not far off it. It was to initiate a review in order to find a durable solution. We were quite involved in pushing to find out, first of all, what the terms of reference for the review were; we never were able to obtain them. It started as a review and then we seemed to be rowing backwards. I remember a number of parliamentary questions were put. The term



“review” did not seem to be used again after the speech, so we moved into a somewhat undeveloped process.

We asked on a number of occasions what exactly was happening. It seemed to be an internal process. There was no consultation or discussion with others. It was always between the Northern Ireland Office and the Home Office, led by the Home Office, frankly. When we asked to see a copy of the outcome of it, we could never get it. Our expectation was to find a long-term, durable solution. We finally knew something was happening with the “New Decade, New Approach” agreement. There was reference there, but that reference was somewhat short of Theresa May’s speech.

We then got the announcement of the change to the immigration rules in May. They would happen from August but be tied to the EU settlement scheme, which meant your application needed to be made between August and 30 June.¹ The family reunion needed to happen between those dates. In fairness, in terms of those changes, we had a number of cases on our books of people who were in those circumstances. That seems to have gone reasonably well. But we recognise that, looking around the corner, we do not have a longer-term solution.

Finally, it is probably worth saying this. In fairness to officials at the Northern Ireland Office and the Home Office, when we devised our own proposals through Alison Harvey, we sat down with officials. They were very clear, as were we, that this was our suggestion. We were not looking to co-opt them, but we did say, “Here is our understanding of the current law. Here are our proposals. We would like to at least make sure that, if we publish them, they are not holed below the waterline because you fail to understand UK or Irish immigration law”. They were very helpful in making sure that our document had an accurate understanding of the law. Alison is very capable, frankly, but we wanted to make sure that we did not enter a sterile debate about our understanding of the law.

Our analysis and our solution are matters for political decisions. Officials were always very clear that, beyond making sure and assisting us that the underpinnings were accurate, there was no further commitment from that. The important thing for us was that the analysis was based on an agreed foundation with both UK and Irish officials.

Q13 **Fay Jones:** Beyond the changes that you mentioned in the “New Decade, New Approach” document, what else has changed in your view?

Les Allamby: Nothing has, inasmuch as, when we get to 1 July, the position will be back to where we were after the McCarthy judgment. We have left the EU and freedom of movement. This was often about access to people coming from beyond the EU. We no longer have freedom of movement; we now have new immigration rules around issues of coming into the country, et cetera. You have a second dimension that applies

¹ Clarification: Between August 2020 and June 2021.



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across the UK, which is that we now have UK immigration law that is no longer driven within the EU by freedom of movement.

Fay Jones: Thank you very much. That is helpful.

Q14 **Stephen Farry:** Good morning to our witnesses. Picking up from the last round of questions, Mr Allamby, do you think the changes made to the EU settlement scheme, particularly the formulation in relation to the people of Northern Ireland, provide a satisfactory solution to the concerns that have been raised? How similar is that to the formulation that came across from Alison Harvey, or are there subtle differences between the two approaches?

Les Allamby: The response was to the family reunion issue. If you were a person of Northern Ireland, in other words if you were covered by the Belfast/Good Friday agreement, whether you identified as British or Irish, or both, you had the same set of rights. That was important. It did not require you to suddenly have to identify as something else if you did not wish to in order to assert those rights. That was important and, in our view, valuable. It was important that it did that.

The question is still what happens afterwards. We have kicked the can down the road, which is something that we are quite good at doing in Northern Ireland on occasions. That is why I call it a quick fix. I am still not clear what will happen after 30 June. We will presumably revert to the problem we had before.

Q15 **Stephen Farry:** Why do you think they did not go for a longer-term solution, but just a quick fix in relation to the EU settlement scheme?

Les Allamby: I honestly do not know. In my role of being Secretary of State for the Home Department for a day, I might ask.

Chair: You are still in office; do not worry.

Les Allamby: In the absence of that, I can only speculate. My guess is that it was probably to do with wider immigration considerations, but I really do not know. I suspect the Northern Ireland Office would have been much more cognisant of the dimension of the 1998 agreement; I suspect the Home Office will have been much more cognisant of the wider immigration and nationality law issues. Whether one prevailed over the other or there was a mutual agreement, I am unfortunately not privy to what was going on behind the scenes.

Q16 **Stephen Farry:** Could I ask a different type of question in relation to the EU settlement scheme? I have in mind people who were born in the Republic of Ireland who have an Irish identity, as well as people who aspire to be British, but it is not currently recognised. Could you talk through a little bit the tension that existed between whether people in that circumstance should have applied to the EU settlement scheme to have their rights entrenched in the UK going forward, as opposed to the advice from the Home Office that the common travel area would be



sufficient to protect their rights? As a supplementary to that, how robust is the common travel area now for those types of individuals post-Brexit?

Les Allamby: There was always a trade-off around the question of whether people who identified as Irish should have applied under the EU settlement scheme. On one hand, it brought some potential additional rights. On the other, under some of the rules, if you are absent from the UK for a period, you can lose those rights. There was a pretty difficult better-off calculation around that. Of course, the UK Government by and large discouraged people from applying, or certainly did not encourage it. The argument was that you fell back on the common travel area.

The joint committee commissioned some work on the common travel area as well, separate from the citizenship issues. The conclusion of that piece of work was that the common travel area is largely, in legal terms, built on sand. Although it predates the UK and Irish Governments joining what was then the EEC, nonetheless, much of the legal underpinnings came from freedom of movement and EU law. Some of it would be going because the supremacy of EU law would no longer prevail once we had finally left.

Where that leaves us is that, while there are some legal underpinnings around social security, for example, quite a lot is based on memorandums of understanding and other kinds of documents that do not really have a solid legal foundation. It is based on the understanding that the two Governments will always be in a positive relationship where the common travel area will be formally recognised, et cetera. If, for economic or political reasons, the two Governments fell out terribly badly, and one said, "We are no longer going to abide by that memorandum of understanding. Is there very much in law that you could do to stop that?", the answer would probably be no.

Q17 **Stephen Farry:** Flowing from that, do you agree that the common travel area should be placed on a more formal legal basis between the UK and Ireland, to ensure protection for all people who would be caught in that type of dilemma?

Les Allamby: Yes. In the year of the Olympics, assuming it goes ahead, the piece of research came up with a gold, silver and bronze. Gold means that you put everything on a clear legislative footing, so it is beyond doubt as to the future relationships between the two Governments. There are other ways that are less certain than that that you could do as well. You could strengthen the legal underpinnings.

Yes, it would be better to create certainty around the common travel area. That is not because there is any near-future danger of the common travel area being unpicked. But, looking 20, 30, 40 or 50 years hence, would it be wise to make sure that there is certainty? We think it is prudent to do that.

Q18 **Chair:** Have you had sight of the written evidence to this inquiry



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submitted by the Government dated 2 March and published on the Committee website on Monday?

Les Allamby: I had a brief look at it, yes.

Q19 **Chair:** Do you have a copy to hand, by any chance?

Les Allamby: I do.

Q20 **Chair:** I hope that this tees up or segues into Mr Goodwill's question. Just pause there what we have heard with regards to Theresa May's 2019 stuff, which clearly indicated some changes needed. Without being selective in my quotations, we would very much welcome a critique of the Government's response from the commission in writing in due course.

"The Government would respectfully submit that this misrepresents the terms of the Belfast agreement, article 1(vi)". "The Government's position, therefore, is that UK nationality legislation—primarily the British Nationality Act 1981, which...does not prevent any person from holding a second nationality: is consistent with the Belfast agreement...and does not infringe on their birthright". "With respect to the potential engagement of the ECHR, the Government does not set out a view at this time as to whether the birthright provision is an element of private life and therefore protected by article 8 of the ECHR".

Reading on, "Therefore, the Government is of the firm view that UK nationality law is consistent with its obligations under the Belfast agreement obligations and the ECHR". "The Government considers that no changes to the British Nationality Act 1981 are required". "Therefore, the Government's view is that UK nationality law, as it stands, already fully respects the important identity and citizenship rights which are recognised in the Belfast agreement and as such considers that legislative changes are neither required nor appropriate".

There has clearly been a shift since 2019 in the view of the Government on this. You clearly think that is not the case. I just wondered why you think the Government might have arrived at that position: "Everything is fine. There nothing to see here. Move on".

Les Allamby: I honestly do not know. It is interesting that the evidence that was given to you made no mention of Theresa May's speech, because it could not have been clearer that she was talking about a long-lasting, durable solution. Something has moved between February 2019 and January 2020, I suspect, when the NDNA document was published to bring back the Northern Ireland Executive and Assembly. They are coy about whether article 8, the right to private and family life, is engaged. I am not going to be a Strasbourg judge for a day, unfortunately, but in my view it probably is engaged.

The question, of course, does not stop there. The question becomes: is the UK Government's current position proportionate? The Upper Tribunal in Emma DeSouza held that it was because it was preventing statelessness, but we have been saying all along that you can find a way



of resolving this that does prevent statelessness. Therefore, there is something to see here, which is that we will be back in Groundhog Day in 2021. The review, as it was called in Theresa May's speech, that was initiated has been a lost opportunity.

Chair: Without seeking to overload you, a juxtaposed critique of the May speech and the Government's written evidence might be rather useful for the Committee to see.

Ms Haughey, do feel free to chip in. You are sitting against a brick wall and it looks as if judgment is awaited, but feel free to chip in with answers. Let us turn to Robert Goodwill. Ms Haughey, we might ask you to answer this one if you are happy to.

Q21 **Mr Goodwill:** Having just heard the answer that Mr Allamby gave to your previous question, Chair, I am sure that human rights and immigration lawyers around the country are reaching for the holiday brochures and looking forward to a very profitable time.

You have already mentioned the issue that a lot of the common travel area is based on memorandums of understanding. Generally, the Ministers in their letter said, "There is nothing to see here". Is there a feeling that the best way to resolve this would be to put something on the statute book so that, as you recommend, the birthright commitment under the Belfast/Good Friday agreement can be enshrined in law without any loss of rights or entitlement? Is that something you would suggest we put in our report?

Éilís Haughey: Yes, in the interests of certainty and clarity for citizens, and of addressing expectations raised by the text of the agreement, the commission's position is that it would be preferable to legislate to provide that clarity and certainty. As the chief commissioner has referenced, the research papers we have commissioned have identified solutions that could provide for amendments to the statute book, which would provide that certainty, not create the risk of statelessness alluded to in the Upper Tribunal and address the concerns otherwise raised by the tribunal.

In short, yes, and, in terms of the common travel area, equally, there is certainly merit in putting beyond doubt the rights of citizens in that regard while, as the chief commissioner has said, there are no grounds for imminent concern about rights being denied on that score. For example, there is a lack of clarity around exactly what healthcare rights one might have perhaps and grounds for clarifying rights, should one be moving between jurisdictions, as people do in the border communities in particular.

Q22 **Mr Goodwill:** Aside from issues raised in the DeSouza case, could you tell me what other practical difficulties are caused, or may be caused, by conferring British citizenship on an individual who actually wishes to be identified as Irish only?

Éilís Haughey: Are you confining the question to the practical matters?



Mr Goodwill: There are two aspects to this. There are people who fundamentally feel that their identity is either Irish or British and, indeed, many people who probably could not care less. There are also practicalities that flow from that in terms of family reunification, rights to work, et cetera. Are there any other issues caused by the way the situation currently works?

Éilis Haughey: May I return to the Good Friday agreement side of it first? In the Belfast/Good Friday agreement, as members will be aware, equality and human rights were central and were key to resolving decades-long issues and divisions between people. Of course, being in the EU had helped address the concerns and difficulties, made less stark the divisions and so on. Nevertheless, the birthright commitment was part of that equality, human rights and identity framework, giving recognition and promoting that sense of equality and parity of esteem. Therefore, legislating to give full effect to that can be seen as a follow-through, which the commission would find helpful.

In terms of practical matters, the chief commissioner has referred to the technical possibility of Irish citizens remaining potentially able to be deported, should they have exclusively Irish citizenship. There are more practical issues with the common travel area in terms of movement around the border areas and ensuring clarity of rights for citizens in those areas navigating two different education and health systems. That was part of the underpinning rationale for putting the common travel area on a more firm legislative footing.

Q23 **Mr Goodwill:** I recall that, when we were going through the process of leaving the European Union, quite a large number of English people were trying to work out if they had rights to apply for Irish citizenship due to their parentage, et cetera. Let us say that I am a staunch unionist living in Northern Ireland but I have a villa in Spain. I can see, for example, that I do not have to meet the 90-day residence limits. I could get a job in a local bar while I am there if I had Irish citizenship.

Do you think there may well be practicalities, aside from the traditional issues in the island of Ireland, such that people may think, "It is expedient for me to have dual nationality because that gives me and my children certain rights"? We could see a rush from people who probably do not really care less what their citizenship is but just see the practicalities as giving them a good reason to apply for Irish citizenship.

Éilis Haughey: You have made the case there, Mr Goodwill, in terms of practical reasons why people might see an advantage in retaining EU citizenship rights, if possible.

Les Allamby: I do not have the figures to hand, but I understand that a significant number of people in Northern Ireland, as a result of leaving the EU, have applied for Irish passports. I am sure that, while some who are strong unionists would not seek to apply for an Irish passport, others are probably more pragmatic. The practical issue is whether you decide



to get an Irish passport as opposed to Irish citizenship. You do not have to apply for Irish citizenship to get a passport if you are a person of Northern Ireland under the 1998 agreement.

The issue that came up with us, though, is that, when it looked like people in Northern Ireland who identify as Irish would retain EU law rights, we spent quite a lot of time trying to understand what those rights that you would retain would be. It was pretty clear, though, that any rights retained would be if you were heading in one direction: in other words, moving towards the European Union rather than coming back into the UK. Officials were always very clear with us that this might create—this is a phrase that has always stuck in my mind—an inevitable asymmetry of rights. We made the point on several occasions that that sounds rather benign but, if you say to someone in Northern Ireland, “You have fewer rights than your neighbour simply because of your identity”, not only is that not in tune with the Belfast/Good Friday agreement, but it may well be considered somewhat more important than an inevitable asymmetry of rights.

Some of the issues are probably relatively uncontentious. Access to EU institutions, the ombudsman, the EU Civil Service, et cetera, seem to be part of that. Freedom from discrimination and, in particular, freedom of movement may well offer somebody who considers themselves to be an Irish national access to support that may not be available if they identified as British. The question becomes: how do you assert those rights? I suspect it probably will be through passports rather than saying, “I live in Northern Ireland and I wish to assert my right to get on an Erasmus programme”, to have an EHIC card as opposed to the new UK Government equivalent card, or whatever it might happen to be.

It seems to me that there are still some issues that need to be ironed out about recognising the agreement and your identity in terms of having left the EU and retaining rights. Our view is that those rights should be retained by everyone in Northern Ireland, not just by those who identify as Irish.

Q24 Mr Goodwill: Would you agree that, aside from the people who see this as a very strong political issue and an issue of identity, people in Northern Ireland actually have a good opportunity to have the best of both worlds, to benefit from freedom of movement and the ability to work around the European Union, and, at the same time, retain their British citizenship?

In particular, how would you see it affecting family reunion? I remember, when I was Immigration Minister, we had English people who were pretending to live in the Republic of Ireland so that they could bring a spouse into the European Union without having to meet language or income thresholds. Are we possibly going to see people use that as a way of achieving family reunion?



Les Allamby: I honestly do not know, and it does not need to happen yet. Is that potentially a possibility? If you have a partner who is entitled to be within the EU, yes, if you move to Dublin, you may well be able to bring your family member to Dublin and not be able to bring him or her to Belfast. There are some issues.

People might make those kinds of decisions for family reunions, but it seems to us that that is not a credible solution to this. Throughout our attempts to look at this, we have been very mindful of—and it is implicit in the agreement—the right to identify as British or Irish, or both. It does not say “without adverse consequences”, but we think the implicit intention is that it should not have adverse consequences. You should not have to identify as something else for convenience in order to assert rights. We think those rights should be there for people of Northern Ireland whether they strongly feel they are British or Irish, or both, as I say.

Q25 **Scott Benton:** Good morning to both of our witnesses. In 2019, you commissioned research that recommended amending the British Nationality Act to provide that no assumption may be made as to the British citizenship of a person born in Northern Ireland, without that person having had an opportunity to assert their right to be identified, or not, as a British citizen. Can you explain how this provision would work in practice, please?

Les Allamby: The starting position is that someone would still be born British, so section 1(1) of the British Nationality Act would still apply, but there would be the right for you to assert your Irish citizenship on behalf of your child. If you so wished, you could say, “I wish to assert my Irish citizenship”, and there is a retrospectivity to do that back to birth. You are never stateless. You start de facto still as a British citizen but you then provide this and the assumption is that you are allowed to do that. You can change it once. The provision was that, if you change it, both parents, or those who hold parental responsibility, would have to agree that. Depending on the age of the child and on the UN Convention on the Rights of the Child, the child or young person might have a say.

Once you reach the age of majority, you may wish to change your identity. You can also do that once. The idea was to move away from the idea, to the earlier question from Mr Goodwill, that on Wednesday I will be Irish, then on Friday I will be British because there is some kind of advantage, and I will revert to Irish the following Monday for convenience purposes. There is a limit on the number of times that you can normally do that.

There are a number of other practical considerations about who the people of Northern Ireland are, because there are some people born in Northern Ireland who do not fall within the people of Northern Ireland. There are some issues there, particularly around those who were born, to use a rather old-fashioned phrase, out of wedlock, and immigration laws have changed to deal with that now.



In practical terms, you are born British but you have the right to assert your Irish citizenship. You would then, in practice, be doing an act, for example applying for an Irish passport, that you could do anyway, so you would have to show that you have another citizenship and would be part of that arrangement. It is not simply saying, "I have an Irish identity". You would effectively be showing that you are not stateless.

- Q26 **Scott Benton:** There are huge pressures on the legislative timetable in Parliament, which are only going to get worse as we seek to catch up from Covid over the coming months and years. Some might argue that a legislative change in this area would not be a priority, not least because, essentially, the outcome of what you are trying to achieve is already possible if a person of Northern Ireland origin, for example, were to renounce their British citizenship. What would you say in response to that as to why this legislative change should be a priority?

Les Allamby: As you know—and it would not have ultimately assisted—one of the objections of Emma DeSouza, in the early stages of wanting to bring over her husband, was that she should simply renunciate her British citizenship, and I guess it came as a bit of a surprise to her that she was a British citizen because she had always considered herself to be an Irish citizen. The question about renunciation of a citizenship that you do not identify with became an issue for her.

As it happens, under the law, putting aside the recent changes post 30 June, as I understand it, renouncing your British citizenship and paying for that in order to do this does not, again, seem to me to be in tune with where we are in terms of the recognition of your right to identify as British or Irish, or both implicitly, without adverse consequence. The suggestion was made to her that that was the way to resolve her particular circumstance.

- Q27 **Mary Kelly Foy:** How do the policies on, and practicalities of, citizenship entitlements for the people of Northern Ireland compare between the UK and Irish Governments?

Les Allamby: I have to be candid and say that what we are asking for would place the people who fall within the people of Northern Ireland in a more advantageous place. In the short term, they already are in a more advantageous place than people who live in, for example, the rest of the UK. The short-term quick fix, as I call it, is that you have to be a person of Northern Ireland and you have to fall within the agreement to be able to take advantage of it. If you are born in Birmingham, for example, you will not be able to take advantage of that.

The Irish position is obviously different because, in part, Ireland is still part of the European Union so there is freedom of movement. For those within the EU, you have your freedom of movement rights and your EU law rights, and EU law remains supreme elsewhere in Ireland. You then rely on Irish immigration law, if you are looking at family reunion, outside of the European Union. I have to confess that I am not an expert in Irish



immigration law in terms of what family reunion arrangements are within the Irish Government.²

Q28 Mr Campbell: Earlier, I raised the issue about people in Northern Ireland who were born in the Republic. The de facto position at the moment is that people in Northern Ireland who have never been to the Republic, never lived in it, never paid taxes in it, never voted in it and never been resident in it can apply in Northern Ireland by going along to a post office, getting the application form for an Irish passport and paying the required fee, and they become Irish passport holders. That has been the case for a number of years.

There are people in Northern Ireland who, perhaps 50 or 60 years ago, were born a couple of miles across the border in the Republic but who have lived in Northern Ireland virtually all their lives. They regard themselves as British citizens. They are British taxpayers, British residents and British voters. They cannot, on the same basis, apply for a British passport. They have to pay the princely sum of £1,300 to become what they already are. You said earlier, Mr Allamby, that the terms of the agreement did not specify, in British Government terms, that those people were actually part of the people of Northern Ireland. Did I hear you correctly saying that?

Les Allamby: Yes. It is clear that someone in the circumstances that you have just outlined is not covered by the agreement in those terms. People of Northern Ireland are people who were born in Northern Ireland. If someone was born two miles across the border in Donegal with all the identity and background that you talk about, that person is not covered currently by those provisions because he or she is not part of the people of Northern Ireland. That is the de facto position of the agreement.

Q29 Mr Campbell: Yes, it might be and it will come as a massive surprise to those thousands of people that they are not part of the people of Northern Ireland. It is an absurdity. What is your view of how they would then be so described?

Les Allamby: We have said that you clearly cannot ascribe a solution within the agreement as such. In our evidence to you—and I think it is your third question—we were quite clear that, if the UK Government wanted to find a way of allowing somebody in those circumstances to be able to acquire British citizenship seamlessly and relatively easily, there is no reason we can see as to why the UK Government should not do that. There is no obvious impediment that we can see, putting aside for a second the cost of doing so, which you have outlined.

If they want to craft a solution for the people who find themselves in the circumstances you are outlining, they can do so, but it is not to be found within the Belfast/Good Friday agreement.

Q30 Mr Campbell: I have described the huge anomaly between people who

² Correction: within Irish law.



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are so easily able to acquire an Irish passport and the others who, with great difficulty and expense, can acquire a British passport. How easily or uneasily does that sit with the terms of subsequent agreements, which all talk about people who can describe themselves as British, Irish or both?

Les Allamby: In Alison Harvey's paper, there were a number of people who were born in Northern Ireland who we recognised were still not counted as the people of Northern Ireland for all kinds of anomalies. They are not a significant number of people but it was to do with, for example, being adopted, surrogacy, being born out of wedlock between certain dates, et cetera. The solution we were ascribing to those people who were the people of Northern Ireland was to come up with some clear legislative arrangements, some of which should probably apply across the UK.

Could you include in that people who clearly identify as British who were born in the Republic and are now residing in Northern Ireland? That would be within the discretion of the UK Government to do.

Q31 **Mr Campbell:** You are the chief commissioner of the Human Rights Commission. If one or a number of people in the cohort that I have described felt aggrieved and that their human rights were infringed because they cannot avail of their choice of passport on the same basis as others can, would you agree with them? How would you view that person's assessment of their belief that their human rights have been infringed?

Les Allamby: We would treat it like anyone else coming to us. First, we would look at what the human rights in play are and whether there is a human rights argument that allows me to deal with that. Is there a legal route here or, frankly, would it have to be dealt with in a political route? I am not sure. You would have to look at the circumstances, et cetera. Hypothetically, there does not seem to me to be an obvious legal route. You might say, "This is unfair because, if I had been born two miles the other side of the border, I would have had a set of rights that I do not have". You can say, "People of Northern Ireland can access a British or an Irish passport, or both, but I cannot". However, I do not think there is a "one bound, you're free" human rights legal argument here. This is a political issue.

I get the point that you are making, which is that people born on one side of the border can access either a British or an Irish passport, and somebody born on the other side cannot, even if they identify very strongly as British, because of their particular background and circumstances.

Q32 **Mr Campbell:** Why do you think our own Government have not tried to establish the route that you suggested to resolve this?

Les Allamby: It is a bit like being in the psychiatrist's chair and coming up with what is the current thinking of the UK Government. I honestly do not know. I have no idea whether it is inertia—it was Mr Benton who



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talked about legislative timetables, et cetera—or whether there is some issue of principle. I am really not clear and I am not sure I got an answer from the UK Government’s response to the Committee as to what it is that is driving their unwillingness to resolve it.

Mr Campbell: I just think that people now will be amazed that there are tens of thousands of people in Northern Ireland who have lived here virtually all their lives and who, according to Mr Allamby and, indeed, according to the paper that our own Government have submitted, are not part of the people of Northern Ireland. I think they will find that amazing. It is something that has to be resolved.

Chair: Mr Campbell, I disagree with you: I do not think it is amazing; I think it is disgraceful.

Mr Campbell: Yes, it is. It is both.

Q33 **Chair:** I rather hope that a cohort of people do beat a path to the door of Mr Allamby to help him make the case.

In their written submission to us, the Government say—and I quote for those who do not have it to hand—“With respect to the potential engagement of the ECHR, the Government does not set out a view at this time as to whether the birthright provision is an element of private life and therefore protected by article 8 of the ECHR”. My question on that is very simple: are you surprised that the Government do not at this time set out a view? That is a simple yes or no question.

Les Allamby: Yes. I am surprised because I cannot believe that they have not taken advice on the matter.

Q34 **Chair:** There is that caveat of “at this time” but, yes, I cannot fathom or believe that advice has not been sought on this point. Picking up on Mr Campbell’s perfectly logical path-point of equity and parity, et cetera, there would be nothing to preclude, saving an appetite so to do, the UK Government, through a Home Office Bill or a Private Member’s Bill with Government support, putting in place precisely the point that Mr Campbell has been talking about. In so doing, could you confirm that it would in no way be in breach of either the letter or the spirit of the Belfast/Good Friday agreement or, indeed, any subsequent agreements that have flowed from it?

Les Allamby: As far as I am aware, there is no Belfast/Good Friday agreement or subsequent agreement impediment to doing it if the UK Government decide to exercise their discretion to do it.

Chair: That was my understanding, Mr Allamby. I just wanted to get your view.

I know Mr Goodwill wants to come back. Robert, I know you are not a witness here but you are a distinguished former Immigration Minister. Was it discussed in your tenure and are you surprised that the Government do not set out a view? I am asking a fellow Committee member questions.



Q35 **Mr Goodwill:** All I can say is that, when I was Immigration Minister, I was the person with the most judicial reviews against them in history. Uncertainty in legislation is generally an invitation for legal action, so my own view would be that, the more certainty we can put on the statute book, the less likely we are to see cases that unexpectedly get rejected and then end up in the courts. That of course sets precedents and you get a lot of follow-on cases.

The question I actually wanted to ask was this. Would any of this affect the rights of Irish citizens to join the British Army? I know that, if you are a UK citizen or a Commonwealth citizen, you can join the British Army and, currently, if you are an Irish citizen, you can as well. I just wondered if there had ever been any discussion about that right, which may change in the future.

Les Allamby: I honestly do not know. It is not something that the commission has ever put its mind to so I could not give you an answer in any meaningful way. We would have to go away and look at that issue.

Mr Goodwill: I ask because I had a situation in my own constituency with a young man born to a British serviceman in Germany, who found out he was actually German and could not join the Army despite the fact that he had lived in the UK all his life. Because his mother registered the birth and not the both of them, his father did not appear on the birth certificate. Currently, as I understand it, Irish citizens can join the British Army. That is something that I do not think the Irish Government could interfere in, and I certainly do not think we would wish to either.

Chair: Yes, that is probably right. Thank you, Mr Goodwill.

Mr Allamby, I suggest that you might want to run down to Ryman or WHSmith—other stationary providers are available—to get a couple of new box files, because something tells me that you may well start to have a few cases come before you raising the point that Mr Campbell has raised. I would certainly urge people to do just that. This is a gaping hole and there should be no uncertainty here. There should be that symmetry of rights and the ability to exercise them. At the moment, we have—I think it was your phrase, Mr Allamby—a rather asymmetrical approach to it.

Can I thank you both very much indeed for your attendance this morning? You have very clearly given us a lot of food for thought on this first session of this inquiry. As I say, without wishing to make further work for you, some sort of written critique of the May 2019 speech and anything subsequent that you think may be helpful to us would serve us well as a Committee as we approach writing our reports. That would be helpful. Thank you all very much indeed.