

Northern Ireland Affairs Committee

Oral evidence: [Devolution and democracy in Northern Ireland—dealing with the deficit](#), HC 613

Wednesday 7 February 2018

Ordered by the House of Commons to be published on 7 February 2018.

[Watch the meeting](#)

Members present: Dr Andrew Murrison (Chair); John Grogan; Lady Hermon; Kate Hoey; Nigel Mills; Ian Paisley; Jim Shannon.

Questions 218 – 283

Witnesses

I: Professor Christopher McCrudden, Professor of Human Rights and Equality Law, Queen's University Belfast; Professor Jonathan Tonge, Professor of Politics, University of Liverpool; Professor Richard Wilford, Professor of Politics, Queen's University Belfast.

Written evidence from witnesses:

- [Professor Christopher McCrudden](#)
- [Professor Jonathan Tonge](#)
- [Professor Richard Wilford](#)

Examination of witnesses

Witnesses: Professor Christopher McCrudden, Professor Jonathan Tonge and Professor Richard Wilford.

Q218 **Chair:** Professors, good morning. It is good to see you. Thank you for taking the time to come and talk to our Committee. As you are aware, we are very much engaged with the Executive, its failure and its future. Your views on this subject from your expert perspectives are most welcome and will certainly colour the report that we ultimately deliver. If I may, I will start by giving each of you a couple of minutes to explain where you are coming from, where you think we currently are with the Executive and what should be done—solutions.

Professor Wilford: Good morning, Chairman and Members. Thank you very much for inviting us this morning. The way I have approached it is to try to draw on previous experience, in terms of the ways in which Westminster and UK Governments have tried to resolve the thorny issue of scrutiny and accountability during periods of direct rule, so there is some precedent to draw on. That said, I am sure we in the room would rather avert the reintroduction of direct rule to Northern Ireland. Nevertheless, it is an option.

Even assuming we get another Assembly election, that would not necessarily pave the way to the restoration of devolution. It is prudent to look at the option of direct rule, but to suggest that it cannot be direct rule as we have known it in the past. There needs to be some fresh thinking about the ways in which Westminster can address this issue, maybe using as its guide the notion I have suggested in the paper. The question has conventionally been: "How has Northern Ireland fared in Westminster?" One ought maybe to think about it the other way round: "What can Westminster do in Northern Ireland, by means of scrutinising and holding to account a direct rule regime?"

That has been my approach, which I have suggested from experiences one can draw on from the past. For a period after 2002, this Committee had a Sub-Committee. That would help to lighten the load on the full Committee, to try to make direct rule more effectively scrutinised. That is one option. I have to say that, although the Good Friday agreement and the institutions it bequeathed are not set in stone, and there have been reforms of both the Executive and the Assembly, I suspect trying to resuscitate an Assembly without an Executive in order to play a supplementary or complementary role to this Committee in terms of scrutinising direct rule might be very difficult, if not impossible—that is, without fresh legislation.

Professor Tonge: My take on the situation is as outlined in the written evidence that I provided on 27 December, which is that there is a clear public mandate for the restoration of the institutions. Quite a lot of



HOUSE OF COMMONS

media coverage in and beyond Northern Ireland has been negative about the Assembly, but when we did the ESRC 2017 Northern Ireland general election survey and we put propositions forward such as, "The Northern Ireland Assembly and Executive should be restored", we found that 78% of unionists and 77% of nationalists agreed they should be.

Secondly, when we asked how people felt about the Northern Ireland Assembly and Executive, we found 81% of unionists and 66% of nationalists, admittedly a somewhat lower percentage, were supportive. If there is to be a return to direct rule, it needs to be a humane form of direct rule, which would not necessarily be bereft of an Assembly. We cannot go back to the days in the 1980s of undemocratic Orders in Council, half of which were not even debated at Westminster. The average length of debate on an Order in Council was 90 minutes. There was a huge democratic deficit.

Without wishing to advocate a return to the Northern Ireland Assembly of 1982-86, if we have to go back to direct rule, there are ways of keeping the Assembly as a scrutiny body. It is also worth remembering that my colleague at Liverpool, Sean Haughey, looked at the wider roles of MLAs and found that, on average, they spend 28 hours per week anyway on constituency work. They could still fulfil a constituency function and a scrutiny function of direct rule. There could still be a role for the Assembly, but the difficulty will be with the Executive.

It is not a case of changing the rules of the institution. First of all, petitions of concern have been the scapegoat in many ways, and have been held responsible for the current impasse. There is something in that, but frankly that is a problem that will diminish. With the DUP only having 28 MLAs anyway, under the current rules no party alone can go on a solo run and block legislation within the Assembly.

Moreover, when you look at public opinion on this issue, when we ask people, "Please tell us about the requirement that unionists and nationalists must both be in the Executive sharing power", there is big cross-community support for that principle. When we asked, "Please tell us about how you feel about legislation requiring the consent of a majority of unionist MLAs and a majority of nationalist MLAs", again, there was substantial cross-community public support for that principle.

It is not a case of tinkering with the Assembly rules; it is ultimately a question of political will. If that political will to compromise cannot be achieved, we have to think about keeping the Assembly as a serious scrutiny body, which will make direct rule a more palatable proposition, although far from perfect.

Professor McCrudden: Thank you, Chair, and thanks to the Committee for inviting me. It is nice to be back. I have given evidence to the Committee before, and in the late 1990s I was an adviser to the Committee, so it is interesting being on the other side of the table. My point in my paper, which I hope you have had a chance to look at, was



HOUSE OF COMMONS

that there were several different kinds of mechanisms operational in the past that attempted to bring a degree of greater accountability during periods of direct rule. I go through some of those and suggest there are both advantages and disadvantages to each of them.

That is on the accountability side, but you have also suggested that you are looking at trying to increase not only accountability but democracy. I suggested at the end of the paper that, in terms of the understanding of democracy and how it has grown up since the Good Friday agreement, there is not an alternative to the Good Friday agreement's understanding of democracy. While accountability can be increased during direct rule, I suggest democracy replacing it in the context of something different from the Good Friday agreement is not going to happen and is unlikely to be successful.

Q219 Chair: Thank you. Can I start with a slightly self-interested question? Where do you think the Northern Ireland Affairs Select Committee might stand in all of this? If we make the assumption that we are not going to get the restoration of the Executive in the immediate future, many of us around the table feel that the duties on us are, if not explicitly, implicitly increased because we have a sense of a democratic deficit, and as democrats we would like to stop that up as best we can. I am wondering what you think we should do and how we might evolve to try to assist the situation.

Professor Wilford: You can take some hint of how you may develop from the experience of the Committee in 2002 to 2003, when it established a Sub-Committee, which did some work. It did not last very long, so in that respect it is not a very encouraging precedent in that respect. But let us face it: you are 11 strong when you are fully personed. You have three and a half staff. You are very limited. You are constrained to the extent that you can bring your collective wisdom to bear on scrutinising a direct rule regime. In that respect, some blue sky thinking is clearly advisable about whether, to pick up on what Jonathan was implying, there is some role for the Assembly that would complement or supplement what you do.

Although I understand the new procedures for creating Select Committees are votes by party blocs, one of the things I suggested was that you could grow in size if necessary, maybe to 15 members. You could have a standing Sub-Committee to take on some of the work, but that is not sufficient. It is necessary, but it is not sufficient that direct rule is scrutinised by a system that is seen to be Westminster-based. That is why I am saying that you need to bend your attention to trying to have a place for Westminster in Northern Ireland, and that might involve reanimating the dormant committee system within the Assembly.

My understanding is—I am sure Christopher will correct me if I am wrong—that you cannot have the Assembly without the Executive. Why would a party or parties that were reluctant to participate in an Executive be prepared to participate in an Assembly? Administratively, one can



HOUSE OF COMMONS

imagine a variety of measures that could be taken, but the brutal political reality is that it will be very difficult, if not legally impossible, to have a freestanding Assembly with no Executive. The key issue is a political one, rather than an administrative one.

Professor McCrudden: On the Committee itself, I am stating the obvious when I say that there is a problem in terms of the representativeness of the Committee. The fact that there are no Sinn Féin, SDLP and Alliance members reduces the representativeness and its credibility from that point of view.

Kate Hoey: It is their choice.

Professor McCrudden: I agree with Rick about not having a Westminster focus, but there is an additional problem, which is the representation of it. This is through no fault of the Committee at all, but the brute political fact is that it is not representative.

Professor Tonge: I hesitate to make recommendations that would add considerably to your workload, but you already have the power to engage in pre-legislative scrutiny of Orders in Council under direct rule, so I would advocate a greater role in that respect. That is the first thing that I would suggest. You have made important recommendations in the past on things like fair employment legislation, so there is no reason why you could not do the same, but it will require an increased workload.

Secondly, dovetail with the Northern Ireland Grand Committee so you can both engage in pre-legislative scrutiny. That would again help. In the past, the Grand Committee has changed the direction of policy. In 2005 it defeated an Order in Council for higher education, so greater scrutiny is possible.

There would then be the issue of how you would liaise with an Assembly. Rick is correct: you would need new legislation to ensure that an Assembly in some form survived in Northern Ireland, bereft of an Executive. If there was liaison with the Assembly, that would solve the representation issue in terms of nationalist parties, because they could make representations to you on the Northern Ireland Affairs Committee. That strikes me as the way forward. There would be much better scrutiny of direct rule. It may even be that fewer legislative measures would come through under direct rule, but that is not necessarily a bad thing in itself, if it allows for greater scrutiny.

Q220 **Jim Shannon:** Thank you for your political contributions and suggestions over the years. I am of a mind that we need to do something fairly radical with political life in Northern Ireland. We need to move on. Sinn Féin is clearly not interested in the political processes of Northern Ireland. It has repeatedly put in reasons for not going forward. There were already red lines for Sinn Féin in December 2016, but in February 2017 they became legacy issues, same-sex marriage, LGBT rights and the Irish language. With every day that passed, something new came in. It has a



HOUSE OF COMMONS

new red line every day; it must have a heck of a lot of red tape, because it seems to be introducing things over and over. As a radical process to move forward, is it not time that we consider a different process for Northern Ireland? Let the parties that want to govern and want to move forward form a coalition or an Executive, and let those that do want to move forward sit on the Back Benches or stay at home. What do you think?

Professor Wilford: I am a miserable optimist. I do not enjoy the same degree of insight as you do into the motives of Sinn Féin and whether it is prepared to re-enter an Executive. It is early days in terms of the five-party talks; they meet again tomorrow for the second time. I know they were in roundtable talks on Monday, and there are meant to be roundtable talks tomorrow. We will see. Let me put it this way: Sinn Féin now has a new leadership, but I do not want to just speak about Sinn Féin. The DUP has quite a lot to answer for as well, but that is by the by.

In a way, Sinn Féin needs devolution in Northern Ireland to work, because it needs to demonstrate to a widening electorate in the south that it is capable of being a reliable, effective and efficient partner in a coalition Administration. That mission has been reinforced by a decision it took at its Ard Fheis to be prepared to go into government as a minority party in a coalition. I agree entirely with Christopher: it is either a tweaked version of consociationalism as decreed by the Good Friday agreement, the key principle of which was inclusivity, or it is direct rule. It cannot be direct rule as we have known it; it has to be direct rule that is tweaked.

No one yet has mentioned, and I am sure it is going to come up, whether or not there is a role for the Irish Government in such a new dispensation, what that role might be and if there can be provision for it as a co-guarantor of the Belfast agreement. Jim, you are hinting at a coalition of the willing.

Jim Shannon: Yes.

Professor Wilford: Generally speaking, "Barkis is willing" across all the parties in Northern Ireland. It is the terms upon which that willingness can be realised that matter, and I fear the parties, the major parties in particular, have boxed themselves in too far. Making any substantive progress at the moment is very difficult, which is why I am miserable. As my grandfather said, "You live in hope and die in despair". I am living in hope.

Q221 **Jim Shannon:** Over the years, we have probably all had that same motto in our minds. I noticed in some of the background correspondence we got that one of the political parties asked, "What would happen if either the first or second largest party within their respective designations declined to participate in the Executive?" It is a very good question, and probably the question on my mind. Why should one party



HOUSE OF COMMONS

hold back the aspirations of the rest of the nation, and indeed some of its own party members, who probably want the Assembly?

Jonathan, the figures you mentioned were interesting. They show to me that a large proportion of nationalist people want the Assembly to work as well. In my mind, I always believed that to be the case, and you have just confirmed it by your stats. If that is the case, why should some people at the head of a party hold back the advancement of some of their own party followers, plus the rest of the people of Northern Ireland? If we are going to move forward, something different is going to happen, and it means that they cannot have the veto on progress for everybody else.

Professor McCrudden: The position is quite simple. The Belfast/Good Friday agreement is the only long-term game in town. Any attempt to undermine, destroy or replace it is playing with fire. There is always the opportunity to renegotiate the agreement. That renegotiation depends on consent. I think what you are suggesting—if I am not misreading it—is a replacement without consent of the existing arrangements. That is not going to be acceptable to substantial elements.

Q222 **Jim Shannon:** The majority on both sides coming together will be the majority of all the people in Northern Ireland. That is the point I am trying to make.

Professor McCrudden: As I said, there are provisions within the agreement itself for renegotiating aspects of it. My political guess is that a renegotiation would end up with pretty much the same kind of balance as you have at the moment, in terms of the structures. Of course, aspects of it could well be changed, but they have to be changed by consent. I suspect you are going to end up pretty much in the same place as you are at the moment.

The agreement in the late 1990s was one that was balanced. The problem is that rebalancing it is clearly going to be to somebody's disadvantage. If you increase the Irish Government's role, that rebalances it. If you increase Westminster's role, that rebalances it, and it rebalances it to the disadvantage of a substantial section of the population. That is why I said at the beginning that a power sharing democracy is where it is at. Restoring that is the only stable solution.

Q223 **Jim Shannon:** The point that I wanted to make is this, and hopefully I have been able to do so: in life, there are things we will not agree on. It is a fact. There are things we will not find a middle ground on. We have found this last while, with this process as it is, that Sinn Féin continues to ask for things that are not acceptable at any stage of the game. If it continues to do that, the process does not move forward. In the last Assembly—I was a Member of the Assembly but no longer am—some of those things were parked. You will say, "You are parking them, but at some time they will have to be addressed". Some things could not be addressed. The things that we want on all sides of the community are



HOUSE OF COMMONS

health, education, roads, farming, fishing and all the other things that are so vitally important for the process, which advantage all sides of the community. I will ask you for your thoughts on that.

The other point is the issue of the budget. Last week, the Chairman and the rest of the Committee tried to push the Secretary of State on the budget. There will not be a statement today on the budget. There will be some answers to our questions during Northern Ireland Questions today, which I feel, with great respect, is unsatisfactory, but that is by the way. We really need to have a budget and functioning Departments in Northern Ireland. This cannot go on much longer. Would that be your opinion as well? The schools, health, roads and fishing issues in my area are sitting on someone's desk ad infinitum. That cannot go on forever.

Professor Wilford: I do not think any of us would disagree with that. The pathologies of the current situation are evident to everyone. It is most regrettable. However, the instrument through which they can be effectively addressed, or at least addressed, is a devolved Administration in Northern Ireland. That means, as Christopher has hinted, that it has to be founded upon the cornerstone of inclusivity, which is what so many aspects of the agreement and the enabling legislation represent: power sharing.

Some people say, and it has been a criticism almost from the first, that what we have in Northern Ireland is a mandatory coalition. People in other parties are included. In a sense that is true, but it is only half true, as the last mandate demonstrated, where two parties opted to go into opposition. It is inherent in the system we have that parties choose not to exercise the option of going into an Executive. That is a decision they take of their own volition. To date, all the parties, with the exception of the SDLP and the UUP for a period, have exercised the option of taking their place.

If any suggestion of a so-called coalition of the willing is intended to or perceived to injure the key principle of inclusivity—that is to say that it is seen as a means of excluding one party or another—the risks to political and social stability in Northern Ireland are immense. I do not want to be an Eeyore here, but that really would be playing with fire, politically at least.

On the budget, absolutely: David Sterling made it quite clear that something needs to happen this week. One assumes that it will happen this week. It would not be unprecedented, because in the very first phase of devolution back in 2000 the first Northern Ireland budget was struck by Peter Mandelson, because we had a period of direct rule between February and May 2000.

Professor Tonge: A voluntary coalition would be inherently unstable. I can completely see its attraction, and I completely agree that many nationalist voters want to see Sinn Féin in that Executive. As a nationalist, why would you not? The reason they supported the Good



HOUSE OF COMMONS

Friday/Belfast agreement was because decisions would be taken on the island of Ireland, so from a nationalist perspective it makes perfect sense.

I completely agree that there are too many red lines. I think we need to break them down one by one, though. The problem with the Irish language Act dates back to 2006, because what was said in the St Andrews agreement was very different from what emerged in the Northern Ireland Act that followed from that agreement. That ambiguity should be nailed down there and then, because annexe B of the St Andrews agreement of 2006 says, "The Government will introduce an Irish language Act reflecting on the experience of Wales and Ireland and work with an incoming Executive to enhance and protect the development of the Irish language". By the time the Northern Ireland (St Andrews Agreement) Act 2006 arrived, it simply said "The Executive Committee shall adopt a strategy setting out how it proposes to enhance and protect the development of the Irish language". It is woolly and vague. It also says exactly the same about Ulster Scots.

I do not expect you to agree, but I think a standalone Irish language Act would be a relatively easy concession, provided it was accompanied by something standalone for Ulster Scots and cultural protections for the unionist community. We still await the report of the Commission on Flags, Identity, Culture and Tradition. *[Interruption.]* Hopefully, this commission, which has been meeting for a long time, will be able to find a way through that. I am not investing a great deal of faith, but it is still a possibility. We should wait and see what that commission finally comes up with and what the report says.

In terms of RHI, you cannot break the deadlock until you have had the report and the full investigation. That will run its course. There is a reason for parking some of the tougher decisions that have to be made. That is what I would argue. I still think there is a case for holding off a little longer, at least in terms of keeping the Assembly in play, until the Commission on Flags, Identity, Culture and Tradition has reported, and until RHI has run its course.

We should also remember that we have had stable periods of devolved Government under Ian Paisley and Martin McGuinness. As late as 21 November 2016, Arlene Foster and Martin McGuinness were issuing a statement saying, "No gimmicks; this is good governance," and very few people were disagreeing. The collapse of the institutions came very quickly and surprised many. There were significant achievements between 2007 and 2016, which tend to have been forgotten over the last year.

Professor McCrudden: Picking up the point about the budget, I absolutely agree. It is quite impossible for a Government to continue without a proper budget. I am sure that is right. There is a broader problem, however. Without Ministers of some sort, civil servants are



HOUSE OF COMMONS

increasingly exposed. That is unfair on the Civil Service, but it is also inviting judicial review.

I very much doubt that this can continue for very much longer without legal challenges to the basis for some decisions, where essentially civil servants—with the best will in the world—are divining what previous Ministers probably thought about the allocation of funds. That really is not a basis for good governance.

- Q224 **Ian Paisley:** Jonathan, I am interested in what you said about the Irish language Act. I sat on the Executive after the St Andrews agreement. I was junior Minister in the Executive. It was my task, along with Gerry Kelly, to organise every single Cabinet meeting that took place during the halcyon days of the Paisley/McGuinness reign. Not once was the Irish language issue brought to the agenda or put on the agenda of any single Cabinet meeting that Gerry Kelly and I organised between us. Is it not the fact that someone dropped the ball?

Professor Tonge: I cannot comment on internal developments within Sinn Féin as to why it has made it a red line, but it seems to have exercised its supporters a great deal over the last year. There has been talk of a citizens' assembly perhaps finding a way through the impasses on an Irish language Act and such matters. Among the electorate, while there may be a consensus for the restoration of the Assembly and Executive, there is not a consensus on an Irish language Act. Unionists are overwhelmingly opposed.

- Q225 **Ian Paisley:** Every single thing that was put in the Cabinet paper, for discussion in a room like this, there was not a consensus for. It was brought to the table and Ministers discussed it. We made agreements on some things and sent other things back. It was our responsibility as Ministers. The buck stopped with us to establish the Cabinet meetings and to bring forward the proposals for discussion. Not once was the Irish language issue brought to the agenda. It was not even suggested that we put it on the agenda. I organised those meetings. It is completely spurious that this is now being pulled out.

Professor Wilford: That was then and this is now.

- Q226 **Ian Paisley:** We have to at some point grow a collective spine here, and not be all jelly and pushed around. We have to say, "These are facts".

Professor Wilford: I am not disputing the facts at all. I am simply pointing out that the agenda is now very different, and for whatever set of reasons the Irish language has assumed enormous salience in the current phase of talks.

- Q227 **Ian Paisley:** Would you agree with me on this point, Richard? The best time to have got the difficult stuff done was when you had the strongest leaders in place, because they could make the concessions. The fact of the matter is that, when the strongest leaders were in place from both tribes, someone failed to put something on the agenda.



Professor Wilford: I am not an insider. I do not enjoy that degree of intimacy with the operation of the Office of the First Minister and Deputy First Minister, or the Executive Office, as it now is. My understanding is that, prior to Christmas, there was a near convergence, not on the issue of a freestanding Irish language Act, but on some kind of language provision that was more encompassing and broadly based. It was not necessarily a single Irish freestanding Act. I think Sinn Féin has actually painted itself into a corner if it is cleaving to that particular view because, as I understand it, there was more movement on the idea of some kind of omnibus Act that addressed a variety of languages.

I would say from my own experience as a Welshman that, when Welsh was made an official language, it had figured very largely in the devolution campaigns and politics of devolution in Wales in the late 1970s, when devolution for Wales was hammered by the anti-devolution campaign. Once the Welsh language was made official, it disarmed the politics of language in Wales. It de-weaponised it. Welsh became ordinary. My grandparents spoke Welsh, and I did a bit of Welsh at school, although I was not fluent. It had been a real bone of political contention in Wales, and when it was made an official language that node, which defined much of the politics in Wales, withered. I would hope that there would be a similar experience in Northern Ireland, if and when we get Irish given official status.

Q228 **Ian Paisley:** That issue will ultimately be something for the Executive parties or the negotiations. Can I take you back to the premise of what is being proposed today? When we cut it all back, we appear to have a collective wisdom emerging that we need—as you put it very interestingly—direct rule that is humane. I suppose the other word for it would be a consultative assembly; we would move to a consultative role for the Assembly. All of the evidence from the 1980s showed that, when we had a consultative assembly, moderate nationalism walked in the door and walked out. They would not even accept it as a basis. Is there any evidence, even today with the SDLP on its last gasp of air, that they would actually stay in the room for a consultative assembly—let alone republicanism?

Professor Tonge: It is doubtful, but it is possible. You would have to have an all-Ireland dimension to the scrutiny vehicles. There would have to be committees of the Oireachtas predominantly linked to scrutiny of the Northern Ireland Assembly. That might entice the SDLP.

Q229 **Ian Paisley:** It might not entice the unionists on the other side. They might fall off the other end. I just venture to suggest that

Professor Tonge: No, because it would not have legislative powers. It would only be a scrutiny vehicle; it could make recommendations, to go back to the earlier point.

Q230 **Ian Paisley:** Would you let a foreign Parliament tell the mother of all Parliaments what it should do? Come on. That is even crazier than what



HOUSE OF COMMONS

we have at the moment.

Professor Tonge: You can agree to a North/South Ministerial Council. I know you did not sign up to the Good Friday agreement, but the St Andrews agreement was the son or daughter of the 1998 agreement.

Q231 **Ian Paisley:** In theory, I can see it: "Let us have the Assembly functioning. We as Parliament will take stuff to it, and it will consult and feed back". It is beautiful in that place called Utopia, but we live in Ulster and it is slightly different from that. I think people would walk out the door and jump out the windows, saying, "We cannot have that either".

Is the rub in all of this that, when you keep doing the same thing and you keep getting the same result, you have to change what you are doing? We either go to direct rule as we know it, we go to direct rule with bells on, or we go to a voluntary coalition and try that. The current process appears to unfortunately be broken.

Professor McCrudden: Yes, I am sure that is right, in the sense that the institutions are clearly not working. The question is what to do about it. We come back to what seems to be a critical point, which is that of course you can change it, but you can change it only with consent. It cannot be unilaterally done. As far as I can see, there is no evidence that the Oireachtas, for example, wants to be involved in the day-to-day administration of Northern Ireland.

Q232 **Ian Paisley:** That is a very interesting point, Christopher, and feeds into something that Richard said in an earlier answer, which I took some hope from. Sinn Féin appears to be reliant on its good ability in Northern Ireland to gain electoral support in the Republic of Ireland. I am looking at the evidence, and it seems to suggest that it does not matter what happens in Northern Ireland, because electors in the south of Ireland do not give a stuff about what happens in Northern Ireland. It certainly does not affect how they vote or not vote for Sinn Féin. Is partition not working in that regard?

Professor McCrudden: You will understand that nobody at this table is speaking for Sinn Féin or has particular insight into its current politics.

Ian Paisley: Of course.

Professor McCrudden: If I could come back to your primary point about the Irish language, you are implying that the Irish language issue has been invented in order to throw a spanner into the works; it indicates an unwillingness on the part of Sinn Féin to be involved in government. I have no idea whether that is true or not, but, if it is the case, that is unfortunate. I would want all the parties, as I suspect on this side of the table we all would, to seriously consider operating the system and operating the Good Friday agreement. That seems to be the consensus that is emerging on this side of the table, rather than a sense that there is any desire for a replacement of that.



HOUSE OF COMMONS

Of course, there will have to be temporary arrangements to deal with some of the problems that Mr Shannon mentioned in terms of the budget, and that I mentioned in terms of the Civil Service. Of course that is the case, but let us not pretend that that is going to be any replacement for the type of democracy that has emerged in Northern Ireland. It is not.

- Q233 **Ian Paisley:** I will characterise that by saying that consensus is keeping the apparatus or structure of government in Northern Ireland alive at one end, on a life support machine, whether by talks, negotiations or whatever, but at the same time allowing good government to come from Westminster in a humane way. Would that be a fair categorisation?

Professor McCrudden: That is probably right. There are aspects of accountability and good governance that can and must be introduced to some degree.

- Q234 **Ian Paisley:** Throwing an election into the mix might not be the healthiest thing to do in that arrangement. Would that be right?

Professor McCrudden: You are not going to replace the kind of democracy that has essentially been negotiated since 1997.

- Q235 **Ian Paisley:** Are we agreed that there should not be an election any time soon?

Professor Tonge: I have three quick points. An election would just produce the same result as March 2017. We know what would happen. If anything, it would probably consolidate the DUP and Sinn Féin, so it is a non-starter, although the Secretary of State was very frank with you when she gave evidence. She is legally obliged to call an election.

Secondly, I do not think unionists would fall off the cliff if the scrutiny body or skeleton assembly had an all-Ireland scrutiny dimension. If you look at the data, unionists are evenly divided over whether they support cross-border bodies. That is cross-border bodies with executive powers. I know there is no executive power in the North/South Ministerial Council. Some of the old hostility has gone there. If that was reduced to scrutiny, to get Sinn Féin and the SDLP into a scrutiny assembly, no, I do not think unionists would fall off a cliff.

I agree with the other point: do the electorate and potential Sinn Féin supporters in the south really care about the north? No. If you look at the Gallagher and Marsh surveys, Northern Ireland has never featured as a reason for voter choice in the south at more than 14%, and that was at the height of the peace process.

- Q236 **Ian Paisley:** Have you done any surveys of that sort?

Professor Tonge: Michael Gallagher and Michael Marsh always did the election surveys in the south, but I do the Northern Ireland general election surveys, and we always ask the question about support for cross-border institutions.



HOUSE OF COMMONS

Q237 **Ian Paisley:** Finally, I will put this suggestion to you. Say there was an election in the south—there probably will be one by this time next year in the Republic of Ireland—and Sinn Féin did exceptionally well: it became the lead party in opposition or a significant party in government. Do you think it would pivot and change in its approach to how it deals with the Northern Ireland Executive and establishing an Executive?

Professor Tonge: There may be a softening of approach under Mary Lou McDonald, but the honest answer is that we do not know whether she will offer a different approach, a softening of Sinn Féin's approach, or whether it will be a radical new departure. Intuitively, I would say there will probably not be a big departure in Sinn Féin policy, but we do not know that. She only takes over this weekend, so I really do not know.

Professor McCrudden: Coming back to your point about the consultative assembly, I do not speak for Sinn Féin or the SDLP, but I would be very surprised if the SDLP would go into a consultative assembly.

Q238 **Ian Paisley:** You would be surprised if they did.

Professor McCrudden: I would be very surprised if they did. I have no inside knowledge of this at all, but I would be very surprised if they did.

Q239 **Ian Paisley:** The evidence suggests that they would not.

Professor McCrudden: Indeed, but I would be surprised if they did. I suspect it would not go down well with the swing voters between SDLP and Sinn Féin.

Professor Wilford: I tend to agree. Ian, you are right to point out what happened to the Prior Assembly. The SDLP did not participate. Eventually it was broken, among other things, by the Anglo-Irish agreement anyway.

Ian Paisley: Unionists were carried out of it, if I recall.

Professor Wilford: We three would agree, as Christopher has already said, that every effort has to be exerted to try to recover the institutions of the Good Friday agreement. Failing that, it would be incredibly difficult, but there are thinkable issues that one could raise, in terms of trying to make a direct rule regime more accountable than has hitherto been the case. It raises tricky questions like, "Should there be involvement in some shape or form for the Irish Republic in such an arrangement?" There are obviously political risks. This is like pursuing fools' gold: there is no magic alchemy here.

As far as I am concerned, either we get the institutions back up and running, as the Secretary of State would say, or we do not. If we do not, how do we ameliorate direct rule as it has previously been practised? Are there inventive and imaginative ways in which we can do it, by, for instance, looking to see if we can supplement what this Committee would do in those circumstances with something that could be done on a more



local level? There could be a nexus between this Committee and some kind of representative bodies within Northern Ireland.

That is the best one can try to imagine. There is no magic solution here. We are going to be, through sheer force of political inertia, pulled back to the key task, which is to get the Good Friday institutions back up on their feet. Goodness knows whether this current round of talks is going to yield not just a solution but a stable, doable solution. I do not see any mileage whatsoever in tinkering with issues like voluntary coalition or coalition of the willing. The political risks of going there are too great. Either we get what we have, imperfect though it is, reformed though it has been—remember, it is not cast in marble; it is cast in aspic, so it is reformable—or we have, as you put it, some direct rule with bells, feathers and whistles. Whatever those bells and so on are, they have to have a local expression.

Q240 Ian Paisley: When the Assembly was functioning, even with all its imperfections, do you think the media, by its conduct, helped bring about its downfall, by being so caustic and critical of absolutely everything that every single Assembly Member tried to do for Northern Ireland?

Professor Wilford: No. The *Belfast Telegraph* had a bit of a campaign about how it was a waste of money and how much it cost.

Q241 Ian Paisley: Do you think there is any regret?

Professor Wilford: Do they regret it? They do, from a purely professional point of view, because there is very little news. In that respect, yes. The talks are watertight. On the way over yesterday, I was talking to a journalist from Ireland, and she was bemoaning the fact that there was no Stormont to report on. I take her at her word. No, I do not think there was a grand media conspiracy. I am not going to go in Donald Trump's direction.

Q242 Ian Paisley: Was it Seamus Heaney who said, "When there is a little flower growing out of the ground, you should not pull it out. You should let it grow"? Maybe people in the media were too quick to keep tugging at it.

Professor McCrudden: You make a serious point. I would not say the media is the main culprit here.

Ian Paisley: No, I would not say that either.

Professor McCrudden: We all teach students, and there is a generation gap here. There is a lack of good political education on a broad level. For example, I do not think there is an appreciation of where we have come from and where we have got to in the last 30 years. Everybody in this room knows, but I am not sure the general population, particularly the younger population, fully appreciates it.

Q243 Ian Paisley: We have moved from "bloody and difficult" to just "difficult".



Professor McCrudden: I am happy that we have moved from “bloody”.

Ian Paisley: Difficult is good.

Professor Tonge: I would not overstate the role of the local media, but it is true that most of the coverage was negative. That is simply not borne out: when you study public opinion, they want the Assembly and the Executive. For all the negativity, it did not greatly shift public opinion, because public opinion still wanted the Assembly and the Executive to work, and they wanted the DUP and Sinn Féin, from the respective sides, within that.

We also have to remember that there are 90 jobs at stake here. It is not 1998, where this was not the main livelihood of these people. There are people who have been in the Assembly since it was reconstituted in 2007. For most of them, it is their main livelihood, and we should think about the implications of that. I am not saying you can keep an Assembly in perpetuity just as a job-creation scheme for 90 people, but we should be cognisant of the implications and the potential permanency of shutting the institution down.

I have been saying for a long time that the salary should be cut, because it is not formulated as a role for a year. But they are spending nearly 30 hours per week on a constituency role. I do not think that was just MLAs bragging about their constituency role; they take them very seriously. DUP MLAs were claiming 32 hours per week on constituency work. You can create a positive out of all the damage that has been done by keeping some sort of constituency representative function. Otherwise, who is going to represent the people, unless you transfer a lot of power to the 11 local authorities? No party has an overall majority in those local authorities. Is anyone seriously advocating mass devolution and transfer of power in Northern Ireland to local councils?

Ian Paisley: Just in England.

Q244 **Kate Hoey:** Welcome. Nearly everyone who goes on to talk about Northern Ireland always talks about the peace process. We hear about the peace process, and anyone who criticises the process of how the institutions are working almost gets accused of being opposed to peace. Are you all very clear that you can be absolutely committed to peace in Northern Ireland but be opposed to the process that is working—or not working—there?

Professor Wilford: The peace process and the political process were inextricably linked, to coin a phrase. I do not see any reason why one should be accused of being opposed of the peace process because one is critical of the way in which some politicians behave or misbehave, or that the processes through which resolutions to particular problems are sought ultimately end in failure.

This is a pertinent point, in relation to something that was just said by Jon. We all remember the IRA ceasefire. You could almost feel Belfast



HOUSE OF COMMONS

physically heave a sigh of relief at that moment. There was a moment of high expectation, but by the time we got to devolution, as the life and times survey demonstrates, people's expectations of what devolution might concretely deliver were fairly modest. As the political process bedded down, particularly in the period between 2010 and 2017, which was a remarkably stable, productive and healthy period for Northern Ireland, people's expectation began to grow. The sense of loss now, against that backdrop, is perhaps more acutely felt.

Q245 **Kate Hoey:** Do you not think that is because people began to think they were being treated normally, and normal politics could continue?

Professor Wilford: Yes. That was the hopeful expectation: that there would be a more normal form of politics, but within a framework of institutions that were so carefully designed as to make it difficult, but not impossible, to change them. People are acutely aware of the political constraints that operate in Northern Ireland. The turnout at the general election and the Assembly election was extremely high. Electorates were highly mobilised for different reasons.

Yes, there was a real hope and expectation that the kinds of problems the health service was encountering and so on could be meaningfully addressed. As things stand at the moment, they are not. They have to be, so there is an air of disappointment, but that does not translate into clamour and demands for the restoration of devolution on the streets in Northern Ireland. There are no marches or demonstrations. There are no people saying, "We want our institutions back", and yet it is those institutions that are best placed, when they are working, to deliver.

It does not matter how elegantly you design the architecture, how consociationally adept it is, unless the spirit that animates the institutions is one of accommodation. That is what matters, so it is not the institutions, in and of themselves; it is the manner and behavioural tropes of some people and parties, not the structures. It is the agencies that inhabit them. If they are not disposed to be accommodating, anything we design is going to falter.

Q246 **Kate Hoey:** I take it, because you two both nodded, that you all agree you can be opposed to the way things are working and be committed to peace.

Professor Wilford: Absolutely.

Professor McCrudden: May I just clarify this? I would prefer to speak for myself rather than have it attributed to me. Yes, of course you are right that attributing an anti-peace motivation because you want to change the structures is clearly wrong. It seems to me there is far too much attribution of motivation, without any real evidence for it. I agree with that. However, there is clearly a linkage between the political process and the peace process.



HOUSE OF COMMONS

The question is not motivation; the question is effect. If you undermine the political process, there is a risk that the peace process will be undermined. That is clear, and it would be very risky to assume that peace is secure, in the sense that we do not need to worry about it. It seems to me that we need to continuously water that process.

Professor Tonge: The concept of a peace process is very elastic. When did it begin and end? It has lasted longer than the two world wars put together. No one really knows when it began or ended. You needed a peace process to create a political process, and you needed a political process to create a peace process. The problem was that we had this set of political arrangements because there was insufficiency of consensus for any alternative, whether it be direct rule, joint authority or a united Ireland. It was always optimistic to expect the mechanics of the institutions to work smoothly. International consociational regimes are inherently unstable because they are built upon ethnic chasms, whether it is Lebanon or Bosnia. It was always going to be optimistic to expect the institutions to function smoothly. From my point of view, the miracle is that we have had productive periods of devolved Government.

Q247 **Kate Hoey:** We have now had a year when there has been no Assembly, and as Professor Wilford has said people are not instantly out on the streets calling for it to come back. Looking at alternatives, it seems that you are all saying voluntary coalition would be just as likely to be unstable as mandatory coalition: yes or no, with a few extras if you have to.

Professor Tonge: Yes, if it is a voluntary coalition, unless one of the major parties could be tempted to form an Opposition. Sinn Féin could go into opposition, but I do not see that happening at all.

Professor McCrudden: It would be not just unstable but unacceptable, in the absence of consent for it.

Q248 **Kate Hoey:** Well, there would be consent between those who were going to be in it.

Professor McCrudden: No, I mean consent from all the parties involved in the Good Friday agreement process. In other words, if you want to change the process, you get the consent of those—

Q249 **Kate Hoey:** But all the parties do not necessarily agree, at the moment, with the way the mandatory coalition worked.

Professor McCrudden: No, but if you are going to change the existing system you have to get consent to change the system.

Q250 **Kate Hoey:** Do you accept that the Belfast agreement can be changed and has been?

Professor McCrudden: The Belfast agreement provides for change in it.

Q251 **Kate Hoey:** It is not a holy writ.



HOUSE OF COMMONS

Professor McCrudden: No, but if you want to change it you do it according to the process that the agreement lays down.

Professor Wilford: That is my view too. There is provision in the Act for a review of the institutions. It has never formally taken place, on an Anglo-Irish basis anyway, other than in part, through successive talks that we have had.

Professor McCrudden: This is not only an agreement between local political parties; it is also an international agreement.

Q252 **Kate Hoey:** Yes, and of course we have international agreements we are changing over through Brexit at the moment, so international agreements can be changed as well, if the will is there.

Professor McCrudden: Perhaps we will not talk about Brexit.

Q253 **Kate Hoey:** I have one final question. You mentioned local government. That does not have the powers and the backup that it has in Great Britain. We could get stronger local government, and we have strong Members of Parliament. We know very many parts of England that do not have assemblies, mayors and so on, which manage quite effectively and feel they are being democratically run. Is there not a feeling sometimes that Northern Ireland could be over-governed, with too many politicians?

Professor Wilford: That has certainly been expressed sporadically over the period. Our local government system in Northern Ireland is much more impoverished than is the case over here. That is for a reason; it is because of course, ideally, we have devolution. If you are suggesting that all hope is lost and we should be looking towards a re-empowered, revitalised local government system in Northern Ireland, it does not have the experience. It would have to learn to use whatever capacity it was given. It would not ameliorate, in any sense, the ethnic division between west and east, politically speaking, in Northern Ireland. It would simply reproduce that political divide. It would balkanise Northern Ireland, and that could cause all sorts of trouble at local level.

Q254 **Kate Hoey:** You do not think the new larger local councils are worth giving more support and responsibility to.

Professor Wilford: If you are saying—and you are not the first to argue this—that we should forget about devolution and have a really muscular form of local government in Northern Ireland to displace devolution, that is an option. If you are going then, in effect, to dismantle what we already have, as Christopher says, you do not do that without consent. You do not do that without agreement. You do not do that without getting the Irish on side, let alone getting agreement within the UK Government.

Q255 **Kate Hoey:** Do you think the Irish Government would be against stronger local government?



HOUSE OF COMMONS

Professor Wilford: They are as committed to the operation of the 1998 institutions now as they ever were, even more so in the context of Brexit.

Professor Tonge: If it simply cannot survive, the way forward would be to transfer more powers to local councils. There is a risk with that; there may be 11 mini Stormonts with the same rows just transferred to local level. If you look at what local authorities do not control in Northern Ireland now, it is an awful lot. You would have to transfer a lot of powers, everything from water to planning, education and health, end the quangos and transfer powers down from the Assembly as well. There would be a lot of powers to be transferred. There is no party with an overall majority in any of those 11 councils, so you are looking at voluntary coalitions to make those local councils more effective. It may be doable; it comes back to political will, but it would give that local control that most people would desire.

Professor McCrudden: We do not know whether increasing the amount of powers, and particularly powers in controversial areas, would potentially wreck the current consensus in local government. In other words, the question is whether local government at the Northern Ireland level works only because it does not have very much power.

Chair The only observation I would make, which you may or may not wish to comment on, is that the 1998 agreement was meant to be facilitative. It was not meant to be a block on future progress and evolution. We have seen, throughout the United Kingdom, a move towards devolution right across the piece, which most political parties are philosophically signed up to at any rate. It certainly seems to be worthy of attention, even if it founders on the rocks that you have very well described.

Q256 **Lady Hermon:** Thank you very much for being so generous with your time this morning. Picking up on a number of points—and we are going to mention Brexit—how do you think Northern Ireland has suffered through the lack of a First Minister and a Deputy First Minister and an Executive representing Northern Ireland in key Brexit negotiations? The clock is ticking, as someone else said.

Professor McCrudden: Where do you start? There are so many different areas in which the question is pertinent. There is clearly a lack of involvement by Northern Ireland elected Ministers in the internal UK decision-making process. I am trying to choose my words carefully. It is not clear to me that, even if there had been Northern Ireland Ministers, they would have had that much significant effect in the internal UK discussions.

Q257 **Lady Hermon:** That is very interesting, because you are all nodding. You are speaking, Christopher, but your colleagues were nodding when you were saying that.



HOUSE OF COMMONS

Professor McCrudden: That is an external assessment based on the reaction of both the Welsh and the Scots. That is one aspect to it.

The other aspect, however, is the contribution of Northern Ireland to the external debate, particularly the external understanding in the EU 27, in Ireland and in Brussels. There, the absence of a Northern Ireland voice has been extremely deleterious, because there has been no specifically Northern Ireland contribution. Essentially, the reality has been that the Northern Ireland perspective has been formulated by Dublin and that it has gone through the Irish Government, rather than through our own Government in Westminster or directly from a Northern Ireland Government.

It is a very complex, mixed situation. I am not convinced that a Northern Ireland Government would have had much effect within the UK, but it would have had a significant voice externally.

Q258 **Lady Hermon:** Given the significance of the border and how you manage the border between Northern Ireland and the Republic of Ireland, was it a mistake by the Prime Minister not to have included the Secretary of State for Northern Ireland within that key Brexit Cabinet committee?

Professor Tonge: Yes, he should certainly have been included, but I broadly agree with what Christopher has argued. Frankly, if FM and DFM had been included as a voice for Northern Ireland, it would have been impossible for them to speak with one voice, because they represent very different interests. Eighty-nine percent of nationalists voted to remain in the EU and only 35% of unionists voted to remain, and there is no sign of buyer's remorse on either side. They are representing very different perspectives, so how could they possibly speak with one voice? The FM and DFM would be speaking with very different voices even if they were included.

Q259 **Lady Hermon:** With the greatest respect, the evidence does not suggest that. In fairness to the late Martin McGuinness and Arlene Foster, as First and Deputy First Minister, they jointly signed a very meaningful and extensive letter, on 13 August, after the EU referendum, and seemed to be in agreement about the main issues affecting Northern Ireland. Why would that not have continued and why could it not continue? Is it, in fact, a driving force for both the leadership of the DUP at the present time, and indeed for the new leadership—she is not particularly new in Northern Ireland—of Sinn Féin, on a national basis? Surely that is a lever that is driving the talks. That is a new factor, is it not?

Professor Tonge: I agree with that. That statement was promising from Arlene Foster and Martin McGuinness, but it was a sectoral appeal. As I recall it, it was a reminder to the UK Government of the "unique vulnerability" of Northern Ireland's agri-food sector, which is very useful. I agreed with the sentiment of that statement. But Arlene Foster, at the party conference that autumn, which I was at, dismissed anything on an all-Ireland basis. When she was invited by the Taoiseach, Enda Kenny,



HOUSE OF COMMONS

she said it would be a “grandstanding forum” for remainers. There was no possibility of the island of Ireland speaking as a whole. That is the first point to make. Secondly, in terms of the constituencies they represent, they are poles apart in their position on the EU.

Professor McCrudden: I slightly disagree with Jonathan on this, because it was not just the letter that was signed by the First and Deputy First Minister; it was also that there was an agreement at the North/South Ministerial Council, and there was an annexe to the North/South Ministerial Council in November, which included statements that showed signs of consensus as well. I do not think it is at all impossible that a devolved Government could reach a consensus on what is best for Northern Ireland. I agree with Jonathan that, unfortunately, Brexit has become highly sectarianised in the Northern Ireland context. That is regrettable, but nevertheless there are sufficient areas where consensus could be developed. Therefore, the absence of a Northern Ireland Government is deleterious and I agree with you.

Professor Wilford: I echo that. I would just make the supplementary point that the north-south bodies and the British-Irish Council are fora within which the issue of the border, the relationship between Ireland and the UK post Brexit and so on could be discussed and maybe even negotiated, but we do not have them because we do not have devolution. I certainly agree with you, Lady Hermon, that they may have been straws in the wind, but they were encouraging, notwithstanding the fact that we are on Brexit, as on so many other issues, a divided society. I do not think the fact that the DUP and Sinn Féin came at this issue from entirely polar opposite positions means that they could not elaborate some kind of common platform, if they were to try to soften the implications for trade between Northern Ireland and the Republic once we formally leave, apparently, the single market and the customs union. It is sad and disappointing that, because one or two bodies no longer exist, they cannot be deployed as a forum within which these kinds of discussions could take place.

Q260 **Lady Hermon:** Coming back to the ticking clock, which is 29 March next year when, as the Prime Minister has repeated time and time again, we will be leaving both the single market and the customs union, and we will be leaving the EU, is that now a factor in play, particularly in the leadership of Sinn Féin? It was not on the page at all in the joint report before Christmas.

Professor Wilford: No, it was not. My honest answer is that I do not know, but I suspect that it is playing an extremely large part in its electoral calculations in the south. I do not think there is any doubt about that, and it would be foolish if it did not. Does that make it more difficult to come to an agreement in the north? I do not think so. They know their positions on Brexit at least, and if the Foster-McGuinness letter is anything to go by I suspect Arlene and Michelle could probably come up with something similar.



Professor McCrudden: I am going to sidestep your question about what is going on in Sinn Féin. I have no idea what is going on in Sinn Féin. However, a critical move is going to be made, which has very significant consequences for the future potential for devolved government. When the powers and functions are repatriated from Brussels to the UK, there is the ongoing discussion about how those are going to be redistributed to the devolved Administrations. The absence of a Northern Ireland Government in that discussion is absolutely critical, because it may well mean that, for example, a direct rule Minister, a Secretary of State, will be deciding on the redistribution of those powers, which has considerable implications for the devolved Administration in terms of its ability to exercise powers once, or if, it is up and running. By stealth, there will be the potential for substantially rejigging the distribution of powers under the Good Friday agreement without consent.

Q261 **Lady Hermon:** If we do not have the Assembly restored.

Professor McCrudden: Exactly so.

Q262 **Lady Hermon:** Yes, and surely that preys on the minds of the leadership.

Professor McCrudden: Exactly, so a rational political actor might well think that they would want to be at the table in that context. I am not sure that has been fully factored into the various parties' calculations.

Q263 **Lady Hermon:** Well, I am sure after this evidence session it will now be factored in, let us hope.

Can I just come back to something I found really, really interesting, which is this contradiction? Jonathan, you gave us some statistics right at the very beginning about the popularity. I have a question here. The majority of people have fallen out of love with the Assembly, if they ever were in love with it. Do we really even care? Rick made the point towards the end of his response to my colleague that we do not see mass demonstrations with placards or people going up to Stormont saying, "I need my Assembly back. I cannot bear the potholes any longer", "I cannot bear the waiting lists" or whatever. People are genuinely very angry about these, and they are also very angry that MLAs are taking their full salary; I just repeat that because I hear it all the time. How do you reconcile your statistics—I do not know what your base was for them—and the fact that there is no public demonstration of exasperation that we do not have an Assembly? How do we reconcile that?

Professor Tonge: First, both communities want different things from Stormont. That is part of the reason that we have had the political problems. Second, people are not going to take to the streets to demonstrate for a return to Stormont; it would be embarrassing to do so. But these were 1,200 face-to-face interviews.

Q264 **Lady Hermon:** It would be embarrassing.



HOUSE OF COMMONS

Professor Tonge: To demonstrate in favour of a return to Stormont, but that is not to say that people want the institutions to collapse. They clearly do not. This was conducted by Social Market Research Belfast, with 1,200 face-to-face interviews. This was not a potentially unrepresentative online poll.

Q265 **Lady Hermon:** In Belfast?

Professor Tonge: No, this was across Northern Ireland. The survey company is based in Belfast. The problem is that people are electing DUP and Sinn Féin to go into Stormont, and they want different things from Stormont. There is still consensual support for the institutions to be maintained, but whether that is possible is another matter.

Professor McCrudden: From the point of view of those who want restoration of the Assembly, the unfortunate thing may be that the parties are representative of public opinion.

Q266 **Lady Hermon:** Meaning?

Professor McCrudden: Meaning that there is no desire to go on to the streets because the majority of unionists who voted for DUP support the DUP position and the majority of those who voted for Sinn Féin support the Sinn Féin position. The lack of people going on to the streets may be an indicator that there is general support for the parties that were elected, in terms of what they are doing.

Q267 **Lady Hermon:** It may also mean that people genuinely do not care. They simply want decisions made and, if those decisions are made, they want good governance. If that good governance comes from Westminster instead of Stormont and the Assembly—

Professor McCrudden: I understand the point.

Lady Hermon: I am not advocating it. I am just putting it to you.

Professor McCrudden: I do not think either of us is advocating it, but the stability of the election results seems to show that there is broad support for the existing positions of the parties, so that may be the reality. The second point I would make slightly more jocularly. We should be slightly uneasy about calling for a return to the streets.

Q268 **Lady Hermon:** I am not advocating that. I am just noting the fact that the statistics were so overwhelming in both communities, and Rick mentioned that, in fact, there are no public demonstrations on the streets at all. I was not advocating that people were on the streets.

Professor Wilford: I appreciate that. Part of the answer may lie in the political culture and the way in which our political process has evolved. In the case of both Scotland and Wales, they were determined to develop their models of devolution from the bottom up, and that led to a great degree of civic and political engagement. In Northern Ireland, the pattern of political negotiations has been top down. We started with the



HOUSE OF COMMONS

political leadership at the top, and hoped for some kind of trickle-down politics that would influence people within wider society so that they would follow their leaders. Therefore, what you get with elections is an accurate reflection of what the people's preferences are and those parties are enacting those preferences in the current talks. There is no necessary disjunction between the two.

As a cultural point, it is quite interesting that we, perhaps, have become used to top-down interparty negotiations behind closed doors, maybe led by an external actor, maybe led by one or the other Government or both, but the public are not privy or have no access to that process. In the Scots and Welsh case, what they did in devising their devolution models has had the effect of keeping their electorates much more engaged than is the case in Northern Ireland. People have disengaged and put their trust in their political leaders and political representatives. It is unfortunate that we have adopted that model of interparty negotiation, that there has not been that concerted effort. Even in 1998, it was meant to be 9 April the agreement was released, but it was a day late because there were some fiddly bits that they had to resolve overnight.

Q269 **Lady Hermon:** There was a bargepole, as I recall.

Professor Wilford: Exactly, but I think maybe that is part of the answer. We just leave it to our political leaders.

Q270 **Lady Hermon:** Moving on slightly, would it be an accurate assessment to say that, in fact, the Prime Minister and the Government are so focused and so all-consumed by the Brexit negotiations and decision-making about the Brexit negotiations that they really do not want direct rule in Northern Ireland?

Professor Tonge: I would certainly agree with that premise, yes. The focus is very much not on Northern Ireland.

Q271 **Lady Hermon:** We are going to be optimistic about the talks. The talks have to succeed.

Professor Tonge: The points you raised earlier about Brexit spill into the Government's focus. Take the ambiguities of phase one of the talks with the EU on special status, which means different things. Unionists are not opposed to the notion of special status for Northern Ireland provided the deal is in a UK-wide context, so there would be no regulatory divergence as long as it is no regulatory divergence in the whole of the UK and Ireland. That is going to dominate phase two anyway, so the idea you can divorce a focus on Northern Ireland from a focus on Brexit is illusory.

Q272 **Lady Hermon:** I certainly did not suggest that. Let me go back to the question. I am very optimistic about the current talks. I may be overly optimistic, but I think the factors have changed. We are in a different year; we have a new Secretary of State, but Brexit is there. I just think that there is a different mood. Perhaps I am mistaken, but I also think a driving force is the fact that the Prime Minister and the Government have



HOUSE OF COMMONS

no appetite for direct rule in Northern Ireland. Am I wrong?

Professor McCrudden: There is a technical aspect of this. I know you want to tempt us into the politics of this, and I am resisting that. The technical aspect is that a lot of the Brexit legislation that is going to come through after the passage of the withdrawal legislation here will have to be put through somewhere affecting Northern Ireland. At the moment, it has to go through the Assembly, because there is no direct rule. At the moment, it cannot go through the Assembly unless it is only negative resolutions. Indeed, there is currently secondary legislation going through the Assembly on the basis of negative resolutions. In other words, the legislation is put to the Assembly and, because nobody votes against it, it goes through. That is not necessarily the way you want to run the Government, but that is the way it happens.

The problem is that secondary legislation that requires affirmative resolutions cannot go through the Assembly, because there is nobody there to vote for it. As I understand it, most of the Brexit legislation that is going to affect Northern Ireland will have to go through with affirmative resolutions. This is a major question in the absence of—

Q273 **Ian Paisley:** But if there is no Assembly, it simply is appended to a Bill here and goes through each time. I will just say keep watching after April. It will probably become quite a regular occurrence.

Professor McCrudden: Thank you.

Q274 **Lady Hermon:** I doubt that. Finally, this came up twice, from two separate witnesses. Christopher and Rick, you have both mentioned this. Christopher, you said that the Good Friday agreement or the Belfast agreement is the only long-term game in town; otherwise we are playing with fire. Rick, you also said about playing with fire if we were to move away from the Assembly. Would you like to clarify what you mean by “playing with fire” if we move away from the agreement?

Professor McCrudden: It is partly what I was saying in response to Ms Hoey’s question about the relationship between the peace process and the political process. On the playing with fire, one of the difficulties we all have is that there is often too much loose language. There is often too much talking up a problem, and that leads to the problem itself becoming more real and more likely to happen. None of us want to be in any position of sabre rattling; that would be irresponsible. But it would be equally irresponsible not to say that lack of stability in government and in the political process has potential consequences for peace in the longer term. That is really all I wanted to imply. I hope I am being responsible in that and that I am not sabre rattling, but it behoves us to say that it is an issue that will continue to haunt Northern Ireland politics.

Professor Wilford: I concur with that. I certainly do not want to be seen or perceived to be stirring up. The DUP’s political axis has shifted to the east, here; Sinn Féin’s has shifted to the south. That leaves a vacuum, politically and democratically speaking, in Northern Ireland



HOUSE OF COMMONS

currently. Something is going to have to fill the vacuum and it could be, in some measure, rather troublesome individuals. I am not trying to over-egg the idea that risks to life and limb would necessarily be a consequence of that, but there are individuals out there who, whatever the circumstances, are intent on mischief.

Lady Hermon: They would fill a vacuum.

Professor Wilford: Yes, and I suppose, while that hiatus of devolution lasts, the risk might be that some republicans say, "We were told that this was a stepping stone to a united Ireland. Look what it has resulted in: stasis, direct rule from Westminster. Up with this we will no longer put". That is the last thing anyone wants to see.

Q275 **Nigel Mills:** Would we all agree that the worst option is no Government at all in Northern Ireland, that we just carry on with the Civil Service ticking things over and not making any decisions?

Professor Wilford: Not making any decisions?

Nigel Mills: Well, taking whatever limited decisions they are allowed to, but no new policy or no new investment.

Professor Wilford: Under direct rule?

Nigel Mills: If the choices are the current situation continuing indefinitely or some form of direct rule, is the current non-government the worst option?

Professor McCrudden: It cannot continue as it is. On a technical level, it cannot continue as it is. This sounds so trite. The form of government on which we rely depends on Ministers. At the moment, this has been the longest period in which there have been no Ministers.

Q276 **Nigel Mills:** In theory, we could set a budget here, do nothing else for a while and limp on a bit longer.

Professor McCrudden: Then the question of making policy decisions based on the budget is going to come through every day. The question is on what basis the Civil Service makes the policy decision. As I said earlier on, that exposes it enormously to judicial review apart from the political pressures.

Professor Tonge: You are right; it is the worst option. I read the transcript of David Sterling's evidence to you, and he did not pull any punches. He kept describing the situation as "unacceptable"; it was the most used word in his transcript, so you certainly do need Ministers. The Secretary of State will have to set a deadline for this show to end.

What deadline that should be is another matter. There is an argument for saying it should not be until after RHI has concluded, which is kicking it into fairly long grass. It is hard to pluck a date from thin air, but it will concentrate minds if you set a deadline. The previous Secretary of State



HOUSE OF COMMONS

kept setting deadlines that did not seem to be deadlines, which probably did not help matters on balance. Was it Senator George Mitchell who said, in 1998, "These guys would have carried on talking for years"? He set a deadline of Easter 1998 and a similar approach may be necessary.

Another approach that ought to be considered is external brokerage. Again, that is not to wave a magic wand. Richard Haass tried and failed with Meghan O'Sullivan in 2013 and 2014, but there is an argument to be put. It is probably the last thing that has not been tried in terms of brokering a deal to resolve some of the current red lines.

Q277 Nigel Mills: We agree we cannot carry on as we are for all that much longer, maybe another few weeks or something, but not another six months.

Professor Tonge: When is the RHI inquiry going to conclude? Do we have a predicted deadline?

Professor Wilford: Autumn.

Professor Tonge: Autumn, yes.

Q278 Nigel Mills: If we cannot carry on as we are and we cannot get the existing institutions back up and running any time soon, that leaves us with direct rule of some form, does it not? There is no third way.

Professor Tonge: It would be budgetary direct rule. The Secretary of State would have to set another budget; certain decisions would have to be taken. You can park it for perhaps another six months, but after that the thing really does lose credibility. A decision would have to be made.

Professor Wilford: The decision to re-impose direct rule requires fresh legislation anyway, because the suspension Act of 2000 was repealed by virtue of the St Andrews Act, so the Government would have to bring forward the 2000 Act, presumably, and then re-rehearse it. The idea that we can limp on in the state we are for political reasons is also unfair on the Civil Service, quite frankly. If we get direct rule, a decision has to be made by the Government, more particularly by the Secretary of State. Jonathan used the adjective "humane" direct rule. I would draw a distinction between direct rule light and full fat direct rule.

Ian Paisley: Hard Brexit, soft Brexit.

Professor Wilford: Well, yes. It is the Goldilocks thing: soft bed; hard bed; this one is just right. The point is that the Secretary of State, in those circumstances, I think, would be inclined to introduce a lighter-touch form of direct rule and keep whatever talks or whatever prospect of talks going. I do not think it is either/or: we have direct rule instead of talks. We have talks, but I think she would be extremely reluctant to make key strategic decisions, particularly about social issues in Northern Ireland that have proved to be so divisive. I think she would be reluctant to tread that particular path, but would have to make



decisions about the budget, expand the ministerial team in the NIO to do it effectively and, at the same time, cajole the parties back or sustain the current phase of talks to another milestone.

- Q279 **Nigel Mills:** I was slightly nervous about thinking that we could call direct rule “inhumane” from here; I am not totally sure that the Government would agree with that. But it seems that you are saying we have to have some Ministers appointed from here. The reason I was a bit intrigued was, if we have pretty much ruled out every option of Northern Irish involvement in that, because we did not think any nationalist or republican party would agree to sit in a consultative assembly, and we do not think having Irish involvement would attract any favour from the unionists at all, we are pretty much stuck with direct rule from here with no Northern Irish involvement, are we not? Is that inevitable?

Professor McCrudden: That clearly also has its disadvantages.

- Q280 **Nigel Mills:** I do not think you have given us any magic solution that does not lead us there unless we get the Assembly up and running quite quickly. That is the end position.

Professor McCrudden: That is right.

- Q281 **Nigel Mills:** On a slightly different theme, we hear that there has been some concern that just putting Humpty back together again, with the parties agreeing a short-term deal, and seeing how long it limps on is not the wisest thing to do, and we need some sort of agreement to make them much harder to bring down again in future. We cannot just have one party say, “I do not like this, so either agree with me or I will wreck the whole thing”. Do you have any ideas that could be workable or agreeable, and could avoid one of the two main parties wrecking this at any point in the future again?

Professor McCrudden: I suspect we are going to bring problems rather than solutions. There are two problems that complicate the existing situation enormously. One is the point that Lady Hermon made about the suspicion that the Government’s eyes are not fully trained on Northern Ireland, and that they have other preoccupations that do not lead to the full gaze of Prime Ministerial authority being brought to bear on the Northern Irish issue.

The second, coming back to Jonathan’s point about external brokerage, is the change of Government in the United States. That has to be factored in as well. One of the critical elements, as we all know around the table, was the involvement of the United States previously, at each stage of different negotiations. That is not happening, and my judgment—and I have spent quite a lot of time in the States—is that that is not going to happen in the same way.

Those two elements make the situation very complicated indeed in terms of getting it up and running. But you are right: I think the general



consensus on this side of the table is that really the only approach that is going to work is getting the Assembly up and running.

Q282 **Nigel Mills:** What I was asking was whether there are any specific changes we should be trying to get the parties to agree to that would make the Assembly and the Executive easier to sustain, like changes to the petition of concern. In theory, we could change it so the Assembly at least could sit if an Executive could not be formed, so there is something happening, or we could allow the Executive to continue, as long as there is one party from each community in the coalition, rather than effectively giving each of the large parties an absolute veto. Are any of those things that you think we should try to proceed with?

Professor Tonge: I do not think it is a case of changing the institutions' rules, but there are things that could be usefully done. Petitions of concern I do not think will matter in any reconstituted Assembly. They will not matter as much now, because no party can go solo on them; no party has 30 seats or more. You could, if you were radical, get rid of the communal designations, or say any measure has to be supported by 65% of the Assembly, which would require DUP, Sinn Féin and four other MLAs, on my maths, to back a measure. You could just go for qualified majority voting.

To stop the issue of parties suddenly throwing in, apparently, these new red lines, you could restrict the number of items of legislation for a party and say it has to declare at the start of any Assembly session what it intends to bring in. It may be linked to the party's manifesto. It would require quite radical legislation to prohibit stuff like that, to stop parties throwing in things that destabilise the Assembly. There are ways around it, but ultimately I still think questions of political will matter more than Assembly or procedural rules, even though those Assembly or procedural rules could be improved.

Professor Wilford: I can give numerous instances of the ways in which procedures and institutions themselves have been amended post 1998: for example, a process whereby First and Deputy First Ministers are now appointed rather than elected by the Assembly as a whole, or the Heath Robinson solution to the issue of who becomes Justice Minister, once those powers were devolved, which involved an agreement. It was a departure from the D'Hondt process, which is the automatic process that allocates a number of seats around the Executive table. Yes, there can be institutional reform and the Assembly has shown itself willing, on the basis of agreement and consent, to change the way in which it operates, like reducing the number of Members, introducing a formal Opposition and so on, but it has to be based on agreement and consent.

The UK Government would be unwise to try to impose some of the ideas that you are thinking of. Probably our motto for the day is: "Why allow things to be difficult when, with a bit more effort, you can make them seem impossible?" Our view is that the primary role is to advocate for the restoration of our devolved institutions on the basis of agreement.



HOUSE OF COMMONS

Failing that, direct rule, as it has operated in the past, has to be, in some shape or form, reformed or amended.

Chair: Yes. That comes across loud and clear. Thank you.

Q283 **John Grogan:** Very quickly, because we are running out of time, I have two questions and I will ask them both together, because we are coming up to the start of the main session. Given what you said about the importance of all this, the interest of the British Government in not having direct rule, the importance of having the voice of Northern Ireland clearly there for the European talks, I appreciate the pressures on the Prime Minister, but is this not going to require, as in the past, the Prime Minister and the Taoiseach to take out a couple of days and try to get it sorted? That is what has happened in the past. It is a question of the timing of that, but are we going to need that?

Secondly, just following on from Lady Hermon, the disconnect between public opinion and translating that into a deal, and the fact of your journalist on the plane asking what they should write about, is there dissent within the different political parties there? Is it easy to identify hawks and doves? I know that obviously Sinn Féin operates in a certain way and the discipline of the DUP. I come from the Labour Party, where our divisions are there in the papers every day, but it helps democratic debate, one might argue. There is a really lively media in Northern Ireland. Do we know who is pressing for a deal in the DUP and Sinn Féin and who is not? It would help if we did.

Professor Tonge: On the first point, I do not think it is a question of the Prime Minister getting involved. I know that might seem an attractive option and obviously Tony Blair devoted a lot of time. It needs to go to an external broker. You need a son or daughter of Senator George Mitchell. Neither the UK nor the Irish Government can really broker this, so I would farm it out to an external broker.

On hawks and doves, the DUP and Sinn Féin are not noted for public internal dissent. We are prompted to believe it was grassroots pressure from Sinn Féin that pressurised Martin McGuinness to walk out of the institutions. As I said earlier, obviously Sinn Féin has a different leader in the north, but we need to see whether Mary Lou McDonald brings a different approach to it.

For the DUP, there is always the question of how committed it is to devolution now that it has a deal here at Westminster, but it knows that is not going to last in perpetuity. I take the DUP at face value when it says it would like the restoration of the devolved institutions. I suspect that, given it is the largest party and will lose the most jobs if the Assembly goes under, there is a logic to it genuinely wanting the restoration of devolution, not least to spend the money it has attracted here.



HOUSE OF COMMONS

Chair: Gentlemen, we are running out of time. John, I am sorry you were short-changed. Thank you ever so much. You have been very patient with us today. We have had a long session this morning and we are very grateful to you for the evidence you have provided for our inquiry. Thank you very much indeed.