



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: [Enforcing Human Rights](#), HC 669
Wednesday 2 May 2018

Written evidence from witnesses:

- [Equality and Human Rights Commission](#)

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Members present: Members present: Ms Harriet Harman (Chair); Fiona Bruce; Ms Karen Buck; Alex Burghart; Baroness Hamwee; Baroness Lawrence of Clarendon; Jeremy Lefroy; Baroness O’Cathain; Baroness Prosser; Lord Woolf.

Questions 51–59

Witness[es]: **David Isaac CBE**, Chair, Equality and Human Rights Commission; **David Russell**, Chief Executive, Northern Ireland Human Rights Commission; **Judith Robertson**, Chair, Scottish Human Rights Commission.

David Isaac, David Russell, and Judith Robertson.

Q51 Chair: Thank you very much indeed for coming to give evidence to us. On the basis that rights are only worth anything if they are enforceable, how enforceable are people’s rights? How much of a reality is it that people have human rights? Obviously there are a number of dimensions to that. There is enforcement through the courts. We have talked to the judiciary. We have talked to lawyers about the accessibility of legal aid for various categories and in different parts of the country.

You, as the human rights commissions, are a very important part of the whole picture. We are very grateful to you for coming to give evidence to us. As you know, we are a Joint Committee on Human Rights, half Lords and half Commons. Lord Woolf will start the questions.

Lord Woolf: Mr Isaac, are you affected adversely by the fact that you are not able to bring proceedings unless there is an equality element in the case you are bringing?

David Isaac: That is a really important point, which I am keen to make to you. It is correct that in the majority of cases that we bring we have to rely not only on the human rights argument but on an equality argument. On pure human rights arguments, we can bring inquiries, and we can institute judicial reviews. That obviously constrains the work we can do on the narrow human rights issues with which we are faced.

It is probably important for me to share with you that, where we can, even on equalities cases, we seek to use human rights arguments as well, so that we are using human rights arguments whenever it is appropriate to do so. One of the points that I was quite keen to raise with you today is that it would be really helpful, and we would be more effective in enforcing human rights arguments, if we had the power to investigate the Section 20 power in the Equality Act 2006. Thank you; that would be a really helpful point.

Lord Woolf: I am afraid it is not so much me helping you, although I would love to be able to do so. Ms Robertson and Mr Russell, in both your jurisdictions, is there is a problem similar to the one David Isaac has?

Judith Robertson: The powers of the Scottish Human Rights Commission are relatively limited in legal terms. We have the power to intervene in civil cases. We have the power to make inquiry into public authorities in Scotland about human rights issues. We have no power to give any kind of legal assistance to an individual.

Lord Woolf: You have no power, so you do not have the distinction between human rights and equality.

Judith Robertson: Our area of competence is within human rights as they relate to the devolved competence of the Scottish Government and Parliament. It is only in relation to human rights. The Equality and Human Rights Commission has the equalities mandate in Scotland, and is the regulator on equalities issues in Scotland. Our mandate covers human rights as they relate to the Scottish Parliament and Government.

Lord Woolf: If you cannot assist individuals, is legal aid available in Scotland for them to go to the courts?

Judith Robertson: Legal aid is available in Scotland, but as, hopefully, we will have a chance to explore, the judicial route is very difficult for anybody to access for enforcing their human rights, whether that be in Scotland or anywhere else.

David Isaac: In the common area of human rights and equalities in Scotland, we work very closely with Judith and her colleagues. A memorandum of understanding exists between us. Where we have powers in Scotland in partnership with the SHRC, we work together using our legal powers.

Lord Woolf: What about Northern Ireland?

David Russell: There are complexities in the situation. We are one of two institutions created under the Belfast Good Friday agreement. We are the national human rights institution accredited, and there is the domestic equality authority—the Equality Commission for Northern Ireland—which has jurisdiction over equality for employment law, et cetera. It is much the same as David would have with equality in Scotland and in England and Wales.

We, however, have quite extensive legal powers. We can assist individuals, in any way the commission sees fit, with interventions before a court. We do third-party and amicus as well, and we have standing under the Human Rights Act to bring own motion cases, although that is currently being challenged by the Attorney-General and the Department of Justice in Northern Ireland in the commission's case on termination of pregnancy.

Our main issue with our legal powers is not their extent, setting aside the current challenge to the own motion power; it is a budgetary matter. We have a very limited legal budget, so we have to use our legal powers very strategically as a consequence.

Lord Woolf: I can see that the budget is very important. Is the position with the three bodies comparable, or, because of the rather more extensive powers of David Isaac's body, is his budget bigger proportionately than yours?

Judith Robertson: Yes. Our current budget is just short of £1 million. It is a very small budget. It is not proportionate to the population of Scotland in relation to the population of the whole country. It is disproportionately small.

Lord Woolf: Presumably, you have done your best to have it extended.

Judith Robertson: Prior to my taking up office, the budget was reduced, as would be true for all our organisations, as part of a public authority in Scotland budget cut of 15%. That happened prior to me taking office. We have had a static budget since then.

David Russell: It is similar for us. Our budget has been cut since 2012. We have had 37% of our budget reduced. We are now at £1.9 million per annum from the Northern Ireland Office.¹

Lord Woolf: You are in a better position.

David Russell: Apparently so, yes; but our legal budget within that is approximately £58,000 per year. Most of the money goes on staffing resources, so in real terms we can afford to support one strategic own motion litigation case every year and a half. In fact, the termination of pregnancy case effectively swallowed up the commission's budget over several years, until the point of the Supreme Court last year.

¹ Correction from David Russell: The Commission receives £1,099,000 per annum from the Northern Ireland Office.

David Isaac: This is not to make the point that we are swimming with money, because we are not, as the Committee and I have rehearsed at previous presentations to you. We have historically had very large cuts. Obviously we are living within the budget we have been given. I am keen that we are more effective than we have been historically, particularly in the use of our legal powers.

Having said that, one of our requests would be for additional funding to bring in the helpline that we lost. That would mean that we would be even more efficient and effective in ensuring that human rights arguments were used in cases, and in delivering outcomes that included and relied upon human rights arguments.

Lord Woolf: How easy is it for individuals to achieve what you could have achieved if the budget had not been used up already and not available to them?

David Isaac: It is hard. In all our communications, we try to encourage all our stakeholders to refer potential matters to us. Our funding means that we have become, and must be, a strategic litigator. We take the best cases, where we think they either change or clarify the law. That does not necessarily mean that we serve the interests of all our potential litigants. One thing that we have managed to do is to allocate funding of £700,000 for an advice line for advisers. I hope that means that the category you are talking about, Lord Woolf, has access to legal advice from citizens advice bureaux or other sources of funding, so that they are not without legal advice on such important issues.

Lord Woolf: Would Judith and David like to comment on the last point as far as their jurisdiction is concerned? Have you been able to do what David Isaac has been able to do?

David Russell: As a commission, we have legal clinics where inquiries can be made and members of the public can come in and meet the legal officers in the commission directly. We do that every week. We have between 70 and 100 of those per annum. A lot of them redirect people to other public authorities that can assist, quite often, for example, the Public Services Ombudsman on maladministration grounds.

We are very similar to David. The cases that the commission supports have to be strategic. They tend to be those where we think there will be a wider, systemic impact as a consequence, even though individuals may come with good grounds for a case. Quite often, those individuals have the support of solicitors and lawyers outside the commission.

Judith Robertson: It is difficult for anybody to take a case in Scotland. As I said, we have no power to support anybody to do that; in fact, we are expressly disallowed. Some of the infrastructure that might be helpful in supporting vulnerable people, in particular people with mental health problems or other issues, to take their own cases or to go through pre-judicial or non-judicial routes, is in advocacy services in Scotland. Independent advocacy services support people to go through those quite complex processes. Coverage of those services is very patchy across the

country, and people have problems accessing them. In general terms, the infrastructure to do what you are describing is weak.

David Isaac: Unless of course we are able to cover it under the generic answer that I gave in relation not just to England and Wales but to Scotland too.

Q52 **Baroness Hamwee:** I want to ask about guidance. I notice from our briefing that you have published guidance for employers and employees following the cases about wearing crosses and British Airways. Could you say a word about whether you are doing that on other issues, and how successful you think it is? Is there any update, because I gather you are undertaking research to see how it is working?

David Isaac: Correct. One of our really important functions is to educate people in relation to—

Baroness Hamwee: I am sorry; I have probably done this at the wrong point.

David Isaac: No. Part of delivering our function is undertaking research and issuing guidance. Our overall anxiety is that people do not necessarily understand the human rights framework. They do not understand the way the commissions work across all our jurisdictions, so guidance is incredibly important.

Judith can talk about research in Scotland. The research we are undertaking suggests not only that in some quarters human rights are considered toxic, but that lots of people do not understand the way in which they could benefit from the operation of human rights mechanisms, even when they bring cases. On that basis, guidance, information and research, which we share whenever we can, is important.

You are absolutely right about the Eweida case concerning religious freedom in the workplace. We issued guidance on faith and belief issues in the workplace, and we are undertaking similar activities for guidance on human rights more generally. We hope that we will shortly be in a position to release the important research that we did with YouGov, which talks about the different categories of potential supporters and opponents of human rights. Our intention is to try to engage in dialogue, and provide guidance to all those constituencies.

Baroness O'Cathain: How difficult is it to convince the people who have the money that you can use for research to actually divvy it up? Who makes the judgment as to whether a particular case or set of problems is better to research than something else?

David Isaac: We have strategic priorities and objectives. We are very keen to ensure that there is no hierarchy in relation to whether they are equalities or human rights issues. It really comes back to the point I made earlier, which is that we are keen to advance human rights arguments where we think the law is uncertain or unclear, or where we

think as a matter of legal principle that it would be advantageous to take a particular case. We look at it on a case-by-case basis.

Baroness O'Cathain: Do you look for each of the regions? They do not come bottom of the pile.

David Isaac: No, certainly not. That is where we work in collaboration across all organisations.

Judith Robertson: As I said, we have no means of pursuing a legal route to support people. Our strategy is quite different. A number of years ago, the commission undertook a large-scale piece of research in Scotland looking at human rights issues across the piece, not just under civil and political rights but right across economic, social and cultural rights. It was very clear from that research that the issues of most concern to people in Scotland, from a human rights perspective, were those relating to economic and social rights: health, housing, education and access to an adequate standard of living. It is not that civil and political rights were not something that people cared about, but as their priorities—what people felt were the most important things to address—those economic and social rights were what people wanted us to engage with and to be more strongly addressed.

Our strategy is very much built on that, and on recognising that those rights are not currently justiciable under either Scots law, or indeed UK law. The means by which we have worked with communities and communities of interest to support the advancement and progression of their rights realisation have been quite diverse. They have not taken judicial routes because we do not have that power, but there are clear instances where clear successes have been achieved and gains made, both in wider public understanding of the rights framework and how it can support people, and, more importantly, in actually achieving rights advances for people in communities in Scotland.

I can talk explicitly about an example of work we are still engaged with in Leith, which is an area of Edinburgh, where three blocks of public authority housing were identified by residents as in serious need of increased maintenance and repair. They were falling short both of our housing standards and anything that would be recognised as a right to an adequate standard of housing.

A lot of work was undertaken with the residents of that community to help them assess how they felt their houses met those standards, or did not. Working with the landlord—in this instance, the local authority—we helped the local authority to understand that, for it to support the delivery of people's rights in relation to adequate housing, it had the potential to shift its priorities. It did that and considerable investment was made, and is being made, in the property. That was not planned, and many years had been spent by residents trying to gain access to their rights to adequate housing. They did not express it in those terms, I have to say, prior to the work with ourselves and the local tenants' participation organisation, the Edinburgh Tenants Federation.

That process of using broader understanding of human rights to empower residents and give them access to international frameworks, in order to say, “This is what your rights are”, has been immensely successful. In fact, one of them gave evidence to the Scottish Parliament last week. She described a situation where previously people were ashamed of their house. They did not invite people into their house. She said that this Christmas, for the first time, she saw people put decorations outside their front door, because they were proud of their house. For me, that is human rights being transformational, but it does not require a judicial route to achieve that.

A lot of work can be done to bring about recognition, as a basis, that human rights have something to contribute to progress everybody’s lives, and, in that case, that they can hold the public authority to account for its failures in relation to the rights of people who were its residents. The duty bearers were not doing that. We have other examples of similar kinds of processes, using non-judicial routes, but still successfully holding duty bearers to account when they have not delivered effectively for people.

Q53 Baroness Hamwee: This question is about public attitudes to human rights; public understanding; differences, perhaps, in the four parts of the UK; and in particular—I should try to find some neutral language for this—the impact of the media and its influence on attitudes.

David Russell: Northern Ireland has a very particular context in the history of human rights. As a commission, we work in a context that is probably slightly removed from the experience in England and Wales; there are some similarities with parts of Scotland, but it is not exactly the same.

What we have done is quite similar in many ways to what Judith just said. The judicial route is always the last resort. The commission tries to look at economic, social and cultural rights, as well as civil and political rights, as priority issues. We too have heard back from our constituent groups that, when it boils down to it, those are the real issues that affect people day in, day out. That is the sort of work, as well as civil and political, that they want to see the human rights commission doing. By operating across a number of issues, such as housing allocation and the right to health, by using investigatory powers and by working with community groups and community-based organisations, we have been able to send the wider message that human rights are for everyone, as opposed to being partial, which might historically have been how they were viewed in the public domain.

Recently, we have been partnering with some community-based organisations, the Rainbow Project in Belfast and LGBTI Rights. The week before last, we launched an animation with the Evangelical Alliance on the right to freedom of conscience in religion and belief. We have found that

by engaging with those constituencies, which would not be typical for the human rights commission, particularly the latter, we have been able to broaden the message of the commission. That has brought wider knowledge among the general public about rights in the broader sense, and has done a lot to tilt the balance. It has been quite progressive. The sort of audiences we have engaged with in the commission have significantly shifted over the last five years to a much broader base than previously.

On the media point, the media can reflect the same division to some degree, as well as the wider experience throughout the UK as a whole. That is something we have to work with, but I invite the Committee to think in a slightly different way. In Northern Ireland, our defamation laws are significantly different from the rest of the United Kingdom. A free press, and the message that that sends out about freedom of speech, is another tack in addressing the negative consequences of debate between the media and the commission itself. We have been working on that area in particular.

Baroness Hamwee: From what you said, being able to have a conversation with the public means there is greater understanding. Is the pendulum in the right place? One can hear both sides: “Oh ridiculous, human rights”, and at the other end, over something quite trivial—I am sure MPs get this a lot—“My human rights are being infringed”, but it is something that is not really a matter of human rights. How do you see it?

David Russell: That is fair comment. Quite a lot of what we hear at the commission is, “My human rights are infringed”, when actually it is not a matter of human rights at all. There is a lot of misunderstanding among the general public about the concept of rights.

Dealing with things in the press, however, is not the only means open to a commission. Every other month, our commissioners do what they refer to as community visits. They get out to various parts of Northern Ireland and directly engage with communities at local level, as Judith was talking about. Their day normally starts by engaging with local government representatives and councillors. They meet the local police service on the ground in a community, and community groups who might never have had recourse to, or a reason to approach, the human rights commission in the past. Physically being present in communities and moving around geographically, bypassing the media to some degree, and increasingly using social media, is really valuable to the work.

Judith Robertson: I hesitate to say that the media in Scotland is less hostile, but I think that is true to some degree. We recently undertook a bit of YouGov research where we did a representative survey of people in Scotland to find out their views on human rights. We found that 42% of the population of Scotland, and we can say that with some confidence, actively support human rights and feel positive about them. We were quite heartened by that. We described a further 30% as “feel conflicted”,

which means that they agreed with both positive statements about human rights and negative statements about human rights. From our perspective, that demonstrates a considerable degree of support for the notion of human rights.

I can leave these notes about the survey with you; 14% were disengaged from human rights and 13% were opposed. What was interesting about the whole research was that it was very clear that the more people understood human rights, or the greater their understanding, the stronger their support. The less their understanding, the more likely they were to oppose. That is helpful, in that the implication is that, if you can increase understanding, you are more likely to increase support for human rights. I could say lots of things about that.

David Isaac: As I mentioned earlier, we have undertaken research that is not dissimilar. We have not yet published the results formally, but the spectrum that Judith mentions is one that we see in our work in England, Scotland and Wales. The depressing information that we got was that the number of what we call vehement advocates is comparatively small, and smaller than in Scotland. There is also a small number of vehement opponents. There is a very large group in the middle, including a lot of very young people.

The point I am keen to make is that education is fundamental to all of this: human rights in the curriculum, PHSE, and giving people an opportunity when they are much younger, but at all levels, to ensure that they understand what human rights mean. I am very keen in all the work I do on behalf of the commission to talk about the point that David made. I know this sounds corny, but human rights are for everybody. We should talk about Hillsborough. We should talk about people with haemophilia who struggled to get redress. Had the Human Rights Act existed at that particular point, redress for them would have been much easier. Giving those personal stories is really important, and encourages people to think more positively about human rights as a tool to protect people in the sorts of issues that we have been talking about, whether it is hospital treatment or accommodation.

The final point I want to make is that that is obviously what we are seeking to do in relation to the Grenfell Tower tragedy. We believe that putting a human rights lens on the arguments that are being presented to the inquiry is incredibly important. It is an example of how we are trying to incorporate human rights arguments in the equalities discussion and dialogue in cases that we bring.

Judith Robertson: There is a really important leadership role in the narrative on human rights, in recognising that we all have all the rights. There is political leadership, public authority leadership and commission leadership, but it needs to extend way beyond us. We are the usual suspects, so we would say that. The more that other people own and use the language of rights with confidence, the more that communities, civil society organisations and individuals can at least begin to understand and

say, "Well, maybe this is something for me". That goes broader than the way it is articulated, principally, but not exclusively, in the media, as being something that is frivolously applied to groups of people who are generally determined as undeserving in some respects. That is not my view, but that is often how it is articulated.

That leadership is present in Scotland to some degree. I have seen a number of public authorities stand up and say, "We are taking a rights-based approach". The Scottish Prison Service has transformed its inspection standards from a human rights perspective, to really look at the rights of the individuals who are in their care, as they describe them now.

The Care Inspectorate, which oversees the rights of people in residential care in Scotland, has gone through its inspection regimes and its standards, to see whether they are really compliant with human rights standards: the right to health, or the CRPD right to independent living. It is bringing those rights more into usage on a day-to-day basis. NHS Health Scotland, in a strategic perspective from the board, decided to take a rights-based approach to the right to health in Scotland, and is using the right to health as a way of talking to health trust boards.

That leadership is a really good way of undermining some aspects of the public narrative, and of enabling individuals to call those public authorities to account for the way they behave in reality. Our *Getting it Right* research showed that it is not that we do not have the laws or the policies in place; we have a gap around implementation. When people's rights are not realised, it is often because the implementation of public services is not up to scratch. Private services come into that sphere as well. Emphasis on implementation and transforming the culture within organisations is a really important part of our strategy.

Chair: May I follow up Sally's point with David? Judith talked about the media in Scotland being less hostile to human rights. Do you feel that the media—for example, the *Daily Mail*—are helping with the argument about human rights? Does it cause problems in terms of public attitudes that undermine people's ability to enforce their rights? If you think that they have a prevailing anti-rights message, how do you deal with them? Do you call them in? Do you try to persuade them to take a rights-positive approach? Could you say something about the media climate in which you are doing your work?

David Isaac: It is really important to say that we absolutely believe in freedom of expression. It is a question of how that freedom of expression is presented, and whether or not, picking up your point, Chair, there is a dialogue.

We have seen instances where a more toxic view of human rights is presented, and that is very unhelpful. We see some of that in relation to what we have been saying about the human rights aspects of Grenfell. Equally, there is a lot of common ground between all of us. We are seen,

as a commission, as the usual suspects. I am very keen that we move beyond that. That is particularly important in the way we engage with the media. I think we would all agree that the media is incredibly influential, particularly on the very people we believe would benefit hugely from human rights in the application of the areas we have touched on, such as education and health treatment.

To be clear, we would like further dialogue. To take the *Daily Mail* as a particular example, it is not as though it does not support human rights arguments when it is keen to do so. We did a lot in relation to Christianity and Christmas, and we had a lot of positive coverage on those issues. It would be good if we got similar positive coverage in areas where we were promoting other forms of human rights and acknowledging dignity.

We would welcome that. It is tough, and any help that this Committee and Westminster could give would be welcome. Judith's point about leadership is important—for example, in the tone of the message and the way the Government might react to observations by the UN on the universal periodic review. Less defensive reactions, to provide real leadership and see a rights-based approach, and the implementation and incorporation of our international obligations, would be really positive.

It is a complicated picture. We present a partial answer in the jigsaw that we cover in the different nations in this country. It takes all of us working hard together, dealing with a lot of detail and complexity, to move the debate forward, so that we have a nuanced discussion that incorporates us all.

Q54 Baroness Lawrence of Clarendon: Judith was talking about housing rights and how you enforce them. Is ensuring access to the courts always the best way to secure enforcement for people's rights, or do you think there is another way of doing that?

Judith Robertson: The example I gave of the housing project in Leith is one that we believe is an effective route for people. We are working from what I would describe as a bottom-up approach within communities, and empowering communities, individuals and groups of people in communities, first, to understand their rights, and then look at who the duty bearers are. They can then start a dialogue and conversation with those duty bearers.

One of the things our research found was that people do not understand who is accountable for delivery of their rights. That is hardly surprising. Most of us are not qualified in social administration, or know who bears responsibility for each aspect of different spheres of our lives. It is a complex picture, and something that people need help with.

Another area without access to a judicial route is around survivors of historical abuse, although for individuals that route was there. In Scotland, the recourse to remedy for those people was really lacking. Work was commissioned by the Scottish Government some time back,

and we looked again at the rights framework to explain how the right to remedy should play out. Over a period of time, we worked with government providers and a group of survivors representing survivors to look at the barriers to justice. There were some real legal barriers to justice. The time bar on taking civil cases was a barrier to access to justice. Ultimately, the Scottish Government lifted the time bar. That has only recently happened, and it enables people to take a civil case. However, as we have discussed, that does not make it any easier for people to do. Often, the problem is that the evidence, which might be 20 or 30 years old, is hard to take through a civil route.

We looked at other aspects of remedy: acknowledgement and apology. We worked with the Government, who in this instance were the principal duty bearer, because the survivors were primarily talking about children who had been in residential care and, therefore, were under the responsibility of the state. That process is ongoing; it is not finished. We are currently exploring aspects of financial redress, recognising that one clear aspect of access to justice is that of financial redress. There are many financial redress schemes around the world, but there was no such scheme in place in Scotland. There is still no scheme, but we are on the road to the point where it could be in place.

One of the key aspects of that process has been the role of survivors in the room, having the conversation directly with government, sometimes Ministers and sometimes civil servants, in a month-by-month process. Two things happen in that sustained dialogue. First, the duty bearers are directly talking to those whose rights were violated. Secondly, people whose rights have been violated to some degree—that is not meant to undermine them—get a sense of the complexity of the process, and the time it takes to bring about change. It has taken a long time for that process to deliver what I would consider elements of access to justice for those individuals, and it is ongoing.

That is not a judicial route, but it is incredibly impactful. I have been involved in it only for the last two years, so I do not want to speak out of turn, and survivors are not in the room, but I think they would say, yes, they have seen change. They have definitely seen progress and things have shifted. That kind of process can be immensely powerful in bringing justice and understanding of what justice looks like and feels like for people.

Chair: Thank you. David, could we hear from you in response to Doreen's question?

David Isaac: There are two aspects to my response. In relation to the sorts of things that Judith is talking about, I would be completely in agreement. We are probably, in England and Wales, not making as much progress on the sorts of examples that Judith has given. We are very much focused on using our legal powers. Whether it is alternative dispute resolution, using public officials, or taking a human rights-based approach

in our pre-enforcement work, it is all to be encouraged, and I would be keen for us to do more.

The bit that concerns me is obviously access to justice. I do not know whether you are going to ask a different question about that, Chair, but your opening remarks made it very clear that we all share a common anxiety about the importance of access to justice, and that rights are meaningless without access to justice. As a commission, we are obviously concerned about the implications of that.

We have done a lot of research and have evidence to suggest that it has had a huge impact on the number of cases, which means that alternative remedies of addressing those concerns have to be encouraged. We think we need to do both. We were able to intervene in the UNISON case in relation to employment tribunal fees. That was a landmark case in moving the law forward and giving access to hundreds of thousands of people. That is the sort of work we need to do. We need to ensure that there is adequate access to justice for people who rely on it.

Baroness Lawrence of Clarendon: Would you say that the lack of legal aid is a barrier for an individual who wants to take the courts route?

David Isaac: We have real concerns about the impediment and barrier that that presents. We are keen that in the review that the Government undertake they look at the evidence that we have all put to them, and are in the process of submitting, and that they come up with meaningful mitigations and remedies to ensure that there are fewer barriers, to enable people to exercise their rights.

David Russell: We are in a slightly different position on the legal aid cuts. The last set of criminal legal aid cuts in Northern Ireland was two years ago. However, I pretty much echo what both Judith and David said. I can illustrate it with three things.

The first is the role of the commissions themselves in providing a degree of access to justice. Outside the judicial route, the commissions have power to instigate investigations. We have used that on a number of occasions and subjects—for example, on accident and emergency healthcare and, most recently, on Traveller accommodation in Northern Ireland.

The important thing about those methods, and the powers available to the commission, is that they allow victims and witnesses, effectively, to take the stand before the commission, to publicly voice their experience and for that to be documented. Much in the same way as Judith described, public authorities are put on notice and required to respond to the eventual report as well as to take part in the investigation itself. That is one option open to the commissions themselves.

Another route is the partnership work that Judith and David were talking about. For almost five years, we have had a long-standing partnership with the Public Services Ombudsman. An awful lot of the work, certainly of our commission, is at the compliance end. The attitude to human rights is that, in essence, a violation occurs; there is a judicial remedy and the

public authority puts up a defence. The public authority's attitude is defending against possible violations of human rights rather than necessarily understanding, as Judith articulated, a human rights-based approach.

We have done work with the ombudsman on the procedural side of human rights, rather than compliance where a violation has occurred, looking at processes that ensure that human rights are considered in decision-making in whatever the public authority is. That is now embedded in the Public Services Ombudsman in Northern Ireland through its complaints handling and its investigatory processes for maladministration. As a consequence, individuals are getting access to justice in human rights terms via a route other than the courts, through the ombudsman's role.

As regards the third example, we are just coming to the end of something that is legally only part of the issue. There is concern about access to justice for litigants in person in Northern Ireland; it is similar throughout the UK as a whole. With the support of the Lord Chief Justice's office, and in partnership with the University of Ulster, we have been doing a research project with litigants in person for about a year and a half. We are publishing the findings.

That is procedural as well, because those people are litigating on their own behalf. Often, one of the problems for the courts, which relates to access to justice, is people navigating the system without legal representation. As part of the project, the commission has been providing litigants in person with procedural advice on their Article 6 fair hearing rights for court processes. That is in civil cases, not in criminal cases.

There are a number of avenues open to commissions to take an educative role that can provide or widen access to justice, other than its simply being seen as, first, a legal route and, secondly, where it is a legal route, to assist and make sure that access to justice is better. The Committee may be aware that Lord Justice Gillen has conducted a review of civil and family proceedings in Northern Ireland. The report was published in August last year. It raised a number of issues, and made a number of recommendations about access to justice, particularly on CRPD and CRC points about ensuring that the voice of the child is adequately heard in proceedings, and that the system is designed to respond to Article 12 of the CRC.

David Isaac: In relation to the second route, the commission has made available sums of money. We have done it twice. The first was in relation to people who were disabled, so that they had access to justice. We ran a very successful pilot, and it resulted in more cases coming to the commission so that we could support them. It also resulted in swifter resolution of cases for the people concerned. It was all very positive. I am keen that we do more of that, purely in relation to access to justice and access to advisers.

Q55 Jeremy Lefroy: I have a question on legal aid. If you do not know the answer, there is no problem. The legal aid budget allocated in the UK is considerably higher than anywhere else comparable in the world. On page 17 of our notes, it shows it as €73 per head for the UK-Northern Ireland; €38 in England and Wales; and €33 in Scotland. The next highest is the Netherlands at €26. In Germany, it is €8.

In other European Union countries, how would people pursue their rights through the courts, given that presumably if they depended on public legal aid it would simply not be there? Do they have other systems? I am just trying to find out whether we are very different from other systems in respect of being able to take cases through the courts, or not.

David Isaac: The answer is that you have to take a holistic view. There is no doubt that the cost to the taxpayer of providing legal aid is very significant. It is not our view that it is an insignificant amount; it is about the implications if there are significant cuts. Who is impacted?

On the comparative position, as I understand it, in Holland they operate a much more holistic, rights-based approach. Alternative remedies are well established in that jurisdiction. A combination of all those things results in a reduced legal aid bill, but more effective justice for redress for many individuals.

Jeremy Lefroy: That is very interesting. What can we learn from them as to how to redress rights more cheaply?

David Isaac: It is a combination of some of the things we have been talking about today, such as education. These are very long-term solutions. We are all keen, and have mandates, to move things on as quickly and as proportionately as we can. For you as parliamentarians, there are medium to long-term solutions on which we would ask you to work with us—for example, education and proportionate adequate funding—so that we can have alternative remedies and partnerships. What Judith was talking about in Scotland sets a very innovative approach that England and Wales and Northern Ireland are seeking to follow. But that is a leadership issue, if I may say so, from Scotland. Would that be correct, Judith?

Judith Robertson: I have a slightly different answer to the question. The cheapest way to ensure that rights are delivered is to ensure that they are not breached.

David Isaac: I would agree with that.

Judith Robertson: If we ensured that our public authorities were operating in line with a rights-based approach, and were developing law, policy and practice in line with a rights-based approach, I am not saying that rights would never be breached—clearly, that is unlikely—but the understanding of that rights framework and what it really means in the delivery of public services for people would be transformed. The actual rights framework has a huge quality of richness, understanding and

insight. If you look at the CRPD, CEDAW and CERD, and the treaty bodies themselves, and at the work that has been done by the committees to bring these things to life, there is a huge body of knowledge that could inform the way we write our laws and deliver policy and practice on the ground.

If our public authorities were delivering rights-respecting services, that would be one way of reducing the legal aid bill. I do not think legal aid is just about looking at human rights issues; it covers a whole range of issues. One of the pieces of work we have been doing in Scotland is increasing our understanding of what the incorporation of human rights in Scots law means. There is UK law as well, but in our context we are only mandated to talk about Scots law. Under the Scotland Act, the Human Rights Act is incorporated in Scots law, but there is no full incorporation of economic, social and cultural rights. That is a huge gap when it comes to people using that rights framework to access, for example, the right to social security, the right to independent living or the right to freedom from discrimination that exists in some settings under equalities legislation. There are big gaps.

We have been working with civil society and public authorities to look at the implications of us incorporating an increased aspect of rights in Scotland. The First Minister has set up an advisory group to seek further advice to support that process in Scotland. Our objective is to make progress on the realisation of rights. Part of that is bringing them into law. We are interested in adding to the legal framework so that the policy process is up front. A consequence could be that people increasingly feel required to go to court, but more likely is that the laws and policies that are actually written are rights compliant in the first place, and the delivery of those services is rights respecting. For us, that is the policy goal. That is the goal of the process. I appreciate that it is quite idealistic, but I think that is the right framework. It is in and of itself a series of ideals. That is a piece of work we are doing.

Chair: I want to move on to Fiona's question and look at the work in your commissions more specifically.

Fiona Bruce: Detta will ask an initial question and then I will ask a supplementary.

Q56 Baroness O'Cathain: It is clear that some of those who submitted written evidence felt that, when the rights of different groups conflict, some are given greater priority—for example, the rights of LGBT people over those of Christians. How do you decide whose rights to defend when rights conflict?

David Isaac: I touched on some of that earlier, in that we take a case-by-case approach. Our view at the EHRC is that this is not a zero-sum game. We need to ensure that everybody respects everybody else's

rights, which goes back to some of the things we have been saying about a rights-based approach.

Again, that sounds idealistic, but we need to look at things case by case. I am keen to reassure you that the commission does precisely what I mentioned earlier. Where we think there are areas, particularly in relation to legal intervention, which are unclear or need to be resolved, we will support those, irrespective of which group it most impacts on, or whether it disadvantages a particular group. From our perspective, there is no hierarchy. We look at cases individually, on the basis of what is in the best interests of promoting the group whose interests need to be furthered.

Fiona Bruce: What could you do to help redress the balance when there is a perception, which seems to exist, that there is a hierarchy of rights? It is not helped when there are statements such as this in a *Guardian* editorial: "Although it is invidious to have to choose between religious and sexual identity, the law should, when in doubt, protect sexual minorities over religious ones". What do you make of that, and what can you do to help redress the balance?

David Isaac: I will start, because I am sure that David has particular views. It is positively unhelpful to set things out in such basic and binary terms; for example, there are lots of LGBT individuals who are Christian, or of other faiths or no faith, and simply to present things in such unhelpful terms does not really move the debate on. It comes back to one of the things I was saying earlier and is something I learned from my experience in the LGBT community in Stonewall. Having dialogue, creating discussion and understanding people's different perspectives is incredibly important.

That is not to say that there will not be difficult decisions that fortunately we at the commission do not have to make, but the judiciary do. You have heard from members of the judiciary. The views of the media, I would suggest, can be positively unhelpful, and that was a good case in point. Having read the evidence that members of the judiciary gave, I do not think that they are persuaded or influenced by that, but members of the public are, which does not help the discussion of a rights-based approach.

Fiona Bruce: Absolutely. You have put your finger on it. Perhaps there needs to be some proactive discussion promoted by organisations such as yours to help to address it. Could I ask you to think about that, because there certainly is a sense among many people of faith, who are half the population, that the balance has not been quite right in recent years?

David Isaac: I understand that. I know that there are anxieties. The commission has various stakeholder groups and one is on faith and belief. There are all sorts of discussions, and we have frank but respectful debate on areas where people disagree. We listen, wherever we can, to those differing views, but I am sure we can do more.

David Russell: I endorse what David said. I take your point exactly, and it is a view that we take as a commission. Rights are for everyone. There is no hierarchy; they are universal. If non-discrimination and freedom of religious belief are in the balance, the commissions have an important role to play.

One example is our recent partnership in Belfast with the Evangelical Alliance, which I mentioned earlier. That came about because the Evangelical Alliance was holding a prayer vigil outside the commission at the time when the termination of pregnancy case was ongoing. As you can imagine, the commission and the Evangelical Alliance do not necessarily see eye to eye on that point, or many others, but it does not stop the commission engaging, and it does not prevent the commission's important role of ensuring that the public space for human rights is opened up to everyone.

That was one example of a partnership where commissions have an important role to play. The other thing we have been actively doing, along with the Equality Commission in Northern Ireland, is hosting a round table with faith leaders. It meets a couple of times a year and provides safe space, in essence, to flesh out the sorts of conversations you are talking about, and for the commission to be seen actively engaging with faith leaders in the community. Often, the commissions have more in common with faith-based communities than we have differences, particularly around the issues Judith mentioned in relation to social and economic rights, and social justice matters, such as housing and health. There is lots of room for partnership where the perception of there being a dichotomy does not stack up in practice. That has to be voiced.

Fiona Bruce: That is a very helpful reply. Thank you.

Q57 Chair: You have identified the cuts in your resources, and you have identified extra power that you would like. Could you give us some examples of things where you think, "We are not able to do this case; we would really like to have done this case, but we just do not have the resources to do it; or we would have liked to do this investigation but we do not have the powers to do the investigation"?

When it comes to human rights issues such as the right not to be deprived of liberty, the right to freedom of speech, the right to family life and the right to privacy, what are the things you are not able to do due to the lack of resources and lack of powers, but that you would like to be doing?

David Isaac: On what we cannot do currently because of our powers, certain cases in relation to accommodating people post the Grenfell Tower tragedy were based on rights to accommodation. We could not support them because they were primarily human rights arguments and there were no equalities arguments we could use.

There are probably a number that relate to investigations. We have been involved in relation to some of the behaviours—I will put it that way—at Brook House. We are in discussion and have written, but we cannot bring an investigation, because they are purely human rights breaches. Those are examples where it would be useful for us to bring an investigation, which we cannot currently do unless there are equalities aspects. There are many other examples. There is asymmetry in the way in which the equalities and human rights aspects set out in the 2006 Act were constructed. It would be an easy fix to give us additional powers to drive forward those things.

As I mentioned at the start, we try to use human rights arguments even in equalities cases. The right to accommodation and family life are the ones we primarily rely on. Judith touched in particular on social and economic rights. We endorse those points. It would help us in furthering human rights arguments to incorporate the international obligations and enact Part 1 of the 2010 Act in relation to socioeconomic rights. We think that would actually move us on quite significantly.

Chair: The House is debating the Windrush generation and what happened to them. Obviously deprivation of liberty is one of the most serious human rights issues. Do you think that their human rights were respected, and, if not, what are you able to do or say about it?

David Isaac: It is something that we have not looked at in detail yet, but I anticipated that you might raise the question. The right to family life, in particular, is something that we will probably explore. There will be a dimension that we need to look at from a purely human rights perspective.

Chair: When do you think that will happen?

David Isaac: Given the intense debate that has happened, it is certainly something I think we should look at. I cannot speak for the Executive, but we should feed into the debate, depending on what happens next and whether it would be useful for us to do so.

Chair: Do you think their human rights have been abused?

David Isaac: There is a risk of that in relation to those aspects, yes, but I cannot say definitively because I do not have the details. I am giving you a typical lawyer's answer, but in principle there is something we would wish to look at; yes.

Q58 Lord Woolf: Do you have any comments about the resources that are available to you from the legal professions? I see that you cannot take cases because of lack of resources, but, where you can take them, do you find that our legal practitioners are up to scratch in advancing the arguments?

Judith Robertson: I am not a lawyer, so my personal knowledge of that is limited. As in many other areas of public life, human rights arguments

are not used as often as they probably could be. There is a proud tradition of the independence of Scots law and all that that brings, as I understand it, but a lot more could be done.

Lord Woolf: I had a feeling that perhaps the position was not as good in Scotland as it was in England. Would you say that it was similar in England?

David Isaac: There are excellent human rights advocates in all the jurisdictions we represent, and they do a very good job.

Lord Woolf: Certainly that was the view when I led an inquiry in Strasbourg. They always said that the best help came from advocates in the British legal system.

David Isaac: To explore an additional point, we sought to establish whether, because of our financial constraints and funding cuts, we could take advantage of pro bono support, but it would appear that that is quite difficult because of potential conflicts and the way our panels work. I have been quite keen to try to be creative, because I know that there are lots of human rights lawyers who would be keen to assist us. Recently, we met our colleagues from the Commonwealth, because Northern Ireland used to chair the Commonwealth national human rights institutions, and the EHRC has just taken over, and we know that some of our colleagues in different jurisdictions are able to take advantage of that.

Lord Woolf: What is the difficulty in your getting pro bono assistance?

David Isaac: It relates to the way our panel works and our ability to be objective and not disadvantage the impartiality of the commission and the litigants we are supporting.

David Russell: We do not have a panel, so we appoint counsel as and when we see fit. We choose the best counsel for the job, in the commission's opinion. There are some excellent advocates in Northern Ireland, but in reality, given our budget constraints, there is increasingly a conversation with counsel about what the commission can afford to pay. It might not be pro bono, but it is certainly not the full going rate.

Lord Woolf: I am very interested in the point that David Isaac was making. There is a reservoir and, especially if it was a case that was of public interest, human rights lawyers might be willing to take it on a pro bono basis, but you have been advised that it is not practical.

David Isaac: Yes. We have not exhausted our discussions. I was encouraged to hear that in other jurisdictions it was possible. With your encouragement, we will certainly explore it further.

Q59 **Alex Burghart:** You have all said that there are limits to what you can currently do and to what you can afford to do. If you could do what you would like to do, and you had the resources to do it as you would like, how much resource would you need? If you are pitching for money, what is your number?

David Isaac: We are in the Dragons' Den.

Chair: What is the scale of the deficiency in what you think you should be able to do under your legal obligations, and what you are actually currently able to do?

David Russell: I can give a relatively concrete answer. The commission was the first of the three NHRIs to be established and the first to be accredited A status, in 2007. At the time the commission was created, under the terms of the Northern Ireland Act, one of the things that had to be done was that, two years after the Act came into force, the commission had to advise the Secretary of State on precisely the question of how much resource we should have.

An independent review was conducted at the time, and it suggested that the commission probably needed roughly a third again of the budget it had when it opened its doors. In order to function, and on the basis of the independent review, we subsequently got our A status, and the increase in budget was granted. Over the last number of years, with the efficiencies—budgetary reduction—the commission is now operating, in real terms, with less cash budget than it did when it opened its doors in 1999 with seed money following the Belfast agreement. In an ideal world, I would like to see the commission's budget restored to the level that was recommended following the Hosking review in 2001.

Alex Burghart: Do the rest of you have as precise an answer as that?

Judith Robertson: No. To be perfectly honest, we have not done those sums. I could give a relatively glib answer and say that we will take the proportionate increase plus a population increase, in recognition of the fact that Scotland has a bigger population. That would be a relatively glib answer in all honesty.

There is a piece of work for us to do to make that assessment. What do we need to do more of? What powers do we need, and what is it going to cost? There is recognition that, for example, the increased powers of the Scottish Parliament and Government have implications for the commission as regards its mandate on increasing the sphere of potential impact for human rights. There has been no concomitant increase in our budget to take into account the increase in devolved power. Under the terms of our A status, that was recognised, and it would need to be dealt with as a bare minimum. That is work we have to do.

David Russell: I think I am right in saying that it has been raised by the accreditation sub-committee at GANHRI for all three bodies.

David Isaac: David is absolutely right, and I was going to make that point. Our A status and the review, which for us is coming up the year after next—

Alex Burghart: What review is that?

David Isaac: The UN review under the Paris principles, which is the UN benchmark that accredits us as national human rights institutions. It looks at such things as our mandate, our ability to enforce, our independence

and our funding. That is coming up, and, as David rightly says, the reviewers have already indicated that they will be keen to look at our funding and our ability to enforce international and domestic obligations. At the EHRC, we have been cut 70% since we were first established. Our powers have diminished during that time as well. I am not asking for an additional 70%, but if we were able to take back the helpline, which is going to be reviewed later this year, it would give us an increased pipeline to help individuals, and to do more in exercising our legal powers. There are many things that currently we have to do by virtue of our strategy and focus that probably, following today's discussion, we would wish to do if we had more resources. My plea would be for at least an additional 30% increase.

Alex Burghart: I am sorry that this is not a very quick last question. The work your bodies do is obviously extremely important. How do we know that you are doing a good job with the resources you have? What systems or measures are in place to hold you to account?

David Isaac: We all have KPIs. We have a very clear strategic plan that we lay in Parliament. I presume that my colleagues do exactly the same. That is a focused document, where we set out our targets and how we measure them. Since I have been in post, I have sought to make them much more meaningful and ambitious, so that we are seen to be more effective and producing improved benefit for taxpayers.

Judith Robertson: We are accountable to the Scottish Parliament. Our strategic plan is laid before the Scottish Parliament. Previously, our accountability was with the Justice Committee of the Parliament. In the current parliamentary term, it went to the Equalities and Human Rights Committee of the Parliament, when human rights were added to its mandate. That is where our accountability lies. Scrutiny is limited. We would benefit from more, because it would encourage engagement with our programme of work and how that engages with Parliament's activity, but it is there.

David Russell: We are answerable to Parliament through the Northern Ireland Office; we are not devolved. The chief commissioner and other chief commissioners have raised that. Our strategic plan and annual business plan are shared with the Northern Ireland Office, which is similar to the other two bodies. Because we are not devolved to the equivalent of the Scottish Parliament, it means that, to some degree, accountability for the Northern Ireland commission rests with this Committee. It is the only obvious place, so we welcome the opportunity to appear before you as regularly as possible. Our accounts and report are in Parliament for Members to look at in the Library of the House.

Chair: Thank you very much for coming to give evidence to us.

