



The 2020 Annual Statement

Human Rights in Northern Ireland

December 2020



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

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About us

The NI Human Rights Commission (the Commission) protects and promotes the human rights of everyone in NI. We do this by:

- keeping under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights;
- advising the Secretary of State for NI and the Executive Committee of the NI Assembly of legislative and other measures which ought to be taken to protect human rights;
- advising the NI Assembly whether proposed legislation is compatible with human rights standards;
- promoting understanding and awareness of the importance of human rights in NI, for example, by undertaking or commissioning or otherwise assisting research and educational activities.

In addition, the Commission has powers to:

- give assistance to individuals who apply to it for help in relation to proceedings involving law or practice concerning the protection of human rights;
- bring proceedings involving law or practice concerning the protection of human rights;
- intervene in, legal proceedings concerning human rights where it need not be a victim or potential victim of the unlawful act to which the proceedings relate;
- conduct investigations;
- require a person to provide information and documents in their possession, and to give oral evidence, in respect of an investigation;
- enter a specified place of detention in NI, in respect of an investigation, and;
- publish its advice and the outcome of its research and investigations.

Our mission statement

The Commission champions and guards the rights of all those who live in NI.

Chief Commissioner: Les Allamby

Commissioners: Helen Henderson
Jonathan Kearney
David Lavery
Maura Muldoon
Eddie Rooney
Stephen White


Chief Executive: Dr David Russell


Abbreviations


CoE	Council of Europe
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
NI	Northern Ireland
UK	United Kingdom
UN	United Nations
UN CAT	United Nations Convention Against Torture, Inhuman or Degrading Treatment or Punishment
UN CERD	United Nations Convention on the Elimination of All Forms of Racial Discrimination
UN CEDAW	United Nations Convention on the Elimination of Discrimination Against Women
UN CRC	United Nations Convention on the Rights of the Child
UN CRPD	United Nations Convention on the Rights of Persons with Disabilities
UN ICCPR	United Nations International Covenant on Civil and Political Rights
UN ICESCR	United Nations International Covenant on Economic, Social and Cultural Rights

Understanding the annual statement

The Commission's annual statement uses a traffic light system to assist readers.

Red  identifies a subject that requires immediate action by the UK Government, NI Executive or relevant public authorities and the issue may be an ongoing violation or abuse of human rights within NI.

Amber  identifies a subject where initial steps toward providing an effective response could have already been taken or the necessity of taking action has been acknowledged by the relevant body. Such actions may have commenced, but are not yet completed. The identified subject requires action by the UK Government, NI Executive or relevant public authorities. The issue may not be at a level that constitutes an ongoing violation or abuse of human rights.

Green  identifies a subject that has been acknowledged as requiring action to protect human rights in NI and an effective response has been provided by the UK Government, NI Executive or relevant public authorities. A firm commitment to address the matter will have been demonstrated and undertaken.

The Annual Statement 2020 continues to be structured slightly differently than other years. The 'green' and 'amber' issues are identified across Chapters 3 and 5. The 'red' issues are clearly set out in Chapter 4. An overview of all issues is provided in the Annex.

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Foreword

For the second year in succession, the Commission has published a truncated document reflecting the circumstances we are in. Last year this was a product of the absence of devolved government for almost three years. In 2020, it is due to the coronavirus pandemic and the impact it has had on human rights political and policy developments.

In early January, a political settlement was reached to enable the Northern Ireland Executive and Assembly to be restored. New Decade, New Approach set out an ambitious programme of reform, in recognition of the stasis created by the prolonged absence of the devolved government. Yet, barely eight weeks later, we moved into lockdown to tackle the dangers created by the coronavirus pandemic.

As a result, the rest of the year has been dominated by the Northern Ireland Executive dealing with an unprecedented public health challenge leading to difficult decisions being made in real-time with limited contemporary experience to draw on. Nonetheless, there has been progress made on a number of fronts beyond the pandemic and the Annual Statement records these developments alongside long outstanding issues that remain unresolved.

Governments in London, Belfast and Dublin have taken unparalleled powers and sweeping measures, unheard of in peace times. Long-cherished freedoms have been curtailed: to see our families and friends, to move more freely, open and run businesses, attend workplaces and engage in social and civic activities.

Human rights do not take a back seat during public emergencies. For civil and political rights, including, for example, freedom of thought, conscience, and religion; and freedom of assembly and movement, a set of principles has been developed on the parameters within which such limitations can be applied. The Siracusa Principles on the Limitations and Derogation Provisions in the United Nations International Covenant on Civil and Political Rights were published by the American Association of the International Commission of Jurists in 1984. One of the 31 lawyers responsible for producing the document was Kevin Boyle, the much respected and missed human rights advocate from Northern Ireland.

The Principles provide that any restrictions on rights must be prescribed in law, with adequate safeguards and effective remedies, and not be arbitrary or unreasonable. Such measures taken, and their severity and scope, should be no more than strictly necessary to deal with the emergency and be proportionate to the threat posed. Any restriction should be no longer than required and, in the case of a public health emergency, should give due regard to the international regulations of the World Health Organisation. Moreover, certain rights can never be derogated from even in an emergency including the right to life, freedom from torture, cruel and inhuman treatment, freedom from slavery, and freedom of thought, conscience and religion. The principles are not binding in domestic law although they remain an excellent yardstick to

judge any diminution of rights. Moreover, many of the concepts outlined in the Siracusa Principles are drawn on within the European Convention Human Rights, which is incorporated into domestic law through the Human Rights Act. In particular, the European Convention and the Strasbourg Court recognise that restrictions on rights must be prescribed in law, meet a legitimate aim, be proportionate and no more necessary than required to meet their specific purpose.

The Commission has applied these principles in our work and in providing evidence to the Joint Human Rights and Women and Equalities Select Committees inquiries into the response to the pandemic, and the Treasury Select Committees inquiry into tax after coronavirus, and the vexed question of how the economy recovers and is paid for.

Outside of the pandemic, we are moving towards the United Kingdom leaving the European Union following the end of the transition period on 31 December 2020. The Commission engaged actively in the negotiations about how the UK Government's commitment to the "non-diminution of rights under the Rights, Safeguards and Equality of Opportunity section of the Belfast (Good Friday) Agreement" could be crystallised in practice. The creation of the Dedicated Mechanism in the Ireland/Northern Ireland Protocol of the Withdrawal Agreement and the Protocol's commitment to keeping pace with six European Union Directives covering equal treatment in access to goods and services, employment, self-employment, social security and freedom from discrimination, regardless of racial and ethnic origin, is an important protection. The scope of preserving other existing rights protections through European Union and domestic law will depend on close reading of the rights section of the Belfast (Good Friday) Agreement 1998. Little did the architects of the 1998 Agreement realise that one of the consequences of the document would be as a safeguard when the United Kingdom left the European Union more than two decades later. The Commission will work diligently alongside the Equality Commission and as part of the Joint Committee with the Irish Human Rights and Equality Commission to ensure that the rights commitments (to use the mantra adopted by the European Court of Human Rights), become real and practical and not theoretical and illusory.

Coinciding with the first lockdown on 18 March this year, the UK Government announced new proposals for handling legacy issues cases in Northern Ireland, moving significantly away from earlier arrangements contained in a published draft bill to implement the Stormont House Agreement institutions. The UK Government now intends to "ensure that the investigations which are necessary are effective and thorough, but quick... only cases in which there is a realistic prospect of a prosecution as a result of new compelling evidence would proceed to a full police investigation and if necessary prosecution".

The Commission has spent months since trying to ascertain how the counter-intuitive "effective, thorough but quick" ambition for investigations can be realised in a way that meets the Article 2 ECHR right to life requirement to effectively investigate deaths. To date, the Commission remains none the wiser as to how this conundrum will be

resolved without the prospect of creating further legal challenges and yet more delay – something that is not in the interests of government, victims and their families, and all others affected by the violence of the past.

The Northern Ireland (Executive Formation etc.) Act 2019 requires the Secretary of State to implement, in full, the recommendations of the United Nations Convention of Elimination of Discrimination against Women (UN CEDAW) inquiry into abortion in Northern Ireland. The recommendations included the decriminalisation of abortion services and adoption of legislation to expand the grounds to legalise abortion. The UN CEDAW inquiry also charged the Commission with a monitoring role in ensuring compliance with international standards concerning access to sexual and reproductive health, including access to safe abortions. The UK Government introduced regulations to permit abortion services from the beginning of April 2020. The Commission began its monitoring work shortly afterwards and has met with all the health and social care trusts, Royal Colleges, Department of Health, Northern Ireland Office, Informing Choices, the British Pregnancy Advisory Service, unregulated providers offering services through the Internet alongside churches and civic organisations both those in favour of and against the legal reform. To date, the Department of Health has failed to commission and fund a service and has issued no guidance to trusts on how any service should be managed and delivered. All five health and social care trusts eventually provided a service through transferring resources from other sexual and reproductive health care services being held in abeyance or reduced due to the pandemic.

The lack of a centrally funded service reflects the inability of the Northern Ireland Executive to agree a way forward to proposals from the Department of Health. The trusts and Royal Colleges have been clear and consistent to the Commission that the existing arrangements are not tenable in the long term. Unsurprisingly then, in early October one health and social care trust withdrew its service to new patients having decided to transfer the resources back to other reproductive care. At the time of writing, the Commission is left to consider taking legal action to ensure that international and domestic human rights standards are met to ensure the health care needs of women. It does appear that this issue can only be resolved politically or legally. The Commission would prefer the former.

Among the positive outcomes within the New Decade, New Approach agreement was the creation of a Northern Ireland Assembly Ad Hoc Committee on a Bill of Rights for Northern Ireland. The Commission gave evidence to the Ad Hoc Committee and welcomes the range of other voices giving evidence and the wider consultation now taking place. The Bill of Rights alongside the need for an institutional means of connecting civic society and political institutions remain unfinished pieces of the puzzle in fully implementing the Belfast (Good Friday) Agreement 1998. The need for overarching rights protections that provide safeguards for everyone in Northern Ireland remains one of the essential tools for a durable, peaceful society moving forward and a bulwark against turbulence caused by political and economic uncertainty.

This year saw the end of the term of one group of Commissioners and the commencement of the term of another. I want to pay tribute to the outgoing Commissioners for their unity of purpose, commitment and collegiality in support of me and staff. They worked in a particular unpropitious funding environment, yet still ensured the Commission was productive and effective and much of the work contained in this statement is down to them. The new Commissioners have had to hit the ground running and the signs are they will make an equally strong contribution.

It is also my last foreword to an Annual Statement. Human Rights remains a contested political and public space, yet a rights based approach has become more mainstream than ever before. The Commission has had to deal with difficult and divisive issues and has not ducked them. The bedrock of the Commission's work is the international human rights standards and how they can be translated practically and effectively locally. It is also about communicating the value of human rights in peoples' everyday lives – and I believe the Commission has done this, through its work with business and sport organizations, highlighting the impact of tax and social security policies and through other social and economic rights initiatives. From my time as the Chief Commissioner I can see a number of important areas of public life where the Commission's work has made an important difference, large and small.

It has been a pleasure and a privilege to serve as the Chief Commissioner and I could not have done so without the unstinting support of staff and Commissioners, both past and present for which I owe a great debt of gratitude.



Les Allamby
Chief Commissioner

Chapter 1 Introduction

The Commission was established following the Belfast (Good Friday) Agreement 1998. It is a national human rights institution with 'A status' accreditation at the Global Alliance of National Human Rights Institutions.

Having assessed developments affecting human rights protections in NI throughout 2020, the Commission publishes this annual statement, operating in accordance with the NI Act 1998, and our statutory requirement to:

- *keep under review the adequacy and effectiveness in NI of law and practice relating to the protection of human rights; and*
- *to advise the Secretary of State for NI and the Executive Committee of the NI Assembly of legislative and other measures which ought to be taken to protect human rights.*¹

Under the UN Paris Principles, a national human rights institution has a responsibility to:

*submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights.*²

The Commission's assessment of developments during 2019 is based on domestic human rights standards and those treaty obligations of the UN and European systems that have been ratified by the UK.

The treaties, which the UK has ratified include:

- *European Convention on Human Rights (ECHR) [UK ratification 1951] – given further domestic effect by the Human Rights Act 1998;*
- *European Social Charter [UK ratification 1962];*
- *Framework Convention for the Protection of National Minorities [UK ratification 1998];*
- *Convention on Action against Trafficking in Human Beings [UK ratification 2008];*
- *European Charter for Regional or Minority Languages [UK ratification 2001];*
- *UN International Covenant on Civil and Political Rights (UN ICCPR) [UK ratification 1976];*
- *UN International Covenant on Economic, Social and Cultural Rights, (UN ICESCR) [UK ratification 1976];*

1 Section 69, NI Act 1998.

2 A/RES/48/134, 'UN General Assembly Principles relating to the Status of National Institutions', 20 December 1993.

- *UN Convention on the Elimination of All Forms of Racial Discrimination (UN CERD) [UK ratification 1969];*
- *UN Convention on the Elimination of All Forms of Discrimination Against Women (UN CEDAW) [UK ratification 1986];*
- *UN Convention on the Rights of the Child (UN CRC) [UK ratification 1991];*
- *Optional Protocol to the UN CRC on the Involvement of Children in Armed Conflict [UK ratification 2003];*
- *Optional Protocol to the UN CRC on the Sale of Children, Child Prostitution and Child Pornography [UK ratification 2009];*
- *UN Convention Against Torture, Inhuman or Degrading Treatment or Punishment (CAT) [UK ratification 1988];*
- *UN Educational, Scientific and Cultural Organisation Convention on the Protection and Promotion of the Diversity of Cultural Expressions [UK ratification 2007];*
- *Charter of Fundamental Rights of the EU [UK ratification 2000];*
- *UN Convention on the Rights of Disabled Persons (UN CRPD) [UK ratification 2009].*

Human rights law further applies by virtue of the NI Act 1998, section 24(1). Ministers of the Executive Committee of the NI Assembly (NI Executive) and Executive departments are therefore required to ensure that all legislation and actions are compatible with the ECHR.³

Moreover, the NI Act 1998, section 26, requires compliance with other international human rights obligations, and that for this purpose the Secretary of State for NI may, by direct order, prevent any proposed action by Ministers of the NI Executive and devolved Executive departments.⁴

The ECHR is given further domestic effect in the UK as a consequence of the Human Rights Act 1998. Subject to section 6(3), all public authorities in NI must ensure that their actions are compatible with the Human Rights Act. The definition of a public authority includes a “court or tribunal, and any person certain of whose functions are functions of a public nature”.⁵

This means that private sector contractors may, depending on their role, be subject to the requirements of the Human Rights Act. Government departments have the duty to ensure that actions carried out following public procurement exercises comply with the ECHR.

3 Section 24 of the NI Act 1998 states: ‘A Minister or NI department has no power to make, confirm or approve any subordinate legislation, or to do any act, so far as the legislation or act— (a) is incompatible with any of the Convention rights’.

4 Section 26 of the NI Act 1998 states: ‘If the Secretary of State considers that any action proposed to be taken by a Minister or NI department would be incompatible with any international obligations, with the interests of defence or national security or with the protection of public safety or public order, he may by order direct that the proposed action shall not be taken’.

5 Section 6, Human Rights Act 1998.

The Commission, in assessing compliance with international human rights standards, takes account of the findings of the international monitoring bodies that are directed to or otherwise apply to NI, as well as the general comments and other interpretive texts adopted by such bodies.

Treaty examinations issued in 2020:

UN International Covenant on Civil and Political Rights

In May 2020, the UN Human Rights Committee published its list of issues and questions in relation to the eighth periodic report of the UK on the UN ICCPR, which is due to be examined in 2021. The information contained within the Commission's submission to inform the UN Human Rights Committee's list of issues is reflected within the UN ICCPR-related sections of the annual statement.

UN Convention against Torture

Within its 2019 concluding observations on the UK's compliance with the UN CAT, the UN CAT Committee requested an update on accountability for conflict-related violations in NI. In May 2020, the Commission provided an update, the information contained within this update is reflected in the conflict-related sections of the annual statement.

UN Convention on the Rights of the Child

In February 2021, the UN CRC Committee is due to consider the list of issues or questions to pose in relation to the sixth and seventh periodic reports of the UK's compliance with the UN CRC. In November 2020, the Commission submitted its shadow report to inform the UN CRC Committee's list of issues. The information contained within this report is reflected in the UN CRC-related sections of the annual statement.

CoE Committee of Ministers

In June 2020, the CoE Committee of Ministers examined the execution of the McKerr, Shanghan, Jordan, Kelly and Others, and McCaughey and Others cases, in which the ECtHR had found a violation of the Article 2 ECHR investigatory obligations. The information contained within the Commission's submission to inform the CoE Committee of Ministers' examination is reflected within the conflict-related sections of the annual statement.

Chapter 2 – COVID-19

In response to the COVID-19 pandemic a number of temporary legal reforms were introduced with a view to tackling the virus and preventing its spread.

This chapter provides an overview of the temporary legislative reforms that are applicable to NI, how these reforms fit within the human rights framework and significant developments that have taken place in NI in response to COVID-19.

Temporary legal reforms

On 25 March 2020, the Coronavirus Act 2020 was enacted. This Act introduced new emergency powers to help contain and cope with COVID-19. These powers have a time limit of two years and can only be used where necessary to deal with the COVID-19 public health crisis. It is possible that some of the powers set out in the Act may never be applied.

In terms of holding the UK Government to account in its use of these powers, the Coronavirus Act is to be reviewed by UK Parliament after six months and the Secretary of State must provide a report on the powers that are used every two months.

Supporting legislation was enacted by the NI Assembly, which provides the detail of how certain aspects of the Coronavirus Act 2020 apply in NI. These include:

- *Health Protection (Coronavirus Restrictions) Regulations 2020 and subsequent versions;*
- *Temporary Modification of Education Duties Notice (NI) 2020 and subsequent versions;*
- *Children’s Social Care (Coronavirus) (Temporary Modification of Children’s Social Care) Regulations (NI) 2020 and subsequent versions;*
- *Planning (Development Management) (Temporary Modifications) (Coronavirus) Regulations (NI) 2020;*
- *Statutory Paternity Pay, Statutory Adoption Pay and Statutory Shared Parental Pay (Normal Weekly Earnings etc) (Coronavirus) (Amendment) Regulations (NI) 2020;*
- *Maternity Allowance and Statutory Maternity Pay (Normal Weekly Earnings etc) (Coronavirus) (Amendment) Regulations (NI) 2020;*
- *Working Time (Coronavirus) (Amendment) Regulations (NI) 2020;*
- *Discretionary Support (Amendment No 2) (COVID-19) Regulations (NI) 2020;*
- *Statutory Sick Pay (General Coronavirus Amendment No 3) Regulations (NI) 2020; and*
- *Private Tenancies (Coronavirus) Modifications Act 2020.*

The initial versions of this legislation were introduced for the purposes of restricting movement, services and social inter-action within NI, in a bid to curb the spread of COVID-19. From 15 May 2020, the NI Executive had been gradually taking steps, including enacting amended versions of the original legislation, to ease the restrictions in place since 28 March 2020. In September 2020, the NI Executive started implementing some localised restrictions for set periods, guided by medical advice. In October 2020, increased restrictions were expanded across the whole of NI for set periods. The tightening and loosening of restrictions is subject to constant review by the NI Executive, guided by the Department of Health and medical advice. This approach is due to continue into 2021.

There were also a number of positive measures introduced through both the UK Government and NI Executive to assist with supporting those that were financially impacted by the restrictions put in place, but these are due to only be operational for a limited period.

Fitting within the human rights framework

Certain rights can be restricted during a public emergency. The Siracusa Principles cover how public emergencies can limit rights within the UN ICCPR. The principles state that severe restrictions of basic rights are allowed as long as the restrictions are necessary, proportionate, have a legitimate aim and are only used for as long as required to meet that aim. The restrictions should be no more than are required by the circumstances of the situation. The principles cover rights such as freedom of assembly and association and freedom of thought, conscience and religion.

The World Health Organisation confirmed that prevention of the spread of COVID-19 and preserving the life and health of those affected or under threat of infection, particularly the most vulnerable, are legitimate aims.

In terms of legally enforceable rights under the ECHR and the Human Rights Act, some rights must be strictly adhered to. These include the right to life (Article 2 ECHR) and the right to freedom from torture, inhuman or degrading treatment or punishment (Article 3 ECHR).

Other rights can be limited under a range of circumstances. These include the rights to liberty (Article 5), education (Protocol No 1, Article 2 ECHR), respect for private and family life (Article 8 ECHR) and to peaceful assembly (Article 11 ECHR). It depends on the individual right and circumstances as to when such a right can be limited and to what extent, but, generally any limitation must be provided for in law, be necessary, proportionate and pursue a legitimate aim.

There have been a number of inquiries within Westminster that have considered the UK Government's response to COVID-19. The House of Commons and House of Lords Joint Committee on Human Rights considered the UK Government's response from a human rights perspective. The House of Commons Women and Equalities Committee considered the UK Government's response from the perspective of protected characteristics and a sub-inquiry focusing on the impact on persons with disabilities. The House of Commons Treasury Committee

considered the UK Government's tax measures after COVID-19. The Commission provided written evidence to each of these inquiries.⁶

Significant developments in response to COVID-19

Equality and non-discrimination

Persons with Disabilities

In June 2020, the Commission and Equality Commission NI as the UN CRPD Independent Mechanism in NI jointly hosted two roundtables with key stakeholders on issues facing persons with disabilities in NI due to COVID-19. The issues raised during these roundtables informed the UN CRPD Independent Mechanism in NI's submission to the House of Commons Women and Equalities Committee's sub-inquiry into the unequal impact of COVID-19 on disability and access to services.⁷

Freedom from torture, inhuman and degrading treatment

Abuse in health and social care settings: High numbers of deaths of care home residents

The statistical updates provided by the Department of Health indicate around half of COVID-19 related deaths to date involved care home residents, either in the care home or in hospitals. Indications are that the high numbers of deaths within care homes may be linked to the slow introduction of testing within such settings, discharging patients to care homes without those individuals being tested for COVID-19, the late arrival of Personal Protective Equipment, the delay in including care home deaths in COVID-19 statistics to enable an understanding of the issue, and the relative under funding and general neglect of the care home sector.⁸ In May 2020, these concerns were highlighted in a joint statement by the Commission and Commissioner for Older People NI.⁹ The Commission also raised these issues with the House of Commons and House of Lords Joint Committee on Human Rights¹⁰ and House of Commons Women and Equalities Committee¹¹ in response to their inquiries into the UK Government's response to COVID-19.

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- 6 NI Human Rights Commission, 'Response to Joint Committee on Human Rights Inquiry into the Government's Response to COVID-19: Human Rights Implications' (NIHRC, 2020); NI Human Rights Commission, 'Response to the Women and Equalities Committee Inquiry into the Government's Response to COVID-19: Human Rights Implications' (NIHRC, 2020); NI Human Rights Commission, 'Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services' (NIHRC and ECNI, 2020); NI Human Rights Commission, 'Response to Treasury Committee's Inquiry into Tax Measures after COVID-19' (NIHRC, 2020).
- 7 UN CRPD Independent Mechanism of NI, 'Submission to Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services' (NIHRC and ECNI, 2020).
- 8 NI Human Rights Commission, 'Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services' (NIHRC, 2020).
- 9 NI Human Rights Commission, 'Press Release: Joint Statement from Chief Commissioner and Commissioner for Older People on COVID-19', 6 May 2020.
- 10 NI Human Rights Commission, 'Response to Joint Committee on Human Rights Inquiry into the Government's Response to COVID-19: Human Rights Implications' (NIHRC, 2020).
- 11 NI Human Rights Commission, 'Response to the Women and Equalities Committee Inquiry into the Government's Response to COVID-19: Human Rights Implications' (NIHRC, 2020); 'Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services' (NIHRC, 2020).

In June 2020, the Department of Health announced the establishment of a Rapid Learning Initiative Group, which aims to learn from care homes' experiences during COVID-19.¹² The group is made up of representatives of the independent care home sector, the Health and Social Care system and the Royal College of Nursing. The Department of Health is clear that this initiative is not a research project, investigation or inquiry.

In September 2020, it was reported that the Health and Social Care Trusts in NI had discharged patients to care homes without those individuals being tested for COVID-19. Almost 70 patients confirmed as having or suffering potential symptoms of the virus were discharged from hospitals to care homes in one health trust.¹³ Between 1 March and 15 April 2020, 318 patients were discharged to care homes, of which only 52 were tested for COVID-19 prior to discharge.¹⁴

Abuse in health and social care settings: Regulation of care homes

In March 2020, the Department of Health directed the Regulation and Quality Improvement Authority Board to reduce the frequency of its statutory inspection activity and cease its non-statutory inspection activity and review programme.¹⁵ A judicial review was initiated by a concerned family, challenging the lawfulness of the Department of Health's direction.¹⁶ In June 2020, the Department of Health revoked its direction and suspended inspections were reinstated.¹⁷ The Regulation and Quality Improvement Authority Board's members claim they were not consulted on a number of decisions taken by the Department of Health, including ending inspections of care homes and re-deploying senior Regulation and Quality Improvement Authority Board staff to other health bodies.¹⁸ On 22 June 2020, all nine members of the Regulation and Quality Improvement Authority Board resigned as a result.¹⁹ On 23 June 2020, the Minister of Health, Robin Swann MLA, announced a review into the resignations.²⁰ The outcome of this review is awaited.

Domestic and sexual violence and abuse

In June 2020, the Police Service NI reported that it received on average 570 domestic violence calls per week between February 2019 and March 2020.²¹ However, between 8 April 2020 and 30 June 2020 the average number of calls per week was consistently above 600, with a spike of 721 calls at mid-April 2020 and 727 at the start of June 2020.²² This reflected

12 Department of Health, 'Press Release: Work underway to learn from care home COVID-19 experiences', 24 June 2020.

13 Tanya Fowles, 'NI health trust discharged 70 Covid patients into care homes', *Belfast Telegraph*, 9 September 2020.

14 Ibid.

15 Lisa Smyth, 'Coronavirus: Swann warned families could sue if he does not call public inquiry into care homes crisis', *Belfast Telegraph*, 14 May 2020.

16 Alan Erwin, 'Coronavirus: Dementia sufferer's son starts legal action after NI care home inspections are scaled back', *Belfast Telegraph*, 30 April 2020.

17 Shauna Corr, 'Coronavirus restrictions placed on work of health and social care watchdog RQIA are lifted', *Belfast Live*, 22 June 2020.

18 Marie-Louise Connolly and Niall McCracken, 'Coronavirus: Health watchdog resigns over row with officials', *BBC News*, 22 June 2020.

19 'Coronavirus: Review ordered into RQIA mass resignations', *BBC News*, 23 June 2020.

20 Ibid.

21 Police Service NI, 'Domestic Abuse Calls Received by Police in NI: Weekly Management Information on Domestic Abuse Calls Received by Police Service NI Since COVID-19 Lockdown Measures were Introduced on 23 March 2020 - 1 July 2020' (PSNI, 2020), at 2.

22 Ibid.

Nexus NI's experience, who reported a 13 per cent rise in calls the week commencing 13 April 2020, on top of a 27 per cent rise in the first week of April.²³ Nexus NI confirmed that the number of visits to its domestic and sexual abuse website had doubled. Nexus NI also stated there had been an increase in callers worried that if they leave home, they could get Covid-19.²⁴

Due to COVID-19 restrictions, Sanctuary Scheme work had to be halted in March 2020.²⁵ This work has recommenced, unless someone within the household has COVID-19 symptoms or is shielding.²⁶ The Sanctuary Scheme for NI Housing Executive tenants is a Department for Communities supported initiative that aims to enable households at risk of violence to remain safely in their own homes by installing a 'sanctuary' in the home and through the provision of support to the household. Research to consider the potential to broaden the Sanctuary Scheme further for NI Housing Executive tenants and to consider how the scheme could be widened to include other tenures was also delayed due to COVID-19. It is expected that this research will be completed by the end of 2020 with a draft action plan published by 31 March 2021.²⁷

In June 2020, the Department of Health provided Women's Aid with an additional £60,000 to provide an initial care package for families who have experienced, or been a victim of, domestic abuse.²⁸ In July 2020, the NI Minister for Infrastructure, Nicola Mallon MLA, and Minister of Justice, Naomi Long, MLA announced that free public transport will be available for those fleeing domestic abuse.²⁹ This will be available in cases where refuge or emergency accommodation has been arranged through the 24 hour Domestic and Sexual Abuse Helpline, the NI Housing Executive or Women's Aid. This supplements, but does not replace, the current provision through the NI Housing Executive for taxi provision where required. Notably other governments within the UK have provided significantly more extra funding to domestic violence organisations during the COVID-19 crisis. The Scottish Government provided £1.35 million to Scottish Women's Aid and the UK Government committed an additional £28 million package for domestic violence victims and £3.8 million for community based domestic abuse and modern slavery services in England and Wales.

Right to private and family life

Visits to residential care homes

In response to COVID-19, the visiting rights of residents in care homes within NI have been significantly curtailed. On 17 March 2020, initial

23 'Increase in NI Domestic Violence Calls', *ITV News*, 13 April 2020.

24 *Ibid.*

25 Email correspondence from Department of Justice to NI Human Rights Commission, 16 July 2020.

26 *Ibid.*

27 *Ibid.*

28 Department of Health, 'Press Release: Cross government response to tackling domestic and sexual abuse during COVID-19', 26 June 2020.

29 Department for Justice, 'Press Release: Ministers announce free public transport for those fleeing domestic abuse', 6 July 2020.

guidance on COVID-19 restrictions for residential care homes was issued and this was followed with an updated version on 26 April 2020.³⁰ This guidance enabled each individual care home to establish its own approach to whether residents could be visited and under what circumstances. These decisions were to be guided by risk assessments conducted by the homes and the general principles that all visits had to be booked in advance and that the care home should engage with family members when proposing to take a bespoke approach in facilitating a visit to a specific resident. Given the risk involved, care homes initially stopped all visits to all residents.

In May 2020, further modifications were made to the Department of Health's guidance, which allowed at minimum family, friends or loved ones to be facilitated to safely visit dying patients. On 6 July 2020, regional principles on care home visits took effect. These principles included a surge grid, which set out a tiered approach for how prevalent the virus was in a care home's geographical area or the care home itself to help guide a care home's decision as to when to relax or tighten restrictions. Consequently, with a reduction in prevalence of the virus, many care homes started to permit visits to a range of residents, albeit with a bespoke approach to what form such visits took.

In September 2020, with the NI Executive's decision to start reintroducing restrictions in response to a rise in COVID-19 infections, the Department of Health issued further guidance for care homes.³¹ While acknowledging that there will be situations where individual care homes will have to amend their approach depending on the risk to their residents, in principle care homes should facilitate one face-to-face visit by one person per week, per resident. According to the guidance every effort should continue to be made to enable other forms of visiting to ensure residents and patients maintain important social connections, such as through the use of technology. Additional consideration should be given to residents at the end of life. Care homes were also encouraged to introduce the concept of care partners, to help support residents' physical, mental and emotional well-being. However, it has been reported that only a small number of care homes in NI have implemented the care partners scheme.³²

In November 2020, concerned family members called for practical and financial help from the Department of Health to support care homes to implement the care partners scheme, highlighting the negative impact that lack of face-to-face visits was having on care home residents, particularly those with dementia.³³ In addition, a judicial review is being sought into how the Department of Health's policies are being implemented by a residential care home in Co Armagh. The applicant's access to her 87-year-old mother who has dementia has been significantly limited since March 2020. The applicant claims that the inflexibility she has experienced is in breach of her human rights.³⁴

30 Department of Health, 'COVID-19: Guidance for Nursing and Residential Care Homes in NI' (DoH, 2020).

31 Department of Health, 'COVID-19: Regional Principles for Visiting in Care Settings in NI' (DoH, 2020).

32 'COVID-19 visiting scheme in place at "small number" of care homes', *BBC News*, 23 November 2020.

33 *Ibid.*

34 Alan Erwin, 'Coronavirus: NI woman launches legal action over restrictions on visiting mum in care home', *Belfast Telegraph*, 24 November 2020.

In 2020, the Commission met with the Minister of Health, Robin Swann MLA, advising that, in line with Article 8 ECHR (right to respect for family life), a proportionate response to restricting visits in residential care homes in NI is required. This also requires ensuring that restrictions are in place for only as long as is necessary and that any restrictions take into account individual and changing circumstances.

Right to work and to just and favourable conditions of work

Accessible childcare

In March 2020, to stop the spread of COVID-19 schools and childcare facilities were closed, which due to the lack of alternative childcare available, impacted on parents/guardians' ability to work. The potential loss of wages and limited paid parental leave available, risked increasing household poverty. This applied particularly to parents of disabled children, as childcare for children with disabilities is extremely limited even in ordinary circumstances. Some schools remained open for the purpose of providing childcare and education for children of key workers. However, there was a lack of childcare provision for pre-school ages. Unlike in Wales, where free childcare was rolled out for children of key workers aged under five years old.³⁵ Childcare for key workers employed outside school hours was also difficult to source.

There was also a lack of clarity around whether parents were expected to continue to pay childcare fees to childcare providers that were not operating during COVID-19. In Ireland, the government has reassured parents that they were not required to pay childcare fees during this COVID-19 crisis, without this impacting on the ability to maintain their childcare places post-COVID-19.³⁶ The Government of Ireland also committed to reimbursing childcare employers to ensure the childcare sector was in a position to reopen after COVID-19.³⁷

Carers

In June 2020, the Commission hosted two COVID-19 and disability rights roundtables with key stakeholders from the disability sector in NI, including representatives of carers. During these discussions it was raised that continuing to provide increased care becomes even more challenging with many carers having to return to their paid work following a period of shielding or furlough.³⁸ The Commission included these findings within its joint written evidence with the Equality Commission NI to the House of Commons Women and Equalities Committee's inquiry into disability and access to services during COVID-19.³⁹

In October 2020, Carers UK reported that there were up to 310,000 unpaid carers in NI. Of the 826 carers surveyed in NI, 702 (85 per cent)

35 Welsh Government, 'Coronavirus: Childcare for Under Five Year Olds Parents Guidance' (Welsh Government, 2020).

36 Gov.ie, 'Press Release: Minister Katherine Zappone announces measures to support Childcare Providers and Parents during COVID-19 closures', 25 March 2020.

37 Ibid.

38 Information provided by a stakeholder attending the IMNI Virtual Roundtable on Disability and COVID-19, 23 June 2020.

39 UN CRPD Independent Mechanism of NI, 'Women and Equalities Committee's Inquiry into the Unequal Impact of COVID-19: Disability and Access to Services' (NIHRC and ECNI, 2020).

reported they were providing more care. For 305 surveyed unpaid carers in NI (37 per cent) this was due to the needs of the person they care for having increased and for 371 (45 per cent) this was because local services have reduced or closed.⁴⁰ In terms of the impact on unpaid carers, 479 (58 per cent) of those surveyed in NI reported feeling more stressed and 437 (53 per cent) said it had an impact on their health and wellbeing.⁴¹ This includes 503 (61 per cent) of those surveyed in NI not being able to take any break from their caring role during the COVID-19 pandemic, 140 (17 per cent) unable to take as many breaks as they felt they needed and 223 (27 per cent) worried about being able to care safely, due to a lack of knowledge, information or equipment.⁴² Additionally, 594 (72 per cent) of unpaid carers surveyed in NI are worried about how they would cope if further lockdowns or local restrictions were introduced, 602 (73 per cent) reported feeling exhausted and worn out as a result of caring during the COVID-19 pandemic and 363 (44 per cent) of carers feel lonely and cut off from people.⁴³ Financial strain was also a concern for a number of unpaid carers surveyed in NI with 231 (28 per cent) struggling to make ends meet, 74 (9 per cent) experiencing debt as a result of caring, 74 (9 per cent) having reduced hours to manage their caring responsibilities and 33 (4 per cent) had given up work to care since the COVID-19 pandemic.⁴⁴ Carer's Allowance in NI has not changed to address increasing needs due to COVID-19.⁴⁵ This is unlike in Scotland, where an extra Carers Allowance Supplement is being paid due to COVID-19.⁴⁶

Right to adequate standard of living and to social security

Child poverty

In March 2020, the Minister for Communities, Carál Ní Chuilín MLA, and the Minister of Education, Peter Weir MLA, announced plans to provide direct payments to families in receipt of Free School Meals during term-time school closures due to COVID-19.⁴⁷ 97,000 children have benefitted from this scheme. In June 2020, the Minister of Finance, Conor Murphy MLA, allocated funds for a summer food scheme, which extended Free School Meals during the school holidays.⁴⁸ The Minister of Education has not committed to continue Free School Meals during school holidays as standard stating that children going hungry during school holiday periods “while it may be exacerbated this year by COVID-19, it is something that causes concern during every holiday period” and that it requires “a cross-departmental effort to address this issue including consideration of the

40 Carers UK, 'Caring Behind Closed Doors Six Months On: The Continued Impact of the Coronavirus (COVID-19) Pandemic on Unpaid Carers' (Carers UK, 2020), at 30.

41 Ibid.

42 Ibid.

43 Ibid.

44 Ibid.

45 Raymond Russell, 'Research and Information Service Briefing Paper: Background Information and Statistics on Carers in NI' (NI Assembly, 2017).

46 Scottish Government, 'Coronavirus Carer's Allowance Supplement'. Available at: <https://www.mygov.scot/carers-allowance-supplement/coronavirus-carers-allowance-supplement/>

47 Department of Education, 'Press Release: Ministers take action in relation to Free School Meals payment', 26 March 2020.

48 Department of Finance, 'Press release: Murphy allocates funds for Health, Childcare & Free School Meals', 30 June 2020.

continuation of the scheme”.⁴⁹ In November 2020, the NI Executive agreed to extend the free school meal scheme over the school holidays until Easter 2022.⁵⁰

Homelessness

In March 2020, the Department for Communities agreed with the NI Housing Executive and Housing Associations that any social housing tenant facing difficulties paying rent during COVID-19 would not be evicted.⁵¹

In May 2020, the Private Tenancies (Coronavirus Modifications) Act 2020 came into force. The Act protects private tenants from eviction during the period of the health crisis by extending the notice to quit period from four to 12 weeks. The Act was originally due to only apply for six months. However, in August 2020, the Minister for Communities, Carál Ní Chuilín MLA, stated that “given the need to prepare for a possible second wave of the virus, and as the various additional economic supports such as the furlough scheme wind down in the autumn, I have decided it is necessary to extend the emergency period”.⁵² On 29 September 2020, the Private Tenancies (Coronavirus Modifications) Regulations (NI) 2020 came into operation, which extended the application of the 2020 Act to 31 March 2021.

A sector-led, multi-agency group was set up with the assistance of funding from the Department for Communities to co-ordinate the response to homelessness and COVID-19, which helped ensure no one slept rough during the strictest period of lockdown.⁵³

Right to health

Mental capacity

The Coronavirus Act 2020 enabled temporary modifications to the commenced aspects of the Mental Capacity Act (NI) 2016, primarily deprivation of liberty safeguards. The temporary provisions relax some of the statutory requirements of these safeguards during the COVID-19 pandemic, to ensure that persons can still be deprived of liberty during the pandemic crisis when staff availability may be significantly reduced.⁵⁴ The details are set out in the Mental Capacity Act (NI) 2016 Emergency Code of Practice Coronavirus Act 2020, which confirms that “the provisions in the Coronavirus Act are permissive and do not remove the normal procedures. Rather they provide an alternative when the normal procedures cannot be followed”.⁵⁵ The Health and Social Care Trusts are required to monitor the use of the modified provisions and must provide a

49 NI Assembly Hansard, ‘Response to Written Questions: Free School Meals – Peter Weir MLA – AQW 7681/17-22’, 8 October 2020.

50 Robbie Meredith, ‘Free school meals: Meals to be funded during holidays until 2022’, *BBC News*, 20 November 2020.

51 Department for Communities, ‘Press Release: Housing support crucial in this crisis – Hargey’, 27 March 2020.

52 Department for Communities, ‘Press Release: Minister Ní Chuilín announces extension of legislation to protect renters’, 19 August 2020.

53 Nicola McCrudden, ‘No Going Back: Tackling NI’s Homelessness Under COVID-19’, *Campbell Tickell*, 30 July 2020.

54 Department of Health, ‘Press Release: Coronavirus and temporary regulations’, 1 April 2020.

55 Department of Health, ‘Mental Capacity Act (NI) 2016 Emergency Code of Practice Coronavirus Act 2020’ (DoH, 2020), at 1.

report to the Department of Health within three months of the emergency ending.⁵⁶

Termination of pregnancy

Since 31 March 2020, terminations have been legalised in NI in a range of circumstances, which are set out in detail in Chapter 3.⁵⁷ However, the Department of Health has not commissioned the required healthcare services to implement these regulations. The Department of Health has also not provided guidance to cover services during the pandemic, particularly given travel restrictions imposed by COVID-19.

The Department of Health's lack of action has made women, girls and transgender men that require or are seeking access to terminations in NI particularly vulnerable during COVID-19, especially during the initial stages of lockdown when significant travel restrictions were in place and many airlines were not operating flights.

Consequently, in April 2020, the Health and Social Care Trusts in NI guided by the new regulations gradually started providing certain termination services within their existing resources and without formal support from the Department of Health. This approach, which is set out in detail in Chapter 4, is not appropriate or sustainable.⁵⁸ In October 2020, due to the continued strain on the Trusts' existing resources and lack of commissioning by the Department of Health, these services started to experience significant roll-back. The Northern Health and Social Care Trust ceased all termination services and the remaining four trust areas do not have the resources to fill this gap, creating a disparity of service provision across NI. Additionally, while some trusts initially offered termination services beyond 10 weeks, this service has now ceased across NI.⁵⁹

Right to education

Academic selection

The disruption to education caused by COVID-19 prompted a number of calls for academic selection to be suspended in 2020. In May 2020, the NI Commissioner for Children and Young People wrote to the Board of Governors and principals of selective post-primary schools urging them to not use academic selection for admitting pupils this upcoming school year.⁶⁰ In June 2020, the Catholic Principals' Association called for transfer tests to be scrapped until 2021.⁶¹

In May 2020, a number of grammar schools announced they will not use academic selection for their 2021 intake.⁶² The Minister of Education, Peter

56 Ibid, at para 28.

57 Abortion (NI) Regulations 2020; Abortion (NI) (No 2) Regulations 2020.

58 Meetings between NI Human Rights Commission, Health and Social Care Trusts, Royal Colleges of Healthcare Professionals and Informing Choices NI, August-October 2020.

59 Ibid.

60 Grainne Connolly, 'Schools urged to avoid transfer tests after lockdown', *Q Radio*, 27 May 2020.

61 John Toner, 'Coronavirus: Catholic heads call for suspension of selection tests in NI', *Belfast Telegraph*, 15 June 2020.

62 'Five grammar schools will not use academic selection', *ITV*, 29 May 2020.

Weir MLA, responded that there was no “viable alternative to put in its place”.⁶³ The Minister of Education further stated that:

*my concern is partly driven by a belief that if there is no opportunity for academic selection we will move, whether it is in the short term or the long term, much more to the situation that we see in England and other places. Selection will happen in some shape or form, because there will always be schools that are oversubscribed and some that are undersubscribed.*⁶⁴

In May 2020, the Association of Quality Education and Post Primary Transfer Consortium announced plans to delay the pending post-primary transfer tests by two weeks.⁶⁵ In June 2020, a judicial review was taken by parents claiming that the postponement of the transfer test of at least two weeks further discriminated against disadvantaged families.⁶⁶ Consequently, transfer tests have been postponed further to January and February 2021, with results due in March 2021.⁶⁷

School examinations

In March 2020, examinations for GCSEs, AS and A levels and vocational qualifications were cancelled in NI.⁶⁸ The Minister of Education, Peter Weir MLA, directed the Council for the Curriculum, Examinations and Assessment to calculate grade outcomes for pupils in NI based on a combination of teacher professional judgements and statistical modelling, with the option for an appeals process where errors in calculations or communications were suspected.⁶⁹

In August 2020, the Minister for Education announced that standardisation would be abandoned for GCSE, A level and AS level results, with pupils awarded the higher of the grades submitted by their centre or the grade calculated by the Council for the Curriculum, Examinations and Assessment.⁷⁰ This was after 37 per cent of A level grades calculated by schools had been downgraded through the standardisation process.⁷¹ Pearson, the educational company that assesses vocational qualifications, also delayed its publication of BTec results by a week to enable reassessment on the basis of teacher estimates to ensure they were not downgraded during moderation.⁷²

Special educational needs

The Temporary Modification of Education Duties Notice (NI) 2020 and its subsequent iterations temporarily modified legal duties covering special educational needs, including assessment, providing statements and

63 Robbie Meredith, 'Transfer tests: Education Minister rejects test suspension call', *BBC News*, 19 May 2020.

64 NI Assembly Hansard, 'Ad Hoc Committee on the COVID-19 Response: Ministerial Statement - Education', 22 May 2020.

65 Robbie Meredith, 'Transfer tests: Education Minister rejects test suspension call', *BBC News*, 19 May 2020.

66 Alan Erwin, 'Parents in legal battle over NI transfer test delay', *Belfast Telegraph*, 16 June 2020.

67 'Transfer tests: Exams put back until January 2021', *BBC News*, 2 September 2020.

68 Robbie Meredith, 'Coronavirus: Further cancellations for GCSE and A-level exams', *BBC News*, 28 March 2020.

69 Council for the Curriculum, Examinations and Assessment, 'Press release: CCEA announces how GCSEs, AS and A levels will be Awarded in Summer 2020' 16 April 2020; Council for the Curriculum, Examinations and Assessment, 'Regulation Decisions at a Glance: Key Points from Our Decisions Report Following Our Consultation on an Appeals Process for GCSE, AS and A level Qualifications in Summer 2020' (CCEA, 2020), at 1.

70 Eimear Flanagan, 'GCSE and A-level results: Q&A on how 2020 grades are decided', *BBC News*, 18 August 2020.

71 Ibid.

72 Adam Forrest, 'BTec students to begin receiving revised results after delay "chaos"', *Independent*, 25 August 2020.

require that the Education Authority NI, schools and others will have a duty to use their best endeavours to make provision.

This modification only applied where an inability to comply with a legal duty was attributable to the temporary closure of schools and the reallocation of Education Authority NI and health and social care resources to meet other essential services. These changes applied for 28 days at a time. All schools in NI reopened the week commencing 31 August 2020.⁷³ Since then some schools have taken individual decisions, guided by the Public Health Agency, to partially or fully close for a set period where there have been COVID-19 positive cases within the school community. In October 2020, the NI Executive decided on the basis of medical advice to close all schools in NI for a period of two weeks.⁷⁴

73 Coronavirus Act 2020 Temporary Modification of Education Duties (No 12) Notice (NI) 2020.

74 'Schools to close and tight new hospitality rules in NI', *BBC News*, 15 October 2020.

Chapter 3 – Significant developments

Unlike in 2019 when there was none, there is one ‘green’ in 2020, concerning equal marriage and civil partnerships. Green issues are those that have been acknowledged as requiring action to protect human rights in NI and an effective response has been provided by the UK Government, NI Executive or relevant public authorities. In essence, a firm commitment to address the matter has been demonstrated and undertaken.

The remainder of the issues raised in this chapter are categorised as ‘amber’ for 2020. These are issues where initial steps have been taken towards providing an effective response or the necessity to take action has been acknowledged by the relevant body. Such actions may have commenced, but are not yet completed. An ‘amber’ issue may not be at a level that constitutes an ongoing violation or abuse of human rights, but it requires action by the UK Government, NI Executive or relevant public authorities.

There have been a number of significant developments in 2020, some are positive and others are negative. Many developments have progressed regardless of COVID-19, while other developments have experienced a delay due to the pandemic. This chapter provides an overview of the significant developments. The developments that were a direct response to the pandemic are set out in Chapter 2.

Equality and non-discrimination

Discrimination on grounds of sexual orientation

Sexual Orientation Strategy

The New Decade, New Approach agreement committed to publishing a sexual orientation strategy.⁷⁵ In October 2020, the Department for Communities published an indicative timetable for the development and publication of the sexual orientation strategy. Development of this strategy adopts a co-design approach, which includes appointing an Expert Advisory Panel and undertaking ongoing engagement with a Co-Design Group and cross-departmental working group made up of key stakeholders. The Expert Panel has been tasked with gathering evidence to inform the strategy and is due to provide a report to the Department for Communities by the end of December 2020. The Co-Design Group and cross-departmental working group are due to regularly meet from November 2020 until at least finalisation of themes and the action plan in June 2021. The strategy is due to be subject to public consultation in August 2021, followed by its publication in December 2021.⁷⁶ The Commission is a member of the Co-Design Group for the sexual orientation strategy.

Lee case

In 2018, the UK Supreme Court found that the refusal of a bakery to make a cake with a slogan supporting the extension of civil marriage to same sex couples was not discriminatory.⁷⁷ In 2019, Mr Lee made an application to the ECtHR on the grounds that the UK Supreme Court failed to give appropriate weight to his ECHR rights.⁷⁸ In March 2020, the ECtHR requested that the parties provide their views on how Mr Lee exhausted domestic remedies, whether there has been an interference with Articles 8, 9 and 10 ECHR and if this can be justified, and the appropriate test to be applied in a dispute of a “purely private nature”.⁷⁹ The UK Government has until 2 December 2020 to provide its written observations.

Equal marriage and civil partnerships

Section 8 of the NI (Executive Formation etc) Act 2019 required that regulations were introduced on or before 13 January 2020 by the Secretary of State for NI that provide for the extension of civil marriage to same sex couples and civil partnerships to couples not of the same sex in NI. On 13 January 2020, the Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (NI) Regulations 2019 came into force, which permitted same-sex civil marriage and opposite sex civil partnerships in NI. However, these regulations did not include religious same sex marriages, or the ability to convert a civil partnership into a marriage or vice versa.

⁷⁵ NI Office, 'New Decade, New Approach' (NIO, 2020), at 27.

⁷⁶ Department for Communities, 'Social Inclusion Strategies'. Available at: <https://www.communities-ni.gov.uk/articles/social-inclusion-strategies>

⁷⁷ *Colin McArthur, Karen McArthur and Ashers Baking Company Ltd v Gareth Lee* [2018] UKSC 49.

⁷⁸ Ashers 'gay cake' row referred to European Court', *BBC News*, 15 August 2019.

⁷⁹ Paul Johnson, "'Gay Cake' Case Communicated by ECtHR", *ECHR Sexual Orientation Blog*, 30 March 2020.

On 20 January 2020, the NI Office launched two consultations seeking views on permitting same-sex religious marriage in NI (alongside the appropriate protections);⁸⁰ and whether to allow same-sex and opposite-sex couples to convert their civil partnerships to marriage, and vice versa.⁸¹ The Commission responded to both consultations.⁸²

On 1 September 2020, the Marriage and Civil Partnership (NI) Regulations 2020 came into force. These regulations remove the prohibition of same-sex religious marriages and enable religious bodies to nominate their officiants to solemnise same-sex marriage. They also set out the protections for those religious bodies and officiants who do not wish to marry or perform civil partnership ceremonies for same-sex couples. This includes an 'opt in' system for same-sex religious marriage, allowing individual officiants to be appointed to solemnise same-sex religious marriage where the governing authority of the religious body they belong to gives its written consent to same-sex marriage to the Registrar General. It also includes protections and exemptions so that these changes do not amount to unlawful discrimination for a religious body, or an officiant, to refuse to marry a couple because they are of the same sex.

In October 2020, the UK Government laid the Marriage and Civil Partnership (NI) (No 2) Regulations 2020 before the UK Parliament which came into force on 7 December 2020. These regulations provide a three-year window in which same sex couples can convert an existing civil partnership formed in NI into a marriage and opposite sex couples can convert an existing marriage formed in NI into a civil partnership. These conversions will be backdated, meaning that the resulting relationship will be treated as having existed from the date the original relationship was formed.

Gender Equality Strategy

The New Decade, New Approach agreement committed to publishing a Gender Strategy.⁸³ In October 2020, the Department for Communities published an indicative timetable for the development and publication of the gender strategy. Development of this strategy adopts a co-design approach, which includes appointing an Expert Advisory Panel and undertaking ongoing engagement with a Co-Design Group and cross-departmental working group made up of key stakeholders. The Expert Panel has been tasked with gathering evidence to inform the strategy and is due to provide a report to the Department for Communities by the end of December 2020. The Co-Design Group and cross-departmental working group are due to regularly meet from November 2020 until at least finalisation of themes and the action plan in June 2021. The strategy is due to be subject to public consultation in August 2021, followed by its

80 NI Office, 'Same-sex Religious Marriage in NI - Government Consultation' (NIHRC, 2020).

81 NI Office, 'Marriage and Civil Partnership - Conversion Entitlements in NI - Government Consultation' (NIHRC, 2020).

82 NI Human Rights Commission, 'Submission to Marriage and Civil Partnership Conversion Consultation' (NIHRC, 2020); NI Human Rights Commission, 'Submission to Same-sex Religious Rights Consultation' (NIHRC, 2020).

83 NI Office, 'New Decade, New Approach' (NIO, 2020), at 27.

publication in December 2021. The Commission is a member of the Co-Design Group for the gender strategy.⁸⁴

Gender recognition

In 2019, the Department of Health asked the Health and Social Care Board to undertake a review of the Regional Gender Identity Service pathway. A multi-agency Gender Identity Service Pathway Review Group was established to take this forward.

In 2020, despite some delays due to COVID-19, the group has developed a draft set of objectives to help inform the future direction of the service in the region. Once agreed, the development of a set of objectives will provide the baseline from which a number of options will be developed and assessed to identify how to deliver a gender identity service that addresses existing need and is capable of meeting demand.⁸⁵ Civil society organisations have welcomed the creation of the multi-agency group, but has raised concerns that a number of persistent issues need immediate action including significant delays in receiving support and treatment from Brackenburn Clinic and the need to support those self-medicating as a result.⁸⁶

Hate crimes

In early 2020, the Independent Hate Crime Review Team undertook a public consultation on reviewing hate crime legislation in NI.⁸⁷ In addition to encouraging written submissions, the team led by Judge Desmond Marrinan, hosted a number of meetings and events with key stakeholders. The Commission submitted a response to the consultation providing human rights advice on the various issues raised within the scope of the consultation.⁸⁸ On 1 December 2020, following a delay due to COVID-19, the findings and recommendations of the Review Team were published.⁸⁹ The Minister of Justice, Naomi Long MLA, is taking time to consider the “complex and wide-ranging” recommendations.⁹⁰

Persons with disabilities

Disability Strategy

The New Decade, New Approach agreement committed to publishing a Disability Strategy.⁹¹ In October 2020, the Department for Communities published an indicative timetable for the development and publication of the disability strategy. Development of this strategy adopts a co-design approach, which includes appointing an Expert Advisory Panel and

84 Department for Communities, 'Social Inclusion Strategies'. Available at: <https://www.communities-ni.gov.uk/articles/social-inclusion-strategies>

85 Health and Social Care Board, 'Gender Identity Service Review of the Pathway'. Available at: <http://www.hscboard.hscni.net/gender-identity-service/>

86 Email correspondence with Transgender NI and NI Human Rights Commission, 21 October 2020.

87 Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: An Independent Review - Consultation Paper' (IHCR, 2020).

88 NI Human Rights Commission, 'Submission to the Hate Crime Review Consultation' (NIHRC, 2020).

89 Department of Justice, 'Hate Crime Legislation in NI: Independent Review' (DoJ, 2020).

90 Department of Justice, 'Press Release: Long welcomes completion of review into hate crime legislation', 30 November 2020.

91 NI Office, 'New Decade, New Approach' (NIO, 2020), at 27.

undertaking ongoing engagement with a Co-Design Group and cross-departmental working group made up of key stakeholders. The Expert Panel has been tasked with gathering evidence to inform the strategy and is due to provide a report to the Department for Communities by the end of December 2020. The Co-Design Group and cross-departmental working group are due to regularly meet from November 2020 until at least finalisation of themes and the action plan in June 2021. The strategy is due to be subject to public consultation in August 2021, followed by its publication in December 2021. The Commission is a member of the Co-Design Group for the disability strategy.⁹²

Independent Living Fund

The UK-wide Independent Living Fund was closed on 30 June 2015 and future responsibilities were transferred to the individual jurisdictions.⁹³ This fund seeks to support persons with disabilities in the UK, including NI, to achieve positive independent living outcomes, and to have greater choice and control over their lives. In NI and Scotland, the Independent Living Fund for existing applicants has been retained and is administered by the Independent Living Fund Scotland.⁹⁴ As these new arrangements restricted continued eligibility of the fund to existing users, they will lead to the fund's eventual closure. In early 2020, Independent Living Fund Scotland, with the support of the Department of Health, publicly consulted on whether the fund should continue and be re-opened for new applicants. This is following ongoing work with the Independent Living Fund Working Group established by the Department of Health, of which the Commission is a member. The Commission responded to the online consultation in favour of continuing the fund and re-opening it to new applicants. In November 2020, the Department of Health and Independent Living Fund were developing a number of options drawing from the public consultation responses and in consultation with the Independent Living Fund Working Group to present to the Minister of Health for consideration.

UN CRPD Independent Mechanism in NI's Disability Forum

In September 2020, after two years' of consultation with the disability sector, the terms of reference of the UN CRPD Independent Mechanism in NI's Disability Forum were finalised.⁹⁵ It is intended that the first meeting of the forum of members from across the disability sector will be held before end of 2020. Reflecting Article 33(3) of the UN CRPD and the UN CRPD Committee's General Comment No 7,⁹⁶ this forum was established to provide a dedicated space to ensure disabled people and their representative organisations are at the core of the Independent Mechanism's work in promoting, protecting and monitoring the implementation of the UN CRPD in NI. It builds on the previous

92 Department for Communities, 'Social Inclusion Strategies'. Available at: <https://www.communities-ni.gov.uk/articles/social-inclusion-strategies>

93 Independent Living Fund, 'Press Release: Decision on the Future of the ILF', 6 March 2014.

94 Steven Preece, 'NI Independent Living Fund to be Administered in Scotland', *Welfare Weekly*, 28 January 2018.

95 UN CRPD Independent Mechanism of NI, 'IMNI Disability Forum: Maximising the Involvement of People with Disabilities in the Realisation of the UN CRPD in NI' (NIHRC and ECNI, 2020).

96 CRPD/C/GC/7, 'UN CRPD Committee General Comment No 7: Participation of Persons with Disabilities, Including Children with Disabilities, Through their Representative Organisations, in the Implementation and Monitoring of the Convention', 9 November 2018.

engagement and involvement of disabled people and their representative organisations in the Independent Mechanism’s UN CRPD related work.

Autism Strategy

Following the publication of an initial Autism Strategy in 2013, the Autism Act (NI) 2011 requires the now Department of Health to publish revised strategies at regular intervals. The initial Autism Strategy is due to expire at the end of 2020. The Strategy’s three-year action plan expired in 2016. The New Decade, New Approach agreement commits to publish a Disability Strategy and a Children and Young People’s Strategy, but not an Autism Strategy.⁹⁷ In October 2020, the Minister of Health, Robin Swann MLA, confirmed that he had intended to publish a revised autism strategy at the beginning of 2021, however “this work has been significantly constrained as a result of the COVID-19 pandemic”.⁹⁸ The Department of Health continues to engage with stakeholders via bilateral meetings to inform key priorities for the future.

In March 2020, Pam Cameron MLA, made an initial proposal to introduce the Autism (Amendment) (NI) 2021 as a Private Members’ Bill to the NI Assembly. The Bill seeks to amend the existing Autism Act (NI) 2011 to introduce new duties, review and update the current Programme for Care, introduce an independent scrutiny mechanism and develop funding for a NI autism training strategy. The proposed Bill is being developed for drafting and is expected to be introduced in the current 2017-2022 mandate of the NI Assembly.⁹⁹

Supported employment

In 2020, the NI Union of Supported Employment has expressed concern about the absence of any clear plan to ensure continuous funding for European Social Fund projects after March 2022, when such funding will no longer be available due to the UK leaving the EU.¹⁰⁰ This fund is the primary and consistent source of funding for employment projects for persons with disabilities in NI.

Sectarianism

Sectarian offences are not included in the Criminal Justice (No 2) (NI) Order 2004 as attracting an enhanced sentence as ‘aggravated by hostility’. The New Decade, New Approach agreement recognises “the need to tackle sectarianism, prejudice and hate in seeking to eliminate discrimination... [and] to see sectarianism given legal expression as a hate crime”.¹⁰¹ In 2020, the Independent Hate Crime Review Team explored the possibility of including sectarian motivation in NI hate crime law.¹⁰² On 1 December 2020, following a delay due to COVID-19, the findings and

97 NI Office, ‘New Decade, New Approach’ (NIO, 2020), at 27.

98 NI Assembly Hansard, ‘Response to Written Question – Autism Strategy – Robin Swann MLA – AQW 6252/17-22’, 5 October 2020.

99 Letter from Pam Cameron MLA to NI Human Rights Commission, 23 March 2020.

100 NI Union of Supported Employment, ‘Briefing Paper: June 2020’ (NIUSE, 2020).

101 NI Office, ‘New Decade, New Approach’ (NIO, 2020), at 43.

102 Independent Hate Crime Review Team, ‘Hate Crime Legislation in NI: An Independent Review – Consultation Paper’ (IHCRT, 2020).

recommendations of the Review Team were published.¹⁰³ The Minister of Justice, Naomi Long MLA, is considering the next steps.¹⁰⁴

Right to life

Rule of law: non-State actors

The New Decade, New Approach agreement includes a commitment to “ending paramilitarism”.¹⁰⁵ This includes a continued commitment by the UK Government to ensure the Police Service NI is “appropriately resourced to deal with terrorism and paramilitary activity”.¹⁰⁶ Also that funding is “available for a range of projects aimed at supporting community and reconciliation initiatives... which could include areas such as additional funding for tackling paramilitarism”.¹⁰⁷

The programme for ending paramilitarism in NI was initially established for five years under the Fresh Start Agreement.¹⁰⁸ The programme is administered by the NI Executive, with financial support from the UK Government. The initial programme is due to end in 2021. In August 2020, the NI Executive agreed to extend the programme for three years. The UK Government is yet to confirm what financial support it will provide for the continuation of this programme.¹⁰⁹

Right to liberty and security of the person

Alternatives to imprisonment

In early 2020, the Department of Justice consulted on reviewing sentencing in NI which included considering sentencing policy, community sentencing and alternatives to short-term prison sentencing.¹¹⁰ The Department of Justice also consulted on the proposed development of an adult restorative justice strategy for NI.¹¹¹ Restorative justice is used extensively within youth justice, but there is currently no comprehensive or strategic approach to its use for adults. In October 2020, the Commission met with Department of Justice officials to provide its views on the consultation document.¹¹² In December 2020, the proposed strategy is to be considered by the NI Assembly Committee for Justice, with its launch to follow in early 2021.¹¹³

103 Department of Justice, ‘Hate Crime Legislation in NI: Independent Review’ (DoJ, 2020).

104 Department of Justice, ‘Press Release: Long welcomes completion of review into hate crime legislation’, 30 November 2020.

105 NI Office, ‘New Decade, New Approach’ (NI Office, 2020), at 9.

106 Ibid, at 48.

107 Ibid, at 53.

108 A Fresh Start: The Stormont Agreement and Implementation Plan, 17 November 2015, at Section A.

109 Email from NI Office to NI Human Rights Commission, 15 September 2020.

110 Department of Justice, ‘Sentencing Review NI: A Public Consultation’ (DoJ, 2019).

111 Department of Justice, ‘Restoring Relationships, Redressing Harm - Development of an Adult Restorative Justice Strategy for NI’ (DoJ, 2020).

112 Meeting between Department of Justice and NI Human Rights Commission, 1 October 2020.

113 Ibid.

Definition of terrorism

In March 2020, the Independent Reviewer of Terrorism, Jonathan Hall QC, published a report on terrorism activity in 2018.¹¹⁴ He expressed that “for all its imperfections, the definition of terrorism in the Terrorism Act 2000 is able to embrace different variations of terror”.¹¹⁵ The Independent Reviewer noted that the definition is both ideology and threat neutral”.¹¹⁶ However, he continued that “the treatment of new or existing types of behaviour as terrorism can have unforeseen consequences”¹¹⁷ and that “this recognition that threats, even those capable of meeting the broad definition of terrorism in law, needed to reach a level of scale before being treated as terrorism in fact, remains relevant in the new threat-neutral world of counterterrorism”.¹¹⁸

On 26 February 2020, the Terrorism Offenders (Restriction of Early Release) Act 2020 came into force in England, Wales and Scotland. It extends the point at which an offender convicted of terrorist offences or offences with a terrorist connection can be considered for release on licence from half to two-thirds of their sentence. This Act does not apply in NI. However, on 20 May 2020, the Counter-Terrorism and Sentencing Bill, which does extend to NI, was introduced to the UK Parliament. This Bill makes provision for a serious terrorist offence with a minimal custodial term of 14 years; extended licencing and tariffs; increased maximum sentences; and the removal of early release for terrorist prisoners. The Commission provided written and oral evidence to the House of Commons Public Bill Committee tasked with scrutinising this Bill.¹¹⁹ By end of October 2020, the Bill was awaiting the Committee stage at the House of Lords. Notably, the Bill in its current form does not address the definition of terrorism.

Women in prison

In June 2020, the Criminal Justice Inspection NI published its report on Ash House Women’s Prison. Overall the findings were positive, however two key concerns were raised. First that, despite previous recommendations:

*governance of the use of force was not sufficiently robust. Too many reports did not explain why force had been necessary, they were not reviewed by managers quickly enough and body-worn camera and CCTV footage was not systematically reviewed. This was a key concern arising from this inspection.*¹²⁰

114 Jonathan Hall QC, ‘The Terrorism Acts in 2018 - Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Terrorism Acts 2000 and 2006’ (Independent Reviewer of Terrorism Legislation, 2020), at 27-28.

115 Ibid.

116 Ibid, at 28.

117 Ibid.

118 Ibid, at 29.

119 NI Human Rights Commission, ‘Briefing on the UK Counter-Terrorism and Sentencing Bill’ (NIHRC, 2020); Oral Evidence Provided by NI Human Rights Commission to House of Commons Public Bill Committee on the Counter-terrorism and Sentencing Bill, 25 June 2020.

120 Criminal Justice Inspection NI, ‘Report on an Unannounced Inspection of Ash House Women’s Prison Hydebank Wood’ (CJINI, 2020), at 7.

Second, that:

*the strategy to reduce the supply of illicit drugs and prescribed medicines in the establishment was not sufficiently robust, given that they were easily available. Too many women were testing positive for drugs and when intelligence was acted on, finds of illicit substances were frequent. However, intelligence was not used sufficiently well, and the drugs supply reduction strategy needed to be made far more effective.*¹²¹

Freedom from torture, inhuman and degrading treatment

Abuse in health and social care settings

Muckamore Abbey Hospital

In August 2020, the Department of Health published the report of an independent review of the leadership and governance at Muckamore Abbey Hospital. The report confirmed the conclusions of the previous Serious Adverse Incident Report that Muckamore Abbey Hospital was viewed as a place apart, which operated outside the sightlines and under the radar of the Belfast Health and Social Care Trust.¹²²

In September 2020, the Minister of Health, Robin Swann MLA, announced a public inquiry into the abuse of patients by staff at Muckamore Abbey Hospital that became public in 2018. The inquiry is to be held under the Inquiries Act 2005. Families and patients, both current and former, are to have the opportunity to influence the Terms of Reference for the inquiry. The Minister of Health has stated that “the work to establish the inquiry will take some time, and it is not work that can be rushed”.¹²³ The inquiry chairperson is to be appointed by end of 2020, with steps to appoint the other panel members and to confirm the terms of reference to follow.¹²⁴

The police investigations into allegations of abuse is ongoing.¹²⁵ In October 2020, 59 staff were subject to precautionary suspensions and 12 people have been arrested as part of the investigations.¹²⁶

Dunmurry Manor Care Home

In 2018, CPEA was appointed to independently review the health and social care system’s response to care failings at Dunmurry Manor Care Home.¹²⁷ In September 2020, CPEA’s first review report was published, which concluded that adult safeguarding practice “did not actively contribute” to keeping residents safe at Dunmurry Manor and that families’

¹²¹ Ibid.

¹²² Muckamore Abbey Hospital Review Team, ‘A Review of Leadership and Governance at Muckamore Abbey Hospital’ (DoH, 2020), at para 4.

¹²³ NI Assembly Hansard, ‘Response to Written Question – Muckamore Abbey Hospital Public Inquiry – Robin Swann MLA – AQW 7051/17-22’, 5 October 2020.

¹²⁴ Ibid.

¹²⁵ Department of Health, ‘Press Release: Swann announces Public Inquiry into Muckamore Abbey Hospital’, 8 September 2020.

¹²⁶ Lauren Harte, ‘Muckamore Abbey abuse scandal chair to be appointed soon, says Swann’, *Belfast Telegraph*, 11 October 2020.

¹²⁷ Department of Health, ‘Press Release: Minister announces plans for Adult Safeguarding Bill for NI’, 10 September 2020.

voices were repeatedly unheard.¹²⁸ It also found divergent safeguarding practices across the Health and Social Care Trusts.¹²⁹

CPEA's eight recommendations included establishing an Adult Safeguarding/Adult Protection Change programme and an Adult Safeguarding/Protection Bill.¹³⁰ The Minister of Health, Robin Swann MLA, has committed to "begin immediately to deliver" these recommendations, confirming that this will include legislative reform.¹³¹ The Minister of Health stated that he intends to consult on a range of legislative options to inform the development of the Adult Safeguarding Bill before the end of 2020.¹³² A new Adult Safeguarding Transformation Board, chaired by Chief Social Worker, Sean Holland, has also been established to oversee the implementation of these recommendations and "to strengthen the governance around adult safeguarding to achieve a more accountable, regional approach".¹³³

CPEA is due to publish its findings on regulation and complaints handling "in the near future".¹³⁴

Allegations of torture and cruel, inhuman or degrading treatment or punishment overseas

On the 18 March 2020, the Overseas Operations (Service Personnel and Veterans) Bill 2019-21 was introduced to the UK Parliament. The Bill aims to create protections for members of the armed forces and the UK Government relating to the legal consequences of events that occur in the course of military operations overseas, by derogation from the ECHR. It seeks to impose a six-year statutory limitation on taking cases against UK service personnel and veterans involved in overseas operations. The Bill currently excludes alleged crimes by UK military personnel within NI, but raises concerns as to the UK Government's commitment to adhering to human rights standards in the broader context, including conflict-related investigations concerning NI. By the start of November 2020, the Bill was progressing through Parliament at pace, reaching the Second Reading stage of the House of Lords.

In the Secretary of State for NI's Ministerial statement on the UK Government's revised approach to proposals for dealing with the legacy of the past in NI, this Bill was referred to as a way "to provide greater certainty for service personnel and veterans who serve in armed conflicts overseas".¹³⁵

128 CPEA, 'Independent Whole Systems Review into Safeguarding and Care at Dunmurry Manor Care Home - Evidence Paper 1: Adult Safeguarding within a Human Rights Based Framework in NI' (DoH, 2020), at para 224.

129 Ibid, at para 193.

130 Ibid, at para 221.

131 Department of Health, 'Press Release: Minister announces plans for Adult Safeguarding Bill for NI', 10 September 2020.

132 Ibid.

133 Ibid.

134 Ibid.

135 NI Office, 'Press Release: UK Government sets out way forward on the legacy of the past in NI', 18 March 2020.

Deprivation of citizenship

In March 2020, the UK Government published the Transparency Report into the use of disruptive and investigatory powers in 2018/2019, which confirmed that the numbers of Temporary Exclusion Orders were small, but appear to be increasing year on year.¹³⁶

In February 2019, Shamima Begum was stripped of her British citizenship. Ms Begum moved to Syria to join the Islamic State at the age of 15. The then Home Secretary, Sajid Javid MP, stated that “where those people pose any threat to this country, I will do everything in my power to prevent their return. This includes stripping dangerous individuals of their British citizenship”.¹³⁷ He further stated that this power “is used only in extreme circumstances, where conducive to the public good”.¹³⁸

In July 2020, the Court of Appeal for England and Wales noted that in her current circumstances Ms Begum was unable to play any meaningful part in her appeal which limited the fairness and effectiveness of that appeal. While recognising the security concerns about Ms Begum, the Court of Appeal unanimously found “the only way in which she can have a fair and effective appeal is to be permitted to come into the UK to pursue her appeal” and that “fairness and justice must on the facts of this case outweigh the national security concerns”.¹³⁹ In addition the Court of Appeal clarified that the Special Immigration Appeals Commission should undertake a ‘full merits appeal’ in any decision by the Home Secretary, rather than limiting itself to the principles of judicial review. This should include considering any risks to rights in Articles 2 and 3 of the ECHR for any person deprived of their UK citizenship.¹⁴⁰ Following the UK Government’s application, the Court of Appeal considered that this case raised a point of law of public importance. The matter was referred to the UK Supreme Court with a hearing due at the end of November 2020.¹⁴¹

Domestic and sexual violence and abuse

Domestic Abuse and Family Proceedings Bill

On 31 March 2020, the Domestic Abuse and Family Proceedings Bill was introduced to the NI Assembly. The Bill provides for a new domestic abuse offence capturing patterns of psychological abuse, violence, and/or coercion of a partner, ex-partner or family member. It also includes a statutory aggravation of domestic abuse, which may attract enhanced sentencing for other offences. In contrast to the Domestic Abuse Bill currently before the UK Parliament, this Bill does not include provision for Domestic Violence Protection Notices and Domestic Violence Protection Orders or a Domestic Abuse Commissioner. In 2020, the Commission provided written and oral evidence to the NI Assembly Committee of

¹³⁶ HM Government, ‘Transparency Report: Disruptive Powers 2018/19’ (HoC, 2020), at 21.

¹³⁷ UK Parliament House of Commons Hansard, ‘Urgent Question: Deprivation of Citizenship Status – Sir Edward Davey MP – HC Vol654/Coll1485-1496’, 20 February 2019.

¹³⁸ Ibid.

¹³⁹ *Begum v Special Immigration Appeals Commission* [2020] EWCA Civ 918, at para 120.

¹⁴⁰ Ibid, at paras 123-129.

¹⁴¹ *R (On the Application of Begum) v Special Immigration Appeals Commission* [2020] UKSC.

Justice on the Bill.¹⁴² This evidence focused on the need to criminalise domestic abuse and for the UK to ratify the Istanbul Convention promptly. It also suggested that the Bill is amended to reflect a broad range of personal connections, to adopt a victim-centred approach to reasonable defence, and to ensure the best interests of the child are paramount regarding a child's involvement in any court proceedings and evidence gathering. The Department of Justice intends the Bill to be enacted in early 2021.

Upskirting

In England and Wales, the Voyeurism (Offences) Act 2019, which criminalises upskirting, came into force on 12 April 2019. Similar legislative provision has been made in Scotland through the Sexual Offences (Scotland) Act 2009. There are no similar provisions that currently provide for the specific offence of upskirting in NI.

After consulting on the matter, the Minister of Justice, Naomi Long MLA, is to introduce a specific offence banning upskirting in NI within the Miscellaneous Provisions Bill, which is to be introduced to the NI Assembly in 2021.¹⁴³

Historical abuse of children and adults

On 31 March 2020, the Historical Institutional Abuse Redress Board was established, in line with the Historical Institutional Abuse (NI) Act 2019. On 3 April 2020, the application process for eligible candidates opened and will run for five years.

In May 2020, it was reported that the identities of 250 survivors of historical institutional abuse in NI were revealed through an emailing error by the office of the Interim Advocate for Victims and Survivors of Historical Institutional Abuse.¹⁴⁴ An independent investigation by the NI Civil Service Group Internal Audit and Fraud Investigation Service found that this breach occurred because the newsletter email was created by copying the email addresses from the office mailing list into the 'to' field of the email rather than the 'bcc' field. A number of recommendations were made to prevent a re-occurrence and to improve data protection and information management arrangements.¹⁴⁵ In September 2020, the Executive Office received letters from some of those affected seeking compensation in respect of the breach. The Executive Office is negotiating on the basis of these letters, with the possibility of those affected seeking court action.¹⁴⁶

In June 2020, the NI Criminal Injuries Compensation Scheme 2009 was amended so that anyone previously denied compensation under the same

142 NI Human Rights Commission, 'Advice to the Department of Justice: Domestic Abuse and Family Proceedings Bill' (NIHRC, 2020); Oral Evidence of NI Human Rights Commission to the NI Assembly Committee for Justice, 2 July 2020.

143 Department of Justice, 'Review of the Law on Child Sexual Exploitation' (DoJ, 2019), at para 4.88-4.90; Department of Justice, 'Press Release: Measures to strengthen laws protecting children from sexual exploitation to be taken forward', 20 October 2020.

144 Declan Harvey, 'Historical Institutional Abuse: Survivors identified in 'massive' email error', *BBC News*, 23 May 2020.

145 NI Civil Service Group Internal Audit and Fraud Investigation Service, 'Data Breach Investigation Office of the HIA Interim Advocate' (NICSGIAFIS, 2020).

146 Jayne McCormack, 'Historical Institutional Abuse: Survivors seek damages over data breach', *BBC News*, 9 September 2020; Henry McDonald, 'NI abuse survivors reject compensation offer for identity leak', *The Guardian*, 6 September 2020.

household rule, or put off from coming forward because of it, will be able to make a fresh application. The time limit for applications to be received is two years from 9 June 2020. However, the time limit may be waived if the Department of Justice considers that there is a good reason for the delay and it is in the interests of justice to do so.¹⁴⁷

In October 2020, Fiona Ryan was appointed as Commissioner for Victims and Survivors of Historical Institutional Childhood Abuse.¹⁴⁸

Spit and bite guards

In March 2020, spit and bite guards were introduced by the Police Service NI to protect officers working in specialist functions, such as the COVID-19 Response Teams, custody suites, cell vans and armed response, during the COVID-19 pandemic.¹⁴⁹ There have been a number of incidents reported where police officers were spat at by individuals claiming to have COVID-19.¹⁵⁰

The Police Service NI and Policing Board NI are exploring the use of spit and bite guards in NI on a longer term basis.¹⁵¹ Spit and bite guards are already used more broadly in police forces across other parts of the UK. In Ireland, spit and bite guards have been used by An Garda Síochána, but this is to a measure of last resort that is to only be used during the COVID-19 pandemic.¹⁵² In 2020, the Commission provided advice and met both the Police Service NI and the Policing Board NI on the human rights concerns linked to spit and bite guards, particularly in the context of more long-term use.

In November 2020, the NI Policing Board published its review of the Police Service NI's response to COVID-19. It recommended that:

*spit and bite guards should now be phased out as soon as possible and officers who have been provided with spit and bite guards should, instead, be provided with the necessary Personal Protective Equipment or other alternative... The use of spit and bite guards should, regardless, cease by 31 December 2020.*¹⁵³

However, the Police Service NI has announced that, from 18 December 2020, spit and bite guards will be issued to a wider range of police officers, including all local policing teams, all neighbourhood policing teams, tactical support groups, Roads Policing Unit, district support teams and C4 Special Operations.¹⁵⁴ The Chief Constable of the Police Service NI, Simon Byrne, has stated that he “believes that an enhanced roll out

147 Department of Justice, ‘Press Release: Justice Minister announces changes to the Criminal Injuries Compensation Scheme’, 9 June 2020.

148 Jayne McCormack, ‘Historical Institutional Abuse: Fiona Ryan named commissioner for victims’, *BBC News*, 6 October 2020.

149 Rebecca Black, ‘Police Service NI to deploy spit and bite guards in custody suites’, *Belfast Telegraph*, 27 March 2020.

150 Andrew Quinn, ‘Man on NI bus says he has COVID-19, spits at Police Service NI officers and is arrest for drugs offences’, Newsletter, 29 May 2020; ‘Newtownabbey man spat blood in policeman’s face before claiming he had COVID-19, court told’, *Belfast Telegraph*, 17 June 2020.

151 Meeting between NI Human Rights Commission and Policing Board NI, 19 June 2020; Meeting between NI Human Rights Commission and Police Service NI, 22 July 2020.

152 Conor Gallagher, ‘COVID-19: Large spike in use of spit hoods by gardaí in past week Enforcement proceedings related to coronavirus laws brought against 192 individuals’, *The Irish Times*, 12 May 2020.

153 Policing Board NI, ‘Report on the Thematic Review of the Policing Response to COVID-19’ (PBNI, 2020), at 12.

154 Letter from Police Service NI to NI Human Rights Commission, 23 November 2020.

to all operational officers fulfils his obligations under health and safety legislation which require... [the provision of] safe systems of work for all employees”.¹⁵⁵ The use of spit and bite guards by the Police Service NI remains a temporary measure in response to the COVID-19 pandemic and is subject to a monthly review by the Chief Constable.¹⁵⁶ All police officers issued with a spit and bite guard must have completed the mandatory online training package. The Police Service NI is also issuing a revised policy and guidance document on the use of spit and bite guards in NI and plans to continue to keep this a live document.¹⁵⁷

Spit and bite guards can be used on children aged 10 years old and upwards, in line with the current age of criminal responsibility in NI.¹⁵⁸ The policy includes requirements to consider the best interests of the child as a primary concern when deciding whether to use a spit and bite guard on children. It also states “where officers or staff are already aware that a member of the public is vulnerable by way of age (under 18), mental health or other debilitating condition, which the use of a spit and bite guards could exacerbate, the presumption will be that a spit and bite guard should be used”.¹⁵⁹ In its meeting with the Police Service NI on spit and bite guards, the Commission raised concerns about using them beyond the pandemic and the use of spit and bite guards on children in any circumstances alongside the need to ensure spit and bite guards were a last resort and only used where they did not cause harm.

Refugee resettlement

In April 2020, the Global Resettlement Scheme was established by the UK Government. This scheme consolidates the Vulnerable Persons’ Resettlement Scheme, the Vulnerable Children’s Resettlement Scheme and the gateway protection programme into one scheme. It aims to be simpler to operate and provide greater consistency in the way that the UK Government resettles refugees. Its geographical focus is also broadened beyond the Middle East and North Africa. It includes a new process for emergency resettlement with the intention of the UK being able to respond quickly to instances when there is a heightened need for protection, providing a faster route to resettlement where lives are at risk. The new scheme will be based on need and involve the UK Government working closely with the UN High Commissioner for Refugees to identify the most vulnerable refugees from around the world.¹⁶⁰

The UK Government committed to receiving up to 5000 refugees in 2020/2021 under the Global Resettlement Scheme.¹⁶¹ The then Head of the NI Civil Service, David Sterling, committed to NI’s involvement in the scheme until March 2021. The Executive Office is conducting an evaluation of the future of refugee resettlement in NI. This evaluation was due to be completed in November 2020, but has been delayed until January

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Home Office, ‘Press Release: New global resettlement scheme for the most vulnerable refugees announced’, 17 June 2019.

¹⁶¹ Letter from Bryson to the Executive Office, 8 July 2020.

2021 due to COVID-19. In October 2020, the Commission wrote to the Executive Office in support of NI's continued and long-term involvement in refugee resettlement.¹⁶²

In 2020, the Executive Office was completing a draft refugee integration strategy, which is expected to be consulted on by the end of the year.¹⁶³

Victims' payments

On the 31 January 2020, the Victims' Payments Regulations 2020 were passed by the UK Parliament. Reflecting section 10 of the NI (Executive Formation etc) Act 2019, these regulations establish a scheme which provides for one or more payments to be made to, or in respect of, a person who has sustained an injury as a result of a 'Troubles-related injury'. Section 10(2) of the 2019 Act imposed an obligation for the regulations to enter into force by 31 May 2020. However, the funding issues and eligibility criteria for the scheme has delayed the process.¹⁶⁴

In June 2020, the (then) Commissioner for Victims and Survivors, Judith Thompson, penned an open letter to Prime Minister Boris Johnson and NI Executive demanding a resolution.¹⁶⁵ Minister of State for NI, Robin Walker MP, made it clear that in the UK Government's view "all costs for this scheme, including ongoing costs, should be funded by the NI Executive. It is a devolved matter and devolved matters are typically funded by the block grant".¹⁶⁶

On 14 August 2020, the Secretary of State for NI, Brandon Lewis MP, issued guidance for the Victims' Payments Board. This guidance aims to support the independent Board when making decisions about applicants who have serious convictions or in other exceptional circumstances with regard to material evidence.¹⁶⁷ The Board is to make a decision on a case by case basis and can only decide that victims' payments are inappropriate if the person has a relevant conviction or if there are exceptional circumstances. The guidance provides that the Board can decide that payments are inappropriate due to a range of factors, including the harm caused to someone else by the offence for which the applicant has a relevant conviction for, the specific nature of the offence and length of sentence, the age at the time of offence, or the passage of time since that offence and the individual's behaviour since. However, the Secretary of State for NI has been clear that those injured at their own hand are excluded. The Secretary of State for NI also stated that in the UK Government's view:

it is not appropriate for payments to be made to people who have a serious conviction for an offence that caused serious harm to others. Nor is it appropriate for payments to be made to people who have a recent conviction for a terrorist related offence, whether the offence

¹⁶² Letter from NI Human Rights Commission to the Executive Office, October 2020.

¹⁶³ Email from the Executive Office to NI Human Rights Commission, 29 October 2020.

¹⁶⁴ Mark Rainey, 'Concerns that eligibility row is blocking Troubles pension', *News Letter*, 23 May 2020.

¹⁶⁵ Commissioner for Victims and Survivors, 'Press Release: Open Letter to Political Representatives from the Commissioner and Victims and Survivors Forum following evidence to the NI Affairs Committee', 24 June 2020.

¹⁶⁶ House of Commons Hansard, 'Response to Written Question: Terrorism - NI - Robin Walker MP - 64964', 30 June 2020.

¹⁶⁷ NI Office, 'Guidance on Decision-making for the Victims' Payments Scheme' (NIO, 2020).

*is serious or not. In the unlikely event that the Board decides to award payments in such cases, despite this guidance being engaged, the [UK] Government will reserve the ability to exercise a power of intervention.*¹⁶⁸

On 21 August 2020, in a case challenging the delay in implementing the Victims' Payments Scheme, the High Court NI ruled that:

*the actions of the Executive Office in deliberately refusing to designate a Department and thus stymieing the implementation of the scheme in order to pressurise the Secretary of State for NI to make a different scheme which will be substantially directly funded by Westminster and which will have very different entitlement rules constitutes unlawful action on the part of the Executive Office.*¹⁶⁹

On 24 August 2020, the Department of Justice was designated to administer the Victims' Payments Scheme. The Minister of Justice, Naomi Long MLA, confirmed that the Department of Justice is committed to "taking the scheme forward as quickly as possible".¹⁷⁰ The Department of Finance has committed £2.5 million for the establishment and initial operation of the Victims' Payments Scheme, but the Minister of Justice estimates that overall the scheme may cost up to £800 million.¹⁷¹ It remains unclear as to where the required funding will come from. As the Minister of Justice has highlighted:

*notwithstanding the judgment, it is clear that there remains a lack of political agreement over aspects of the scheme and, in particular, there is an urgent need to resolve the source of funding for the payments. I am absolutely clear that the UK Government has a critical role to play in this regard and am committed to working with the Secretary of State, Treasury and Executive Colleagues to ensure that the necessary funding is in place to support delivery of this important scheme for victims.*¹⁷²

In October 2020, work continued by the Department of Justice to open the scheme to applications in early March 2021. This includes the development of an IT system, the deployment and training of staff for administrative preparations, the development of a medical assessment process and the appointment of the Victims' Payments Board. The Minister of Justice has stressed that "not all of those issues fall within the

168 NI Office, 'Press Release: Secretary of State issues Victims' Payments Guidance', 14 August 2020.

169 *In the Matter of an Application for Judicial Review by Mrs Jennifer McNern and The Executive Office and the Secretary of State for NI and the In the Matter of an Application for Judicial Review by Mr Brian Turley and the Executive Office and the Secretary of State for NI and in the Matter of Decisions of the Executive Office and the Secretary of State for NI* [2020] NIQB 57, at para 30(b).

170 Department of Justice, 'Press Release: Long welcomes designation of Department of Justice to administer Victims' Payments Scheme', 24 August 2020.

171 *In the Matter of an Application for Judicial Review by Mrs Jennifer McNern and The Executive Office and the Secretary of State for NI and the In the Matter of an Application for Judicial Review by Mr Brian Turley and the Executive Office and the Secretary of State for NI and in the Matter of Decisions of the Executive Office and the Secretary of State for NI* [2020] NIQB 57, at para 32; 'Executive Office ordered to pay pension court costs', *BBC News*, 28 August 2020.

172 Department of Justice, 'Press Release: Long welcomes designation of Department of Justice to administer Victims' Payments Scheme', 24 August 2020.

direct control of the Department of Justice” and that the ability for the scheme to open is “subject to funding”.¹⁷³

The Minister of Justice confirmed that it will be a matter for the independent Board as to when the applications will be processed and first payments are made, but that “every effort will be made to ensure that the scheme can open for applications at the earliest opportunity and that payments are advanced as quickly as possible”.¹⁷⁴

The Minister of Justice highlighted that:

*I am concerned, however... that the Secretary of State [for NI] suggested that he would reserve the power to intervene in some decisions made by the Victims' Payment Board. It is critical that the Board is not subject to any external interference and that it can carry out its work independently. Any external intervention has the potential to undermine the operation of the Board and those arrangements are clearly set out in Regulations.*¹⁷⁵

Freedom from slavery

Modern slavery and human trafficking

In May 2020, the NI Local Government Association published guidance on tackling modern slavery for local councils in NI.¹⁷⁶

In September 2020, the Independent Anti-Slavery Commissioner, Dame Sara Thornton, published her annual report. Unlike the rest of the UK, Trafficking and Exploitation Risk Orders are not included within legislation in NI. The Anti-Slavery Commissioner has urged the Minister of Justice, Naomi Long MLA, to “reconsider their value as evidence of effective use in England and Wales and Scotland emerges”.¹⁷⁷

In October 2020, a delegation of the CoE Group of Experts on Action Against Trafficking conducted a remote visit to the UK as part of its third evaluation of the UK’s implementation of the Convention on Action Against Trafficking in Human Beings.¹⁷⁸ The Commission met with the delegation and provided an overview of trafficking and modern slavery issues in NI.

Also in October 2020, the Department of Justice launched a public consultation on a draft Modern Slavery Strategy for NI 2021/2022.¹⁷⁹ The strategy aims to equip NI to eradicate modern slavery through a

173 NI Assembly Hansard, ‘Oral Question: Victims’ Payments Scheme – Sinead Bradley MLA – AQO 567/17-22’, 7 September 2020; NI Assembly Hansard, ‘Oral Question: Victims’ Payments Scheme – Gary Middleton MLA – AQO 571/17-22’, 7 September 2020; NI Assembly Hansard, ‘Oral Question: Victims’ Payments Scheme – Rosemary Barton MLA – AQO 572/17-22’, 7 September 2020; NI Assembly Hansard, ‘Oral Question: Victims’ Payments Scheme – Alan Chambers MLA – AQO 574/17-22’, 7 September 2020; NI Assembly Hansard, ‘Response to Written Question – Victims’ Payments Scheme – Naomi Long MLA – AQO 839/17-22’, 6 October 2020.

174 Ibid.

175 NI Assembly Hansard, ‘Response to Written Question – Victims’ Payments Scheme – Naomi Long MLA – AQO 839/17-22’, 6 October 2020.

176 NI Local Government Association, ‘Tackling Modern Slavery: Guidance for Councils’ (NILGA, 2020).

177 Independent Anti-Slavery Commissioner, ‘Independent Anti-Slavery Commissioner Annual Report 2019-2020’ (IASC, 2020), at para 2.3.3.

178 CoE, ‘Press Release: Group of Experts on Action Against Trafficking carries out third evaluation of the UK’, 6 October 2020.

179 Department of Justice, ‘Draft Modern Slavery Strategy 2021/22’ (DoJ, 2020).

collaborative partnership between law enforcement agencies, front line professionals and the general public to raise awareness of human trafficking and slavery-like offences, support victims, and bring offenders to justice. The Commission is providing a response to the consultation in due course.

Additionally, the Criminal Justice Inspection NI published its report on how the criminal justice system deals with modern slavery and human trafficking in NI.¹⁸⁰ The report identified that further work is required to better understand the nature and scale of modern slavery and human trafficking in NI and for a more effective legislative and strategic response to be developed. Specifically, the report “recommended that the full range of enforcement powers available elsewhere in the UK need to be replicated in NI”.¹⁸¹

In October 2020, the Independent Anti-Slavery Commissioner, Sara Thornton, the Minister of Justice, Naomi Long MLA, and the Chief Inspector of Criminal Justice in NI, Jacqui Durkin, all spoke at a meeting of the Commission’s Business and Human Rights Forum.

Right to fair trial and the administration of justice

Access to justice

In 2020, the Department of Justice consulted on the use of live link technology in review of detention by a Superintendent from 24 to 36 hours and a Magistrate for up to 96 hours, under Articles 43 and 44 of the Police and Criminal Evidence (NI) Order.¹⁸² The Commission provided a response to the consultation.¹⁸³ In October 2020, the Department of Justice published a summary of the consultation responses, which largely welcomed the proposed amends “while stressing that the rights, voice and participation of the detainee must be maintained at all times”.¹⁸⁴ The Department of Justice intends to include the proposed amends to the use of live links within the Miscellaneous Provisions Bill that is currently being prepared for introduction to the NI Assembly in 2021.¹⁸⁵

Avoidable delay

In 2012, the Criminal Justice Inspectorate NI recommended statutory time limits were introduced as a way of tackling avoidable delay.¹⁸⁶ In 2018, the Criminal Justice Inspectorate NI further recommended that:

once direct transfer to the Crown Court is established for murder and manslaughter cases, the Department of Justice should ensure that

180 Criminal Justice Inspection NI, ‘Modern Slavery and Human Trafficking: An Inspection of How the Criminal Justice System Deals with Modern Slavery and Human Trafficking in NI’ (CJINI, 2020).

181 Ibid, at 4.

182 Department of Justice, ‘Consultation on Proposals on the Use of Live Links for Police Detention/Interviews’ (DoJ, 2020).

183 NI Human Rights Commission, ‘Briefing Paper: Department of Justice Consultation on Proposals on the Use of Live Links for Police Detention/Interviews’ (NIHRC, 2020).

184 Department of Justice, ‘The Use of Live Links for Police Detention/Interviews – A Consultation: Summary of Responses’ (DoJ, 2020), at para 3.2.

185 Ibid, at paras 3.3 and 3.4.

186 Criminal Justice Inspection NI, ‘Avoidable Delay: A Progress Report’ (CJINI, 2012), at para 4.7.

*rape, serious sexual offences and child abuse offences be added to the list of specified offences under the Justice Act (NI) 2015.*¹⁸⁷

The New Decade, New Approach agreement includes a commitment that “the [NI] Executive will deliver committal reform to help speed up the criminal justice system, benefiting victims and witnesses”.¹⁸⁸ It also commits the NI Executive to “address the findings in recently published reports from Criminal Justice Inspection NI and the report of Sir John Gillen on the handling of serious sexual offences cases, and will deliver the necessary changes in case conduct and management”.¹⁸⁹

In February 2020, the Minister of Justice, Naomi Long MLA, established an Implementation Team to co-ordinate phased actions aimed at addressing the Gillen report, as agreed by the Criminal Justice Board.¹⁹⁰ In June 2020, the Department of Justice published the Implementation Team’s plan.¹⁹¹

By 2021, the implementation plan includes a commitment to introduce separate legal advice/representation for complainants pre-trial, Case Progression Officers, Achieving Best Evidence interview, improved disclosure, and a bespoke Indictable Cases Process that takes into account the unique nature of sexual offences cases.¹⁹² By 2022, the implementation plan commits to removing the use of oral evidence as part of the committal process, and to introduce new arrangements whereby relevant cases can bypass the committal process entirely, thus ensuring that those cases are transferred to the Crown Court at an earlier stage. This is subject to the passage of the Criminal Justice (Committal Reform) Bill, which was introduced to the NI Assembly in November 2020.

Right to private and family life

Alternative care arrangements for children

On 7 May 2020, the Children’s Social Care (Coronavirus) (Temporary Modification of Children’s Social Care) Regulations (NI) 2020 came into force. These regulations temporarily alter the statutory requirements for reviewing placements of children with parents, foster carers, adoption parents, children’s care homes and secure accommodation. The regulations also extend the deadlines for dealing with complaints linked to children’s care arrangements. The regulations allow for such temporary measures for a maximum period of six months, subject to review. In September 2020, the Department of Health and health and social care trusts were on track to return operations for child care arrangements back to normal by the end of that month.¹⁹³ However, in October 2020, the regulations were renewed for a further six months until 21 May 2021 in

¹⁸⁷ Criminal Justice Inspection NI, ‘Without Witness Public Protection Inspection I: A Thematic Inspection of the Handling of Sexual Violence and Abuse Cases by the Criminal Justice System in NI’ (CIJNI, 2018), at Recommendation 5.

¹⁸⁸ NI Office, ‘New Decade, New Approach’ (NIO, 2020), at 7.

¹⁸⁹ Ibid, at 7-8.

¹⁹⁰ Department of Justice, ‘Press Release: We must work together to deliver real change for victims of serious sexual assault: Long’, 3 February 2020.

¹⁹¹ Department of Justice, ‘Implementation Plan: The Gillen Review into the Law and Procedures in Serious Sexual Offences in NI’ (DoJ, 2020).

¹⁹² Ibid, at 6-7.

¹⁹³ Letter from Department of Health to NI Assembly Committee for Health, 27 October 2020.

response to an increasing strain on the health and social care trusts due to a second wave of COVID-19.¹⁹⁴

Anonymity: children and pre-charge proceedings

Section 44 of the Youth Justice and Criminal Evidence Act 1999 prevents anyone under 18 allegedly involved in an offence from being named in the media.¹⁹⁵ However, unlike in England and Wales, NI has not enacted this provision. Article 22 of the Criminal Justice (Children) (NI) Order 1998 places reporting restrictions for minors in post-charge and court scenarios, but not for minors who are pre-charge.

In 2020, a challenge was brought on behalf of a child hacker who was named in the press. In 2015, the applicant, who was then 15 years old, was arrested and interviewed by the Police Service NI as a suspect in an alleged cyber-crime involving the hacking of customer details retained by the company Talk-Talk. Shortly after his arrest details of the applicant's identity, including his name, age, place of residence and photograph, were published by various media outlets. The applicant sought a declaration that the Department of Justice's failure to enact section 44 of the Youth and Justice Criminal Evidence Act was unlawful and to not extend the protection of Article 22 of the Criminal Justice (Children) (NI) Order 1998 to pre-charge minors was unfair. The applicant also sought to obtain an order requiring the Department of Justice to immediately enact legislation to provide for reporting restrictions in pre-charge situations. The High Court NI found that the applicant, who was in a pre-charge situation, was "not in a relevantly analogous situation to children who actually appear before a court" and that there was "nothing unfair or irrational in the State's approach".¹⁹⁶

Biometric data

In 2015, the UK Supreme Court ruled that the indefinite retention of Mr Gaughran's DNA profile was not a disproportionate interference with Article 8 ECHR, as he had pleaded guilty to a recordable offence namely, a drink driving offence for which he was fined and banned from driving for 12 months.¹⁹⁷ Mr Gaughran brought his case to the ECtHR. In February 2020, the ECtHR found that the policy of indefinite retention was a disproportionate interference with the applicant's right under Article 8 ECHR, stating that:

the indiscriminate nature of the powers of retention of the DNA profile, fingerprints and photograph of the applicant as person convicted of an offence, even if spent, without reference to the seriousness of the offence or the need for indefinite retention and in the absence of any real possibility of review, failed to strike a fair balance between the competing public and private interests...

194 Ibid; Children's Social Care (Coronavirus) (Temporary Modification of Children's Social Care) (Amendment) Regulations (NI) 2020.

195 This provision applies in England, Wales and NI.

196 *In the Matter of an Application by JKL (A Minor) to Apply for Judicial Review and the In the Matter of a Decision of the Department of Justice* [2020] NIQB 29, at paras 70 and 72.

197 *Gaughran v Chief Constable of the Police Service of NI* [2015] UKSC 29.

*Accordingly, the respondent State has overstepped the acceptable margin of appreciation.*¹⁹⁸

In 2020, with a view to addressing the ECtHR’s ruling, the Department of Justice consulted on proposals to amend the legislation governing the retention of DNA and fingerprints in NI.¹⁹⁹ The Department of Justice proposes amending the Criminal Justice Act (NI) 2013 to end indefinite retention, instead using the 75, 50 and 25 year model for retaining DNA and fingerprints of convicted individuals. It is also proposed that this new approach would include a review system that would be put in regulations, which have yet to be published. The Commission responded to this consultation, welcoming the removal of indefinite retention, but raising concerns that the proposed alternative lengths of retention and the lack of plans to consider such retention on a case-by-case basis were disproportionate.²⁰⁰

In October 2020, revised proposals from the Department of Justice following the consultation responses were considered by the NI Assembly Committee for Justice.²⁰¹ The Commission is providing further advice to the Department of Justice and Committee for Justice in light of the revised proposals.

Environmental regulation

The New Decade, New Approach agreement includes a commitment to “bring forward a Climate Change Act to give environmental targets a strong legal underpinning” and to “establish an Independent Environmental Protection Agency to oversee this work and ensure targets are met”.²⁰²

In October 2020, the Minister of Agriculture, Environment and Rural Affairs, Edwin Poots MLA, confirmed that officials had commenced work on scoping the options for the introduction of a NI Climate Change Bill.²⁰³ Additionally, Claire Bailey MLA announced her intention to introduce a private members’ bill on climate change to the NI Assembly. This Bill aims to introduce a statutory target of making NI carbon neutral by 2045, to set targets for greenhouse gases and to establish an independent climate commissioner.²⁰⁴

Rehabilitation of offenders

Under section 6 of the Rehabilitation of Offenders (NI) Order 1978, individuals that have been subject to particular sentences can never be considered to be, in law, a rehabilitated person, irrespective of personal

198 *Gaughran v UK* (2020) ECHR 144, at 96.

199 Department of Justice, ‘Consultation on proposals to amend the legislation governing the retention of DNA and fingerprints in NI’ (DoJ, 2020).

200 NI Human Rights Commission, ‘Submission to Department of Justice Consultation on Proposals to Amend the Legislation Governing the Retention of DNA and Fingerprints in NI’ (NIHRC, 2020).

201 NI Assembly Hansard, ‘Committee for Justice: Proposals to Amend Legislation Governing the Retention of DNA and Fingerprints – Department of Justice’, 15 October 2020.

202 NI Office, ‘New Decade, New Approach’ (NIO, 2020), at 44.

203 NI Assembly Hansard, ‘Response to Written Question – Climate Change – Edwin Poots MLA – AQW 7840/17-22’, 7 October 2020.

204 Conor Macauley, ‘Stormont: Climate bill due before NI Assembly’, *BBC News*, 21 October 2020.

history and circumstances. This includes individuals that have received a sentence of imprisonment or corrective training for a term exceeding 30 months.

In 2020, the Commission commenced a judicial review challenging the legality of the blanket approach taken by the 1978 Order on behalf of an individual who was convicted of arson, burglary and theft had served their sentence, shown immediate remorse and had not been involved in any further criminal activity for forty years. The Commission argues that a blanket approach that does not consider individual circumstances is disproportionate and a violation of Article 8 ECHR. A leave hearing is due in January 2021.

In February 2020, the Minister of Justice, Naomi Long MLA, committed to conducting a review of the Rehabilitation of Offenders (NI) Order 1978, but progress has been delayed due to COVID-19. The Department of Justice intends to publish a consultation document on the issue by the end of 2020.²⁰⁵



Stop and search

In February 2020, the Court of Appeal NI considered whether the Police Service NI's Code of Practice for Monitoring Community Background imposes insufficient safeguards to ensure that the impugned powers are not exercised arbitrarily. The Court of Appeal noted that:

although there is no specific methodology required under the Code for the monitoring of community background we accept that the monitoring and supervision requirements of the Code establish a duty on the part of the Police Service NI to devise a methodology of enabling such monitoring and supervision... The evaluation of the pilot by the Police Service NI has tended to suggest that the best option may be assessment by the individual police officers of community background. We understand that such an option has not yet been implemented but we are satisfied that the requirements of the Code are that some proportionate measure is put in place in order to ensure that there can be adequate monitoring and supervision of the community background of those being stopped and searched.²⁰⁶

The Court of Appeal agreed with the High Court that, taking into account the scheme as a whole, it was satisfied that there were “sufficient safeguards to protect the individual against arbitrary interference”, but found a breach of Article 8 ECHR on the basis that the Police Service NI did not record the basis for the search.²⁰⁷

Following this ruling, the Independent Reviewer of the Justice and Security (NI) Act 2007, David Seymour, reported that:

the Court of Appeal in Ramsey has now made it clear that the Code establishes a legal duty on the Police Service NI to devise a methodology for monitoring the community background of those

²⁰⁵ Meeting between Department of Justice and NI Human Rights Commission, 26 October 2020.

²⁰⁶ *In the Matter of an application by Stephen Ramsey* (No 2) [2020] NICA 14, at paras 55-58.

²⁰⁷ *Ibid.*, at para 68.

*who are stopped and searched under the Justice and Security (NI) Act... if the issue of community monitoring is to be taken forward [there would be benefit in], refining and publishing an analysis of the impact of General Data Protection Regulation on the Police Service NI's ability to record the community background of those who are stopped and searched under the Justice and Security (NI) Act.*²⁰⁸

Freedom of religion and belief, expression, association and right to participate in public and political life

Freedom of expression of journalists

In April 2020, a journalist working for the Irish News was warned by the Police Service NI of a threat against them.²⁰⁹ In May 2020, further threats were issued against journalists working for the Sunday Life and Sunday World.²¹⁰ On 20 May 2020, an open letter was published by #StandUpForJournalism, which included the First and Deputy First Minister for NI and the Commission's Chief Commissioner as signatories. The open letter calls "for the immediate withdrawal of all threats against journalists in NI and for the freedom of press to be respected and protected".²¹¹

In July 2020, the NI High Court published its judgment on whether the search warrants issued against journalists Barry McCaffrey and Trevor Birney were lawful. The High Court confirmed "that on the basis of the material that has been provided to us we see no overriding requirement in the public interest which could have justified an interference with the protection of journalistic sources in this case".²¹²

Parades and protests

In May and June 2020, there were a series of anti-racism protests in NI in response to the global 'Black Lives Matter' movement. At that time, the existing iteration of the Health Protection (Coronavirus, Restrictions) (NI) Regulations, which are aimed at preventing the spread of COVID-19, prohibited gatherings in public spaces of more than two people with limited exceptions. The regulations also provided the Police Service NI with the powers to restrict freedom of movement and protests for this purpose. The Police Service NI issued a number of fines to 'Black Lives Matter' protestors under these regulations.²¹³ However, subsequent protests by the NI Cenotaph Protection Group reportedly took place without fines being issued.²¹⁴ The Police Ombudsman NI is investigating

208 David Seymour, 'Report of the Independent Reviewer Justice and Security (NI) Act 2007: Twelfth Report - 1 August 2018-31 July 2019' (NIO, 2020), at paras 7.30-7.44.

209 Gerry Moriarty, 'Threats against NI journalists broadly condemned', *The Irish Times*, 20 May 2020.

210 Ibid.

211 'Stand Up for Journalism: Initiative condemning threats against NI reporters receives widespread support', *Belfast Telegraph*, 20 May 2020.

212 *In the Matter of an Application by Fine Point Films and Trevor Birney for Judicial Review and the in the Matter of an Application by Barry McCaffrey and the in the Matter of an Application by Police Service NI and Durham Constabulary for Search Warrants* [2020] NIQB 55, at para 55.

213 'Coronavirus: Anti-racism rallies in Belfast and Londonderry', *BBC News*, 6 June 2020.

214 Jonathan Bell, 'Police Ombudsman to probe difference in Police Service NI approach to Black Lives Matter rallies and Belfast cenotaph protest', *Belfast Telegraph*, 17 June 2020.

the use of police powers in relation to large public gatherings during this period.²¹⁵

In November 2020, the Policing Board NI, in its review of the Police Service NI's response to COVID-19, acknowledged that there was an "apparent inconsistency in approach to the enforcement of all large gatherings of people during April, May and June 2020".²¹⁶ The Policing Board NI recommended that the Police Service NI should report to the Board on any lessons learnt; hold discussions with organisers "to ensure peaceful protests are facilitated and that both sides understand the positive obligations of the police and the key role of the organisers"; create an Independent Advisory Group on protests; and hold a seminar with key stakeholders, including the Commission, to assist "with ensuring a consistent approach to all protests".²¹⁷

Right to work and to just and favourable conditions of work

Accessible childcare

The New Decade, New Approach agreement committed to publishing a Childcare Strategy.²¹⁸ A timeline for producing this strategy was due to be published by April 2020, this is yet to be provided. It also committed to giving "immediate priority to developing arrangements to deliver extended, affordable, responsive, high quality provision of early education and care initiatives for families with children aged 3-4".²¹⁹

In July 2020, the Minister of Education, Peter Weir MLA, advised that the "design, planning and phased implementation [of a childcare strategy] will take a number of years and may require primary legislation" and that any advances in moving this forward have been delayed by having to re-direct staff resources due to COVID-19.²²⁰ A funding bid submitted by the Department of Education indicates that it is not expected that the childcare strategy will progress until at least 2021/2022, with implementation in 2022/2023.²²¹

On 13 July 2020, Regulation 37(3) of the Universal Credit Regulations (NI) 2016 was amended to provide that "relevant childcare" may include care provided outside NI in some circumstances.²²² Consequently, a person who resides and works in NI, or resides in NI and works in Ireland may be entitled to the childcare costs element of Universal Credit, where childcare provided in Ireland is approved by an organisation accredited by the Secretary of State for NI or in accordance with legislation in Ireland.

Armed Forces Covenant

215 Police Ombudsman NI, 'Press Release: Police Ombudsman to look at how police have enforced regulations on large public gatherings', 17 June 2020.

216 Policing Board NI, 'Report on the Thematic Review of the Policing Response to COVID-19' (PBNI, 2020), at 56.

217 Ibid, at 56-57.

218 NI Office, 'New Decade, New Approach' (NIO, 2020), at 27.

219 Ibid, at 40.

220 NI Assembly Hansard, 'Written Answers: Update on Childcare Strategy - Peter Weir MLA - AQO 507/17-22', 24 July 2020.

221 NI Assembly Hansard, 'Written Questions - Childcare Strategy - Rachel Woods MLA - AQW 8101/17-22', 2 October 2020.

222 The Universal Credit (Miscellaneous Amendments) Regulations (NI) 2020.

In the New Decade, New Approach agreement, the UK Government committed to introducing a UK-wide Armed Forces Covenant,²²³ which is to be introduced in 2021.²²⁴ The agreement committed to appointing a NI Veterans' Commissioner to act as an independent point of contact to support and enhance outcomes for veterans in NI.²²⁵ In August 2020, Danny Kinahan was appointed as the newly created NI Veterans Commissioner.²²⁶ The New Decade, New Approach agreement also committed to initiate a review of the Aftercare Service in NI,²²⁷ which has been delayed due to COVID-19.²²⁸

Right to an adequate standard of living and to social security

Child poverty

Child Poverty Strategy

In March 2019, the current Child Poverty Strategy expired.²²⁹ The New Decade, New Approach agreement committed to publishing a Child Poverty Strategy.²³⁰ A timeline for producing this strategy was due to be published by April 2020, this is yet to be provided.

In September 2020, the Minister for Communities, Carál Ní Chuilín MLA, announced that the existing child poverty strategy has been extended to May 2022. This is on the basis that the Minister for Communities considers there may be scope to take child poverty forward within the wider anti-poverty strategy that has also been committed within the New Decade, New Approach agreement.²³¹ The Department of Communities has established an Expert Panel, Co-Design Working Group and cross-departmental working group for the purposes of drafting the anti-poverty strategy, which is due to be published in December 2021.²³² In November 2020, the Commission met with the Expert Panel.²³³

Social housing

The New Decade, New Approach includes a commitment to reclassify housing associations in order to “enable housing associations to continue building new social housing and intermediate housing, including the Co-ownership Housing Scheme after March 2020”.²³⁴ In August 2020, the Housing (Amendment) Act (NI) 2020, which delivers on this commitment

223 NI Office, 'New Decade, New Approach' (NIO, 2020), at 49.

224 Email from NI Office to NI Human Rights Commission, 22 July 2020.

225 NI Office, 'New Decade, New Approach' (NIO, 2020), at 49.

226 NI Office, 'Press Release: Appointment of Veterans Commissioner for NI', 27 August 2020.

227 NI Office, 'New Decade, New Approach' (NIO, 2020), at 49.

228 Email from NI Office to NI Human Rights Commission, 22 July 2020.

229 NI Executive, 'The Executive's Child Poverty Strategy' (NI Executive, 2016); Department for Communities, 'Press Release: Minister announces extension to Child Poverty Strategy', 11 September 2020.

230 NI Office, 'New Decade, New Approach' (NIO, 2020), at 27.

231 Department for Communities, 'Press Release: Minister announces extension to Child Poverty Strategy', 11 September 2020.

232 Department for Communities, 'Social Inclusion Strategies'. Available at: <https://www.communities-ni.gov.uk/articles/social-inclusion-strategies>

233 Meeting between Expert Panel on the Anti-Poverty Strategy and NI Human Rights Commission, 9 November 2020.

234 NI Office, 'New Decade, New Approach' (NIO, 2020), at 9.

and ends the statutory right to buy scheme for Housing Associations was given Royal Assent.

Social security

In March and June 2020, the Department for Communities extended the social security reform mitigation package through agreement with the Department of Finance under the Budget Act (NI) 2020 and Budget (No 2) Act 2020. The current arrangements are in place until December 2020 and are being kept under review in the absence of amendments to the Welfare Reform (NI) Order 2015.²³⁵

In September 2020, the Minister for Communities, Carál Ní Chuilín MLA, confirmed that she intends to introduce primary legislation to amend as a matter of urgency the Welfare Reform (NI) Order 2015 to provide for an extension of social security mitigation payments for people affected by the bedroom tax.²³⁶ It is also the Minister for Communities' intention to address the two-child tax credit and bedroom cap in future legislation and regulations.²³⁷ The Minister for Communities also confirmed that any changes will be developed through co-design.²³⁸

In October 2020, the UK Supreme Court heard the Child Poverty Action Group's appeal concerning the lawfulness of the two-child tax credit limit, after failing with its challenge in part on human rights grounds in the Court of Appeal.²³⁹ The outcome is awaited.

Travellers' accommodation

In 2020, the NI Housing Executive published its draft Irish Traveller Accommodation Strategy for consultation.²⁴⁰ The Commission provided a response to the consultation, which highlighted the need to be careful about the language used, to make full use of available data sources and to ensure the needs of specific groups of Travellers' are addressed.²⁴¹ The outcome of the consultation is awaited.

In 2020, following a recommendation within the Commission's Travellers' accommodation investigation report to do so, the Department for Communities completed a comprehensive review of the 20-year-old Design Guide on Travellers' Sites, which included focused consultation with the relevant statutory bodies, local councils, interest groups, members of the Traveller communities and their advice and advocacy groups.²⁴² In October 2020, the Department for Communities published a revised Design Guide for Travellers' Sites in NI, which has been updated to include current health and safety requirements, fire safety guidance, legal

235 NI Assembly Hansard, 'Oral Questions: Welfare Mitigations Schemes Primary Legislation - Cara Hunter MLA - AQO 594/17-22', 8 September 2020; Email from Cliff Edge Coalition to NI Human Rights Commission, 29 September 2020.

236 NI Assembly Hansard, 'Oral Questions: Welfare Mitigations Schemes Primary Legislation - Cara Hunter MLA - AQO 594/17-22', 8 September 2020.

237 Ibid.

238 Letter from Minister for Communities, Carál Ní Chuilín MLA, to NI Human Rights Commission, 30 June 2020.

239 NI Office, 'New Decade, New Approach' (NIO, 2020).

240 NI Housing Executive, 'Irish Traveller Accommodation Strategy: 2020-2025' (NIHE, 2020).

241 Letter from NI Human Rights Commission to NI Housing Executive, 16 September 2020.

242 Department for Communities, 'Design Guide for Travellers' Sites in NI'. Available at: <https://www.communities-ni.gov.uk/publications/design-guide-travellers-sites-northern-ireland>

and technical advice in relation to fitness standards, service provisions, adaptations and advice on site licencing. It is intended to support the provision of appropriate, cost effective facilities for Travellers living in NI.²⁴³

Right to health

Emergency healthcare

The New Decade, New Approach agreement committed to “reconfigure hospital provision to deliver better patient outcomes, more stable services and sustainable staffing”.²⁴⁴ This included making improvements to “urgent and emergency care” by the end of 2020.²⁴⁵ Implementation of this commitment has been subject to delay due to COVID-19.

Mental health

In 2018, the NI Commissioner for Children and Young People published its rights based review into mental health services provided for children and young people in NI.²⁴⁶ In February 2020, the NI Commissioner for Children and Young People published its first monitoring report analysing the NI Executive’s response to the recommendations set out in the review.²⁴⁷ Regarding progress to date, the NI Commissioner for Children and Young People has expressed particular concern in relation to funding for effectively implementing the recommendations and a continued lack of progress on effective data collection and addressing delays related to Child and Adolescent Mental Health Services.²⁴⁸

The New Decade, New Approach agreement committed to publishing a Mental Health Strategy by December 2020.²⁴⁹ However, this target has not been met due to increased demands on the Department of Health posed by COVID-19.²⁵⁰ The Department of Health has committed to publish a Mental Health Strategy that is “co-produced with multi-disciplinary and multi-sectoral participation in its development, be evidence based, take a whole life approach, focus on population need, be trauma informed and place the need and experiences of the persons using the system at its centre”.²⁵¹

In June 2020, Siobhán O’Neill was appointed interim Mental Health Champion for NI. This role includes being a public advocate for mental health, a consensus builder to integrate mental health and wellbeing across government, an adviser to senior stakeholders and a challenger of decisions and policies related to mental health.²⁵²

243 Department for Communities, ‘Design Guide for Travellers’ Sites NI’ (DfC, 2020).

244 NI Office, ‘New Decade, New Approach’ (NIO, 2020).

245 Ibid.

246 NI Commissioner for Children and Young People, ‘Still Waiting: A Rights Based Review of Mental Health Services and Support for Children and Young People’ (NICCY, 2018).

247 NI Commissioner for Children and Young People, ‘Still Waiting: Monitoring Report’ (NICCY, 2020).

248 Ibid, at 12.

249 NI Office, ‘New Decade, New Approach’ (NIO, 2020), at 27.

250 Department of Health, ‘Mental Health Action Plan’ (DoH, 2020).

251 Ibid, at 8.

252 University of Ulster, ‘Press Release: Professor Siobhán O’Neill appointed interim Mental Health Champion for NI’, 24 June 2020.

In October 2020, the Commission made an *amicus curiae* intervention in a mental health case being considered by the NI High Court.²⁵³ The High Court was considering the lawfulness, particularly in relation to Article 5 ECHR (right to liberty), of releasing an individual who had been convicted and detained within a mental health hospital who now appeared to have mental capacity. The Trust sought conditions upon the individual's discharge, however, drawing from recent UK Supreme Court jurisprudence,²⁵⁴ the Review Tribunal did not consider that it had the power to authorise a conditional discharge as it amounted to a deprivation of liberty. In November 2020, Justice Keegan highlighted that if mental capacity legislation can be utilised in NI in relation to an individual without capacity seeking conditional discharge, but cannot be utilised in the same way by a person with capacity in the same situation then the individual with capacity is left at a disadvantage. Mindful of the human rights considerations, Justice Keegan indicated that she was considering using the Court's inherent jurisdiction to address this. Justice Keegan adjourned the case on the basis that further evidence and consideration of the legal issues is required.

Legislative reform on termination of pregnancy

On 31 March 2020, in line with the NI (Executive Formation etc) Act 2019, the Abortion (NI) Regulations 2020 came into force. This was in addition to the decriminalisation of termination of pregnancy in October 2019.²⁵⁵

On 14 May 2020, the original regulations were revoked and replaced by the Abortion (NI) (No 2) Regulations 2020. This was for administrative reasons, with no substantive changes to the circumstances in which terminations can be performed in NI and the procedural requirements attached to this. Consequently, since 31 March 2020, terminations have been legalised in NI under any circumstances up to 12 weeks and where there is a risk to physical or mental health up to 24 weeks. Terminations with no gestational limit are also now legal in NI where there is an immediate necessity, a risk to life or grave permanent injury to the physical or mental health of a pregnant woman, or in cases of severe foetal impairment or fatal foetal abnormality. However, the Department of Health has not commissioned the required healthcare services to implement these regulations. The Department of Health has also not provided guidance on the provision of services in general or to cover services during the pandemic, particularly given travel restrictions imposed by COVID-19.

Between mid-April and start of June 2020, health and social care trusts in NI guided by the regulations started providing certain services within their existing resources and without financial support from the Department of Health. This approach is not sustainable in the longer term, which was confirmed in October 2020 when certain services provided by health and social care trusts experienced roll-back. The detail of the initial provision provided and subsequent developments are set out in Chapter 4.

253 *Belfast Health and Social Care Trust v O and R* [2020].

254 *Secretary of State for Justice v MM* [2018] UKSC 60.

255 Section 9(2), NI (Executive Formations etc) Act 2019.

On 2 June 2020, the NI Assembly debated a motion put forward by the DUP “that this Assembly welcomes the important intervention of disability campaigner Heidi Crowter and rejects the imposition of abortion legislation to all non-fatal disabilities, including Down’s syndrome”. An amendment was added by Sinn Fein “that this Assembly welcomes the important intervention of disability campaigner Heidi Crowter and the specific legislative provision in the abortion legislation that goes beyond fatal foetal abnormalities to include non-fatal disabilities, including Down’s syndrome”.

The DUP’s motion was carried (46:40) and Sinn Fein’s amendment was rejected (32:52). This outcome does not impact the 2020 regulations, however, the motion and amendments are incompatible with the UN CEDAW Committee’s inquiry recommendation regarding severe foetal impairment.²⁵⁶

Monitoring project

The UK Government has committed to:

*establish a mechanism to advance women’s rights, including through monitoring authorities’ compliance with international standards concerning access to sexual and reproductive health, including access to safe abortions, and ensure enhanced coordination between the mechanism with the Department of Health, Social Services and Public Safety and the NI Human Rights Commission.*²⁵⁷

Within its Business Plan 2020–2021, the Commission committed to:

*monitor the provision of reproductive healthcare services and education in NI, following the introduction of a new legal framework for abortion, and engage with the Department of Health and Department of Education in accordance with the NI (Executive Formation etc) Act 2019.*²⁵⁸

In 2020, regarding the healthcare aspect, the Commission met with the Department of Health, health and social professionals and civil society organisations that conduct work on access to terminations.

Protests at family planning clinics

Claire Bailey MLA intends to introduce a Private Members’ Bill to the NI Assembly which aims to “introduce safe access zones around registered pregnancy advisory bureaux and clinics, in which anti-termination activity could not take place”.²⁵⁹ The purpose of the Bill is to ensure women, girls and transgender men have “access to sexual and reproductive healthcare services without impediment or harassment, while carefully balancing the right to freedom of assembly”.²⁶⁰

256 CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW Report of the Committee’, 6 March 2018, at para 85(b)(iii).

257 Ibid, at para 85(e).

258 NI Human Rights Commission, ‘Business Plan 2020-21’ (NIHRC, 2020), at 9.

259 NI Assembly, ‘Pro-Forma for Development of a Members’ Bill – Safe Access Zones Bill (Public Health and Well Being)’ (NI Assembly, 2020), at 2.

260 Ibid.

Right to education

Special educational needs

In November 2019, the Education Authority NI conducted an internal audit of its Special Educational Needs assessment processes, which found “significant shortcomings in how the Education Authority NI managed the process”.²⁶¹ The audit found that “85 per cent of pupils did not complete the statementing process within the 26-week statutory period. That meant that, at the time of the analysis in November 2019, over 1,000 children had exceeded the statutory time frame”.²⁶² In March 2020, the Chairperson of the NI Assembly Committee for Education, Chris Lyttle MLA, summarised the issues as:

*unnecessary and undue delay in the Education Authority NI’s assessment and statementing of support for children with special educational needs; a lack of management focus and accountability; a lack of managerial performance monitoring; limited evidence of management meetings; incorrect interpretation of valid exception reasons for delay; failure to accurately record assessment timescales and the time taken to provide support for children with special educational needs; delayed provision of appropriate transport and classroom assistant support; information governance issues, risking the integrity of highly sensitive information held about children with special educational needs; and some good practice attributable to individual staff working in challenging circumstances but no proactive, effective management.*²⁶³

He raised that “of most concern is how such a culture and systematic failure was allowed to develop”.²⁶⁴

In June 2020, almost 300 children in NI with a statement of Special Educational Needs were still without a school place for September 2020.²⁶⁵

In September 2020, the NI Audit Office issued a follow up report on special educational needs in NI from an earlier inquiry in 2017.²⁶⁶ The earlier report found that neither the Department of Education nor the Education Authority NI could demonstrate value for money in the provision of special education needs support in mainstream schools.²⁶⁷ The follow up report found that, of ten recommendations made in 2017, none had yet been fully addressed.²⁶⁸ Further, it noted that it had been 13 years since the Department of Education had begun a review of special educational needs in NI and that review has still to be completed.²⁶⁹

261 NI Assembly Hansard, ‘Committee for Education: Special Educational Needs Assessment and Statementing Audit - Education Authority NI’, 4 March 2020.

262 Ibid.

263 Ibid.

264 Ibid.

265 Robbie Meredith, ‘Hundreds of special needs children have no September place’, *BBC News*, 24 June 2020.

266 NI Audit Office, ‘Impact Review of Special Educational Needs’ (NIAO, 2020).

267 NI Audit Office, ‘Special Educational Needs’ (NIAO, 2017).

268 NI Audit Office, ‘Impact Review of Special Educational Needs’ (NIAO, 2020).

269 Ibid.

Elsewhere, the Education Authority NI is working on implementing ten recommendations identified by the internal audit and the Committee for Education who will monitor how the implementation is progressing.²⁷⁰ This includes drafting a report on lessons learned from the Special Educational Needs admissions process and the use of Interim Specialist Resource Provisions, which is to inform discussions with the Department of Education on the way forward.²⁷¹ The Department of Education established a Special Educational Needs Governance Group, chaired by the Department of Education's Permanent Secretary and including the Education Authority NI, to provide strategic oversight to the programme of Special Educational Needs improvements.²⁷² The Department of Education also consulted on its draft Special Educational Needs Regulations and Code of Practice.²⁷³

Right to participate in the cultural life of the community

Irish language and Ulster Scots

The New Decade, New Approach agreement committed the First Minister and Deputy First Minister to “sponsor and oversee a new framework both recognising and celebrating NI’s diversity of identities and culture, and accommodating cultural difference”.²⁷⁴ The agreement committed that this framework would consist of the establishment of an Office of Identity and Cultural Expression, a Commissioner to recognise, support, protect and enhance the development of the Irish language in NI, and a Commissioner to enhance and develop the language, arts and literature associated with the Ulster Scots/Ulster British tradition.²⁷⁵ The framework was also to include recognition of the status of the Irish language and Ulster Scots language in NI.²⁷⁶ The three Bills that were intended to provide for this legislative framework were published with the agreement – NI Act 1998 (Amendment No 1) Bill, NI Act 1998 (Amendment No 2) Bill, and NI Act (Amendment No 3) Bill. These Bills were to be presented to the NI Assembly by April 2020,²⁷⁷ but this is still awaited.

In May 2020, the Commission provided advice to the Executive Office and Secretary of State for NI, Brandon Lewis MP, on the three Bills.²⁷⁸

The New Decade, New Approach agreement also commits to publishing an Irish Language Strategy and Ulster Scots Strategy.²⁷⁹ A timeline for

270 NI Assembly Hansard, ‘Committee for Education: Special Educational Needs Assessment and Statementing Audit – Education Authority NI’, 4 March 2020.

271 NI Assembly Hansard, ‘Response to Written Question – Special Educational Needs – Peter Weir MLA – AQW 7523/17-22’, 1 October 2020.

272 Ibid.

273 Department of Education, ‘Consultation on Draft Special Educational Needs Regulations’ (DoE, 2020); Department of Education, ‘Consultation on Draft Special Educational Needs Code of Practice’ (DoE, 2020).

274 NI Office, ‘New Decade, New Approach’ (NIO, 2020), at 15.

275 Ibid, at 16.

276 Ibid.

277 Ibid, at 36.

278 NI Human Rights Commission, ‘Office of Identity and Cultural Expression Provisions of the Draft NI Act 1998 (Amendment No 1)’ (NIHRC, 2020); NI Human Rights Commission, ‘Irish Language Provisions of the NI Act 1998 (Amendment No 2)’ (NIHRC, 2020); NI Human Rights Commission, ‘Ulster Scots/Ulster British Provisions of the NI Act 1998 (Amendment No 3)’ (NIHRC, 2020).

279 NI Office, ‘New Decade, New Approach’ (NIO, 2020), at 27.

producing this strategy was due to be published by April 2020, this is yet to be provided.

In July 2020, the Committee of Experts of the European Charter for Regional or Minority Languages published its monitoring report on the UK. The Committee of Experts noted the “ongoing political resistance” by the NI Executive and considered that “such legislation should be passed at central governmental level and comprehensively regulate the use and promotion of Irish”.²⁸⁰ On Ulster Scots, the Committee of Experts stated that “due to the lack of information in the State periodical report on the situation of Ulster Scots... [it] was unfortunately not able to conclude on numerous undertakings”.²⁸¹ Of the information that was provided, the Committee of Experts noted that “Ulster Scots continues to have a weak presence in public life” and recommended the adoption of “a strategy to promote Ulster Scots in education and other areas of public life”.²⁸²

On the basis of the Committee of Experts’ report, the CoE Committee of Ministers published its recommendations regarding application of the European Charter for Regional or Minority Languages by the UK. The recommendations identified three matters of priority across the UK, including that the UK Government and NI Executive “adopt a comprehensive law and strategy on the promotion of Irish in NI”.²⁸³

Constitutional protections

A Bill of Rights for NI

The New Decade, New Approach agreement committed to establishing a NI Assembly Ad Hoc Committee on a Bill of Rights, assisted by a panel of five experts appointed jointly by the First Minister and Deputy First Minister.²⁸⁴ The expert panel is yet to be established, but is under active consideration by the Executive Office.²⁸⁵ However, in March 2020, the Ad Hoc Committee on a Bill of Rights was established. The Commission was one of the first to provide oral evidence to the Ad Hoc Committee on the importance of developing a Bill of Rights for NI.

In August 2020, the Ad Hoc Committee on a Bill of Rights published its forward work plan for September to December 2020, which includes gathering evidence on international experiences, particular circumstances of NI, human rights, Brexit and justiciability and enforcement.²⁸⁶

Other constitutional reforms

280 CM(2019)84-final, ‘Fifth Report of the Committee of Experts on the European Charter for Regional or Minority Languages in respect of the UK’, 1 July 2020, at para 1.2.

281 Ibid, at para 22.

282 Ibid, at paras 1.2 and 2.4.2(1)(a).

283 CM/RecCHL(2020) 1, ‘Recommendation of the CoE Committee of Ministers to Member States on the Application of the European Charter for Regional or Minority Languages by the UK’, 1 July 2020.

284 NI Office, ‘New Decade, New Approach’ (NIO, 2020), at para 37.

285 Email correspondence between NI Assembly Ad Hoc Committee on a Bill of Rights and NI Human Rights Commission, 21 October 2020.

286 Ad Hoc Committee on a Bill of Rights, ‘Forward Work Programme: September-December 2020’. Available at: <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/ad-hoc-committee-on-a-bill-of-rights/forward-work-programme/>

In July 2020, the UK Government launched an Independent Review of Administrative Law, chaired by Lord Faulks QC. The Independent Panel is to consider options for reform to the process of judicial review and to put forward options for the UK Government's consideration.²⁸⁷ In September 2020, the Independent Panel sought evidence on how effectively judicial review balances enabling citizens to challenge the lawfulness of government action and allowing the executive and local authorities to carry on the business of government.²⁸⁸

In October 2020, the Secretary of State for Justice, Robert Buckland MP, clarified that the UK Government does not intend to opt out of the ECHR.²⁸⁹

National Human Rights Institutions

In 2009/2010, the Commission's core budget was £1,702,000. By 2020/2021, the Commission's core budget had decreased to £1,216,000. This has affected the Commission's ability to fulfil its statutory functions. In 2020, ongoing concerns about the Commission's funding remain.

In June 2018, the UK Supreme Court ruled that the Commission did not have the powers to take a case in its own name, without a victim.²⁹⁰ In 2020, the UK Government has moved to resolve this issue by a further amendment to sections 71(2A) and 71(2B) of the NI Act 1998, provided by Schedule 3 of the EU (Withdrawal Agreement) Act 2020.

UK's exit and transition from Membership of the EU

Withdrawal Agreement and Ireland/NI Protocol

In January 2020, the UK signed the UK-EU Withdrawal Agreement and Ireland/NI Protocol.²⁹¹ On 31 January 2020, the UK left the EU in accordance with the Withdrawal Agreement.²⁹² Much of the UK-EU Withdrawal Agreement is dedicated to setting out the terms of the transition period and Part Two sets out the commitments in relation to citizens' rights after the UK leaves the EU. Article 2 of the Protocol the UK commits to:

*ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol.*²⁹³

287 Gov.UK, 'Independent Review of Administrative Law'. Available at: <https://www.gov.uk/government/groups/independent-review-of-administrative-law>

288 Independent Review of Administrative Law Secretariat, 'Does Judicial Review Strike the Right Balance Between Enabling Citizens to Challenge the Lawfulness of Government Action and Allowing the Executive and Local Authorities to Carry on the Business of Government: Call for Evidence' (MoJ, 2020).

289 Letter from the Lord Chancellor and Secretary of State for Justice, Robert Buckland MP, to the Chair of the Joint Committee on Human Rights, Harriet Harmon MP, 1 October 2020.

290 *In the Matter of an Application by the NI Human Rights Commission for Judicial Review (NI)* [2018] UKSC 27.

291 Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020.

292 Ibid.

293 Protocol on Ireland/NI to the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020.

Annex 1 contains six equality directives related to access and supply of goods and services, employment, self-employment, racial or ethnic origin and social security which will continue to set standards in NI, as EU law evolves.²⁹⁴ This list does not include directives concerning parental leave, pregnant workers and the rights of victims, but the UK Government has confirmed that:

*provided that the rights in question are relevant to the aforementioned chapter of the Agreement, they are in scope of the UK Government's commitment that there will be no diminution of rights as a result of the UK leaving the EU.*²⁹⁵

The additional scope of the Ireland/NI Protocol remains to be seen and it is unclear the extent to which the EU Charter of Fundamental Rights can be implied into the commitments in the Protocol.

In September 2020, the Commission and Equality Commission NI provided oral evidence to the NI Assembly Committee for the Executive Office on Article 2(1) of the Ireland/NI Protocol, reiterating the requirement to ensure that there is no diminution of rights due to Brexit and to set out the role of the Commissions as the appointed dedicated mechanism.²⁹⁶ In late 2020, the NI Affairs Committee conducted an inquiry into Brexit and the Ireland/NI Protocol.²⁹⁷ In December 2020, the Commission and Equality Commission NI provided joint written evidence to the inquiry.

Internal Market Bill

In September 2020, the Secretary of State for NI, Brandon Lewis MP, stated that the Internal Market Bill will ensure:

*people and businesses in NI will have unfettered access to the whole of the UK market... does break international law in a very specific and limited way. We are taking the power to disapply the EU law concept of direct effect, required by Article 4 [of the UK-EU Withdrawal Agreement], in certain very tightly defined circumstances.*²⁹⁸

In September 2020, the UK Internal Market Bill was introduced to UK Parliament. Clause 45 of the Bill states that powers conferred on Ministers to deviate from the Ireland/NI Protocol will have effect “notwithstanding any relevant international or domestic law with which they may be incompatible or inconsistent” and that regulations under clause 42 and 43 of the Bill “are not to be considered unlawful on the grounds of any

294 Directive 2004/114/EC 2004, 'EU Council Directive on the Principle of Equal Treatment between Men and Women in Access to and Supply of Goods and Services', 23 December 2004; Directive 2006/54/EC, 'EU Council Directive on the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation', 5 July 2006; Directive 2000/43/EC, 'EU Council Directive on the Principle of Equal Treatment between Persons Irrespective of Racial and Ethnic Origin' 29 June 2000; Directive 2000/78/EC, 'EU Council Directive of a General Framework for Equal Treatment in Employment and Occupation' 27 November 2000; Directive 2010/41/EU, 'EU Parliament and EU Council Directive on the Principle of Equal Treatment between Men and Women Engaged in Self-employment', 7 July 2010; Directive 79/7/EEC, 'Directive of the Council of European Communities on the Principle of Equal Treatment for Men and Women in Social Security', 19 December 1978.

295 NI Office, 'UK Government Commitment to "No Diminution of Rights, Safeguards and Equality of Opportunity" in NI: What Does It Mean and How Will It be Implemented?' (NIO, 2020).

296 NI Assembly Committee for the Executive Office, 'Oral Evidence: Article 2(1) of the Protocol on Ireland/NI – Equality Commission for NI and NI Human Rights Commission', 16 September 2020.

297 House of Commons NI Affairs Committee, 'Brexit and the NI Protocol'. Available at: <https://committees.parliament.uk/work/544/brexit-and-the-northern-ireland-protocol/>

298 UK Parliament House of Commons Hansard, 'Urgent Question: NI Protocol: UK Legal Obligations – Louise Haigh MP – Vol 679, Column 497-615', 7 September 2020.

incompatibility or inconsistency with relevant international or domestic law”.²⁹⁹

The UK Government recognises that it is “an established principle of international law that a State is obliged to discharge its treaty obligations in good faith”.³⁰⁰ Nevertheless, it is of the opinion that “Parliament is sovereign as a matter of domestic law and can pass legislation which is in breach of the UK’s treaty obligations” and that therefore, enacting the Internal Market Bill would be not unconstitutional.³⁰¹

In October 2020, the Commission and the Equality Commission NI published a briefing raising concerns that the Internal Market Bill undermined the Belfast (Good Friday) Agreement, the Ireland/NI Protocol and the mandate of the dedicated mechanism.³⁰² The Commission and Equality Commission NI also wrote to the Secretary of State for NI seeking clarity that there will be no diminution of rights due to the ramifications of the Internal Market Bill and that the relevant obligations within the withdrawal treaty will be implemented in full. In late October 2020, the Commission and Equality Commission NI issued a briefing paper recommending an amendment to the Internal Market Bill ensuring that the Bill would have no adverse consequences for the ‘non-diminution of rights’ commitments made within the Ireland/NI Protocol.³⁰³

Additionally, the Chief Commissioner of the Commission, Les Allamby, and Chief Commissioner of the Irish Human Rights and Equality Commission, Sinéad Gibney, provided oral evidence to the NI Assembly Committee for the Executive Office on the Internal Market Bill. The Commission raised concerns that as it stands the Internal Market Bill enables UK Ministers to override the human rights and equality protections of the Belfast (Good Friday) Agreement in the interest of the internal market. The Commission is concerned that the Bill may have negative consequences for human rights.

In November 2020, the House of Lords voted to remove the provisions of concern within the Internal Market Bill. However, the UK Government made it clear that it intended to reinstate the provisions once the Bill was returned for consideration within the House of Commons in December 2020.³⁰⁴

Dedicated mechanism

Article 2(1) of the Ireland/NI Protocol provides that the commitment to “no diminution of rights, safeguards or equality of opportunity” will be monitored through “dedicated mechanisms”. Article 2(2) of the Protocol states that:

the UK shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the NI

299 Clause 45(1) and (2), UK Internal Market Bill 2019-21.

300 UK Government, ‘Legal Position: UK Internal Market Bill and NI Protocol’ (UKG, 2020).

301 Ibid.

302 NI Human Rights Commission and Equality Commission NI, ‘Briefing on the Internal Market Bill’ (NIHRC and ECNI, 2020).

303 Ibid.

304 ‘Brexit: Government’s bill suffers heavy House of Lords defeat’, *BBC News*, 10 November 2020.

*Human Rights Commission, the Equality Commission NI and the Joint Committee of representatives of the Human Rights Commissions of NI and Ireland, in upholding equality standards.*³⁰⁵

In July 2020, the NI Human Rights Commission was provided with additional funds for 2020/2021 to undertake its role as part of the dedicated mechanism. The Commission is due to establish the dedicated mechanism, in cooperation with the Equality Commission NI, in January 2021.

Future relationship

In February 2020, the UK Government set out its approach to negotiations of the future relationship to the EU:

*it is a vision of a relationship based on friendly cooperation between sovereign equals, with both parties respecting one another's legal autonomy and right to manage their own resources as they see fit. Whatever happens, the [UK] Government will not negotiate any arrangement in which the UK does not have control of its own laws and political life. That means that we will not agree to any obligations for our laws to be aligned with the EU's, or for the EU's institutions, including the Court of Justice, to have any jurisdiction in the UK.*³⁰⁶

The commitments on non-regression on environmental standards and labour laws are much weaker than in earlier iterations of the UK Government's position.³⁰⁷ The UK intends that a future relationship agreement should include "reciprocal commitments not to weaken or reduce the level of protection afforded by labour or environmental laws and standards "in order to encourage trade or investment".³⁰⁸ On justice and security cooperation, the UK Government indicates that this should be facilitated through a separate agreement and governance system and that in recognition of the importance attached to safeguarding human rights in the EU and the UK, "the agreement should not specify how the UK or the EU Member States should protect and enforce human rights and the rule of law within their own autonomous legal systems".³⁰⁹ On mobility and social security, the UK Government suggests an agreement that is "similar in kind to agreements the UK already has with countries outside the EU".³¹⁰

In September 2020, the UK Government's Chief Negotiator, David Frost, made it clear that "a number of challenging areas remain and the divergences on some are still significant", but that the UK is "committed to working hard to reach agreement by the middle of October".³¹¹ In response, the EU Chief negotiator, Michel Barnier, noted that "the EU has

³⁰⁵ Protocol on Ireland/NI to the Agreement on the Withdrawal of the UK of Great Britain and NI from the EU and the European Atomic Energy Community 2020.

³⁰⁶ HM Government, 'The Future Relationship with the EU: The UK's Approach to Negotiations' (HM Government, 2020), at para 5.

³⁰⁷ HM Government, 'White Paper on the Future Relationship between the UK and EU' (HM Government, 2018), at Chapter 1.6.5, para 123.

³⁰⁸ HM Government, 'The Future Relationship with the EU: The UK's Approach to Negotiations' (HM Government, 2020), at paras 75-78.

³⁰⁹ *Ibid*, at paras 27-53.

³¹⁰ *Ibid*, paras 17-18.

³¹¹ David Frost, 'Statement after Round 8 of the Negotiations', 10 September 2020.

shown flexibility to work around the UK's red lines and find solutions... in particular with regard to the role of the European Court of Justice, the future legislative autonomy of the UK, and fisheries".³¹² However, the EU was "missing important guarantees on non-regression from social, environmental, labour and climate standards" and on "essential safeguards for judicial cooperation and law enforcement".³¹³

In October 2020, the Vice President of the European Commission, Maros Sefcovic, stated "deal or no deal that the Withdrawal Agreement must be respected" and that the UK and European Commission had "managed to strike a constructive approach. Now it will be vital that this translated into concrete, workable, operational solutions".³¹⁴ In terms of the deal negotiations, the Vice President confirmed that the European Commission's "objective is still to reach an agreement that will pave the way for a new fruitful relationship between the EU and the UK".³¹⁵ He warned that the European Commission "will continue to work for such an agreement, but not at any price".³¹⁶ In response to the October 2020 meeting of the EU-UK Joint Committee, the Vice President of the European Commission remarked that there is:

*political will to move at pace on both sides. This is necessary as, despite some progress, much work remains to be done by the UK, in particular with regard to the implementation of the Protocol on Ireland and NI in its entirety from 1 January 2021 onwards. The EU... is ready to work with the UK to find solution at full speed and within the framework of the Withdrawal Agreement and EU law.*³¹⁷

Retained EU law

Currently only the UK Supreme Court and the High Court of Justiciary in Scotland (where there is no route of appeal to the UK Supreme Court) have the power to diverge from retained EU case law.³¹⁸ Section 6(5A) of the EU (Withdrawal) Act 2018 permits a Minister by regulation to amend the Act and change the extent to which other courts can diverge from retained EU case law. In 2020, the Ministry of Justice consulted on whether to expand these powers to the NI Court of Appeal and or the NI High Court (and equivalent courts in other jurisdictions of the UK).³¹⁹ The Commission responded to this consultation.³²⁰

In October 2020, the UK Government introduced draft regulations to extend the power to depart from retained EU case law to additional courts, including the Court of Appeal NI. The draft regulations preserve the normal operation of precedent between decisions of UK courts, by

312 EU Commission, 'Press statement by Michel Barnier following Round 8 of the negotiations for a new partnership between the EU and the UK', 10 September 2020.

313 Ibid.

314 European Commission, 'Press Statement: Speech by Vice-President Sefcovic on behalf of President von der Leyen at the European Parliament Plenary on the Conclusions of the European Council meeting of 15 and 16 October 2020', 21 October 2020.

315 Ibid.

316 Ibid.

317 European Commission, 'Press Release: Statement by the European Commission following the fourth meeting of the EU-UK Joint Committee', 19 October 2020.

318 Sections 6(4)-6(5), EU (Withdrawal) Act 2018.

319 Ministry of Justice, 'Retained EU Case Law: Consultation on the Departure from Retained EU Case Law by UK Courts and Tribunals' (MoJ, 2020).

320 NI Human Rights Commission, 'Briefing Paper: Ministry of Justice Consultation on Retained EU Case Law' (NIHRC, 2020).

making it clear that the identified courts (including the Court of Appeal NI) will be bound by the decision of another court which would normally bind them on whether or not to depart from retained EU case law. The draft regulations do not allow courts to depart from retained domestic case law which relates to retained EU case law in circumstances where they would not otherwise be able. The draft regulations are expected to progress through Parliament and expected to come into force following the end of the transition period on 31 December 2020.

Common Travel Area

In March 2020, the Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2019-21 was introduced to the UK Parliament. This Bill ends European Economic Area nationals' right to free movement. It enhances Common Travel Area rights, by allowing free movement of British citizens into Ireland and Irish citizens into the UK, regardless of whether the journey originated outside of the Common Travel Area.

It does not reciprocate legislation in Ireland, which rules out deportation of UK citizens.³²¹ In September 2020, the Commission provided a submission on the Bill to the House of Commons Public Bill Committee of the Immigration and Social Security Coordination (EU Withdrawal) Bill and NI Assembly calling for no diminution of rights and for the birthright commitment in the Belfast (Good Friday) Agreement to be further enshrined in law.³²² On 11 November 2020, the Immigration and Social Security Co-Ordination (EU Withdrawal) Act 2020 received Royal Assent and commencement regulations were introduced two days later.

Future justice arrangements

In 2020, the House of Commons NI Affairs Committee conducted an inquiry on cross-border cooperation on policing, security and criminal justice after Brexit.³²³ In October 2020, the Commission provided written evidence to the inquiry, which highlighted the need to continue data sharing arrangements that reflects human rights and data protection standards, to establish an effective and efficient UK-EU extradition arrangement in the absence of the European Arrest Warrant, to ensure continued cross-border arrangements on the basis of what already exists and to ensure victims' rights and the rights of accused persons are central to any future arrangements.³²⁴

Continuing EU citizenship in NI

In 2020, the Joint Committee of the Commission and Irish Human Rights and Equality Commission published a legal analysis and proposals for reform to uphold the birthright provision in the Belfast (Good Friday)

321 Aliens (Exemption) Order 1999.

322 NI Human Rights Commission, 'Briefing on the Immigration and Social Security Coordination (EU Withdrawal) Bill' (NIHRC, 2020); NI Human Rights, 'Submission to the Public Bill Committee of the Immigration and Social Security Coordination (EU Withdrawal) Bill' (NIHRC, 2020).

323 NI Affairs Committee, 'Cross-Border Cooperation on Policing, Security and Criminal Justice after Brexit'. Available at: <https://committees.parliament.uk/work/534/crossborder-cooperation-on-policing-security-and-criminal-justice-after-brexit/>

324 NI Human Rights Commission, 'Submission to NI Affairs Committee Inquiry on Cross-border Cooperation on Policing, Security and Criminal Justice after Brexit' (NIHRC, 2020).

Agreement within UK immigration law³²⁵ and research on continuing EU citizenship rights in NI after the UK leaves the EU.³²⁶

In February 2019, the (then) Prime Minister, Theresa May MP, recognised that “the birthright to identify and be accepted as British, Irish or both, and to hold both British and Irish citizenship is absolutely central to the [Belfast (Good Friday)] Agreement”.³²⁷ The then Prime Minister also stated that she had initiated a review of immigration rules “to deliver a long term solution consistent with the letter and spirit of the Belfast Agreement”.³²⁸

The New Decade, New Approach agreement committed the UK Government to reviewing its rules on migration noting that “taking into account the letter and spirit of the Belfast Agreement and recognising that the policy should not create incentives for renunciation of British citizenship by those citizens who may wish to retain it”.³²⁹ The agreement also commits the UK Government to change the rules governing how the people of NI bring their family members to the UK to allow for parity between Irish citizens, British citizens and dual nationals.³³⁰

In April 2020, the Commission wrote to Home Secretary, Priti Patel MP, seeking an update on the review.³³¹ In May 2020, the Home Secretary responded that “the former Prime Minister did not commission a formal review and there were no terms of reference, but the conclusion of that work was published in the New Decade, New Approach deal”.³³²

In May 2020, the Home Office released a Statement of Changes in Immigration Rules, which provides for a “relevant person of NI” to access EU free movement law protections.³³³ On 24 August 2020, these changes came into force and remain in place until the EU Settlement Scheme closes to new applications in June 2021.³³⁴ A relevant person of NI is defined as someone who is a British citizen, an Irish citizen, or both British and Irish and was born in NI to a parent who was British, Irish or both, or otherwise entitled to reside in NI without any restriction on their period of residence.

The right of NI born Irish citizens to avail of EU free movement rights in relation to family members from non-EU states had been legally challenged by Jake Parker De Souza.³³⁵ The challenge had reached the Court of Appeal in NI, but was withdrawn following changes to the EU Settlement Scheme to include family members of people of NI.³³⁶ The legal issue is likely to re-emerge after June 2021.

325 Alison Harvey, ‘A Legal Analysis of Incorporating into UK Law the Birthright Commitment under the Belfast (Good Friday) Agreement 1998’ (NIHRC and IHREC, 2020).

326 Sylvia de Mars, Colin Murray, Aoife O’Donoghue and Ben Warwick, ‘Continuing EU Citizenship “Rights, Opportunities and Benefits” in NI after Brexit’ (NIHRC and IHREC, 2020).

327 Prime Ministers Office, ‘Press Release: PM speech in Belfast’, 5 February 2019.

328 Ibid.

329 NI Office, ‘New Decade, New Approach’ (NIO, 2020), at 48.

330 Ibid.

331 Letter from NI Human Rights Commission to Home Secretary, Priti Patel MP, 23 April 2020.

332 Letter from Home Secretary, Priti Patel MP, to NI Human Rights Commission, 4 May 2020.

333 Home Office, ‘Statement of Changes in Immigration Rules CP232 (HO, 2020), at 10.

334 NI Human Rights Commission, ‘EU Settlement Scheme extended to the people of NI: what does it mean for me?’ (NIHRC, 2020).

335 *Secretary of State for the Home Department v Jake Parker De Souza* [2019] UKUT 355.

336 Jayne McCormack, ‘Emma DeSouza withdraws Home Office court appeal’ *BBC News*, 21 May 2020.

In October 2020, the House of Commons Committee on the Future Relationship with the EU published a report on implementing the Withdrawal Agreement and citizens' rights. The cross-party report urges the UK and EU to ensure that citizens' rights protections in the Withdrawal Agreement are fully implemented for UK nationals living across the EU and EU citizens in the UK, including their right to live and work in the country where they reside.³³⁷

In October 2020, the Citizens' Rights (Frontier Workers) EU Exit Regulations were published creating a permit scheme for frontier workers. The regulations are likely to apply to a number of EU citizens travelling between Ireland and NI for work. Anyone applying must do so before 1 July 2021. The lack of consultation and an impact assessment in advance of producing the regulations was raised by a number of civil society organisations including the Committee for the Administration of Justice, the Centre for Cross Border Studies and the Irish Congress of Trade Unions.

³³⁷ House of Commons Committee on the Future Relationship with the EU, 'Implementing the Withdrawal Agreement: Citizens' Rights' (HC, 2020).

Chapter 4 – Issues needing immediate action

Red issues are those that require immediate action by the UK Government, NI Executive or relevant public authorities and the issue may be an ongoing violation or abuse of human rights within NI. As in 2019, there are 13 red issues in 2020.

This chapter sets out the updates from 2020 in relation to the red issues and the Commission's respective recommendations in detail.

Right to Life

Conflict related investigations: transitional justice and individual cases

In 2019, the UN CAT Committee recommended that the UK Government “take urgent measures to advance and implement the Stormont House Agreement and the mechanisms it contemplates for investigating conflict-related violations, particularly the Historical Investigations Unit”.³³⁸ The UN CAT Committee also recommended the UK Government “refrain from enacting amnesties or statutes of limitations for torture or ill-treatment”, which are inconsistent with UN CAT.³³⁹

The UN CAT Committee’s recommendations are supported by the UN Human Rights Committee,³⁴⁰ and Pablo de Greiff, the then UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and guarantees of non-repetition.³⁴¹

Furthermore, in September 2020, the CoE Committee of Ministers “strongly urged” the UK Government to “act, within the shortest possible timeframe, on their obligation to put an end to the type of violation identified by the [ECtHR] in the present cases and to secure compliance with the requirements of Article 2 of the [ECHR]”.³⁴² The Committee of Ministers also noted “the length of time these judgments have been pending, with the families waiting for answers”.³⁴³ The Committee of Ministers requested that the UK provided a detailed timeframe by 22 October 2020, or it would consider issuing an interim resolution against the UK.³⁴⁴ The UK Government submitted its response and the Committee of Ministers is to meet in December 2020 to consider whether further action is required.³⁴⁵

Stormont House Agreement

On 23 December 2014, the Stormont House Agreement was reached.³⁴⁶ The Agreement sets out a structure for the effective investigation of conflict related deaths including the Oral History Archive,³⁴⁷ Victims and Survivors’ Services (including a Mental Trauma Service, pension for severely physically injured victims, and advocate-counsellor assistance),³⁴⁸ the Historical Inquiries Unit,³⁴⁹ the Independent Commission

338 CAT/C/GBR/CO/6, ‘UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at paras 41(a) and 41(b).

339 Ibid, at paras 41(a) and 41(f).

340 CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015, at para 11(b).

341 A/HRC/34/62/Add.1, ‘Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff on his Mission to the UK of Great Britain and NI’, 17 November 2016, at para 39.

342 CM/Notes/1377bis/H46-44, ‘CoE Committee of Ministers Decision: McKerr Group v UK (Application No 28883/95)’, 3 September 2020, at para 6.

343 Ibid.

344 Ibid.

345 DH-DD(2020)931, ‘CoE Committee of Ministers Communication from the Authorities in the McKerr Group of Cases v UK (Application No 28883/95)’, 28 October 2020, at 4; Email from CoE Committee of Ministers Secretariat to NI Human Rights Commission, 28 October 2020.

346 Stormont House Agreement, 23 December 2014.

347 Ibid, at para 22.

348 Ibid, at para 26-29.

349 Ibid, at para 30.

on Information Retrieval;³⁵⁰ and the Implementation and Reconciliation Group.³⁵¹ The UK Government has committed within the financial annex of the Stormont House Agreement to provide up to £150 million over 5 years to help fund the bodies to deal with the past.³⁵²

In July 2019, the NI Office published a summary of the 17,000 responses to the legacy consultation. This document will be used to inform the UK Government's next steps, which will be set out "in due course".³⁵³ The overarching message from the majority of respondents was "the current system needs to be reformed".³⁵⁴ The NI Office accepted it has "an obligation to seek to address the legacy of the past in a way that builds for the future... [and confirmed that the UK] Government remains fully committed to the implementation of the Stormont House Agreement".³⁵⁵

In 2020, following the re-establishment of the NI Assembly, the New Decade, New Approach document stated that:

*in moving to a better, more prosperous and shared future the parties recognise the need to address the legacy of the past. To that end, the parties are committed to working together and to doing everything possible to heal wounds and eliminate the issues that divide us.*³⁵⁶

The UK Government committed to:

*within 100 days, publish and introduce legislation in the UK Parliament to implement the Stormont House Agreement, to address NI legacy issues. The [UK] Government will now start an intensive process with the NI parties, and the Irish Government as appropriate, to maintain a broad-based consensus on these issues, recognising that any such UK Parliament legislation should have the consent of the NI Assembly.*³⁵⁷

The UK Government also committed to provide funding to implement the Stormont House Agreement proposals on legacy. This was supported by the Government of Ireland who affirmed:

*its commitment to working with the UK Government to support the establishment of the Stormont House Agreement legacy institutions as a matter of urgency, including by introducing necessary implementing legislation in the Oireachtas, to deal with the legacy of the Troubles and support reconciliation, meeting the legitimate needs and expectations of victims and survivors.*³⁵⁸

However, on 18 March 2020, the Secretary of State for NI, Brandon Lewis MP, issued a written Ministerial Statement outlining the UK Government's new approach to addressing the legacy of the past in NI. This statement

350 Ibid, at para 41.

351 Ibid, at para 51.

352 NI Office, 'Stormont House Agreement: Financial Annex' (NIO, 2014), at 1. The Stormont House Agreement includes a further broad financial commitment to all sections covered within the Agreement. It is stated within the Financial Annex that: 'the total value of the Government's package is additional spending power of almost £2 billion'.

353 NI Office, 'Press Release: Government Publishes Summary of Responses to Legacy Consultation', 5 July 2019.

354 NI Office, 'Addressing the Legacy of NI's Past: Analysis of the Consultation Responses' (NIO, 2019), at 4.

355 Ibid.

356 NI Office, 'New Decade, New Approach' (NIO, 2020), at 14.

357 Ibid, at 48.

358 Ibid, at 62.

indicates a significant roll back on the commitments made in New Decade, New Approach and the Stormont House Agreement. In the Secretary of State for NI's view, "it is clear that, while the principles underpinning the draft Bill as consulted on in 2018 remain, significant changes will be needed to obtain a broad consensus for the implementation of any legislation".³⁵⁹ His statement continued that:

while there must always be a route to justice, experience suggests that the likelihood of justice in most cases may now be small, and continues to decrease as time passes.

Our view is that we should now therefore centre our attention on providing as much information as possible to families about what happened to their loved ones - while this is still possible.

*Our proposals have therefore evolved to remain true to the principles of the Stormont House Agreement, but with a greater emphasis on gathering information for families; moving at a faster pace to retrieve knowledge before it is lost; and doing more to help individuals and society to share and understand the tragic experiences of the past.*³⁶⁰

The Ministerial statement also sets out that:

*the [UK] Government will ensure that the investigations, which are necessary are effective and thorough, but quick, so we are able to move beyond the cycle of investigations that has, to date, undermined attempts to come to terms with the past. Only cases in which there is a realistic prospect of a prosecution as a result of new compelling evidence would proceed to a full police investigation and if necessary, prosecution. Cases which do not reach this threshold, or subsequently are not referred for prosecution, would be closed and no further investigations or prosecutions would be possible - though family reports would still be provided to the victims' loved ones. Such an approach would give all participants the confidence and certainty to fully engage with the information recovery process.*³⁶¹

In April 2020, the Commission wrote to the Secretary of State for NI, Brandon Lewis MP, expressing concerns that this new approach by the UK Government is not human rights compliant, particularly regarding Article 2 ECHR.³⁶²

Additionally, the Ministerial statement does not address the issue of expanding the remit of the Historical Investigations Unit to address allegations of torture, sexual violence, and disappearances committed during 'the Troubles'. There are no plans that the Commission is aware of to address this using other initiatives.

Furthermore, there are 28 cases where individuals have died at the scene of a conflict-related incident, but are not recorded as conflict-related deaths.³⁶³ These cases include individuals that died of shock-related

359 NI Office, 'Press Release: UK Government sets out way forward on the legacy of the past in NI', 18 March 2020.

360 Ibid.

361 Ibid.

362 Letter from NI Human Rights Commission to Secretary of State for NI, Brandon Lewis MP, 1 April 2020.

363 Noel McAdam, 'New push to recognise tragic cases of 'forgotten dead' of the Troubles', *Belfast Telegraph*, 18 July 2017; Roundtable discussion with civil society representatives, January 2019.

injuries, for example a heart attack, when exposed to scenarios such as arriving at a scene where a relative had been shot, being within the vicinity of a bomb attack, or raids and missile attacks on their home.³⁶⁴ These cases are not recognised as potentially falling within the remit of the Stormont House Agreement and its proposed remedies.

In May 2020, the Commission submitted an update in respect of the UN CAT Committee's follow up procedure to its 2019 Concluding Observations on the UK's implementation of the UN CAT.³⁶⁵ This submission provided the requested update on steps taken since May 2019 to implement the UN CAT Committee's recommendations concerning accountability for conflict-related violations in NI.

In May 2020, the Commission also provided a submission to the CoE Committee of Ministers regarding its supervision of the *McKerr Group* of cases.³⁶⁶ The Commission updated the CoE Committee of Ministers that since the last examination in September 2019, there have been limited concrete government actions to address the outstanding issues.³⁶⁷

Following the Ministerial Statement, the House of Commons NI Affairs Committee launched an inquiry into whether the UK Government's proposals deliver for victims, survivors and their families. The Commission provided a written response to the questions posed by the NI Affairs Committee, which highlighted the need for the Stormont House Agreement to be implemented fully and effectively and raised concerns that the UK Government's new direction as set out in the Ministerial statement is not human rights compliant.³⁶⁸ In October 2020, the NI Affairs Committee published an interim report to its inquiry finding that the UK Government's proposals were a "unilateral and unhelpful departure from the Stormont House Agreement rather than a positive and progressive evolution" and that the proposed "permanent closure of a case in which a serious crime has been committed raises profound legal, ethical and human rights issues".³⁶⁹ Additionally, the NI Affairs Committee stated that it was "dismayed" by the lack of engagement and consultation by the UK Government with stakeholders, NI parties and the Government of Ireland both before and after publication of the Ministerial statement.³⁷⁰ The NI Affairs Committee stated that the UK "Government must, as soon as possible, introduce legislation that is consistent with the six principles of the Stormont House Agreement".³⁷¹

Statute of limitations

In April 2017, the House of Commons Defence Committee issued a report on investigation into fatalities in NI involving British military personnel.

³⁶⁴ Ibid.

³⁶⁵ NI Human Rights Commission, 'Update in Respect of UN CAT Committee's Follow-up Procedure to UK's 2019 Concluding Observations' (NIHRC, 2020).

³⁶⁶ NI Human Rights Commission, 'Submission to the Committee of Ministers in Relation to the Supervision of the Cases Concerning the Actions of the Security Forces in NI' (NIHRC, 2020).

³⁶⁷ Ibid, at para 2.1.

³⁶⁸ NI Human Rights Commission, 'Submission to the NI Affairs Committee Inquiry into Addressing the Legacy of NI's Past: UK Government's New Proposals' (NIHRC, 2020).

³⁶⁹ House of Commons NI Affairs Committee, 'Addressing the Legacy of NI's Past: The Government's New Proposals (Interim Report)' (NIAC, 2020), at paras 15 and 38.

³⁷⁰ Ibid, at 24.

³⁷¹ Ibid, at 15.

In the report, the Defence Committee recommended “the enactment of a statute of limitations, covering all Troubles-related incidents, up to the signing of the 1998 Belfast Agreement, which involved former members of the Armed Forces”.³⁷²

Since then there have been numerous calls for the introduction of a statute of limitations to protect from prosecution members of the Armed Forces who served in NI.³⁷³ The most recent of these came from the current Prime Minister, Boris Johnson.³⁷⁴ The Queen’s Speech in December 2019 also referenced bringing “forward proposals to tackle vexatious claims that undermine our Armed Forces”.³⁷⁵

In July 2019, the majority of respondents to the draft NI (Stormont House Agreement) Bill consultation were of the opinion that a statute of limitations would be inappropriate for ‘Troubles-related’ matters.³⁷⁶ However, the UK Government’s view persists and the NI (Executive Formation etc) Act 2019, sections 3(8) required the Secretary of State for NI to publish a report on protecting veterans of the Armed Forces and other security personnel from repeated investigation for Troubles-related incidents, including creating a presumption of non-prosecution. Section 3(9) of the 2019 Act requires the Secretary of State to report on progress concerning guidance by the Attorney General for NI on this issue.

However, it has since been confirmed that:

*under the Justice (NI) Act 2002, the Attorney General for NI does not superintend the Director of Public Prosecutions for NI and therefore is not able to either issue prosecution guidance to the Director of Public Prosecutions or direct the Director of Public Prosecutions to issue such guidance. It is not within the UK Government’s powers to direct the Attorney General for NI, recognising that under the Justice (NI) Act 2002, justice is a devolved matter. The UK Government has no plans to alter the current division of responsibilities, and independence as between, the Director of Public Prosecutions and the Attorney General for NI.*³⁷⁷

Instead, the UK Government:

*will continue working with the NI political parties, the Irish Government and the relevant Civil Service departments and independent judicial bodies to consider the issues raised in the recent legacy consultation and to take forward an approach which reforms the current processes for dealing with the legacy of the Troubles which is effective, legally robust and commands consensus.*³⁷⁸

372 House of Commons Defence Committee, ‘Investigations into Fatalities in NI involving British Military Personnel: Seventh Report of Session 2016-17: HC 1064’, 26 April 2017.

373 Ibid; House of Commons Hansard, ‘Oral Questions: Armed Forces Veterans: Historic Allegations’, 9 July 2018; House of Commons Hansard ‘Written Statement: Legal Protections and Support for Armed Forces Personnel and Veterans - Penny Mordaunt MP - HCWS1575’, 21 May 2019.

374 Conservatives, ‘Press Release: Conservatives in general election manifesto pledge to end ‘unfair trials’ for NI veterans’, 13 November 2019.

375 Gov.UK, ‘Press Release: Queen’s Speech December 2019’, 19 December 2019.

376 NI Office, ‘Addressing the Legacy of NI’s Past: Analysis of the Consultation Responses’ (NIO, 2019), at 4.

377 NI Office, ‘Report Pursuant to Sections 3(1), 3(6), 3(7), 3(8), 3(9) and 3(10) of the NI (Executive Formation etc) Act 2019 - Regarding Executive Formation; Transparency of Political Donations; Higher Education and a Derry University; Presumption of Non-prosecution; Troubles Prosecution Guidance; and Abortion Law Review’ (Crown, 2019), at 20.

378 Ibid.

Prosecutions

In March 2019, the Public Prosecution Service NI issued decisions regarding 19 individuals reported for a range of offences relating to 'Bloody Sunday', including murder, attempted murder and wounding committed on 30 January 1972. The Director of Public Prosecutions is prosecuting one former soldier, Soldier F, for the murders of James Wray and William McKinney and for the attempted murders of Joseph Friel, Michael Quinn, Joe Mahon and Patrick O'Donnell.³⁷⁹ The case was initially adjourned in September 2019 and has been subject to delays since.³⁸⁰ Most recently, COVID-19 measures in place at the NI courts have resulted in the case being adjourned further with a date for the hearing to be set in due course.³⁸¹

The families of ten individuals killed and ten individuals injured during Bloody Sunday requested a formal review of the Public Prosecution Service NI's decision to not prosecute 15 soldiers that were allegedly connected with these deaths and injuries. In September 2020, the Public Prosecution Service NI confirmed that, following an internal review, it was upholding its decision to not prosecute on the grounds that the evidential test for prosecution had not been met.³⁸² Soldier F was included within this review for alleged actions that are separate to the case currently before the court and therefore the outcome of this internal review has not affected the progression of this case.³⁸³ The families are considering further legal action following the outcome of the Public Prosecution Service NI's internal review.³⁸⁴

Recommendation

The Commission is deeply concerned at the lack of detail contained within the March 2020 Ministerial Statement and the indication that it seeks to significantly renege on commitments made in the Stormont House Agreement. This approach raises serious concerns as to whether the UK Government's proposed way forward is human rights compliant. The Commission continues to recommend that the Stormont House Agreement is fully and promptly implemented and in a way that is fully compliant with human rights law. This includes recognising cases where individuals have died at the scene of a conflict-related incident as being within the scope of the Stormont House Agreement. It also includes introducing a mechanism or procedure to deal with investigations of allegations of torture, inhuman and degrading treatment.

379 Public Prosecution Service NI, 'Press Release: Bloody Sunday prosecution decisions', 14 March 2019.

380 'Soldier F Bloody Sunday case adjourned', *BBC News*, 18 September 2019.

381 George Jackson, 'Bloody Sunday Soldier F hearings put back to September', *Belfast Telegraph*, 25 June 2020; Email from Madden and Finucane to NI Human Rights Commission, 27 October 2020.

382 Public Prosecution Service NI, 'Press Release: PPS upholds decision not to prosecute 15 soldiers in connection with Bloody Sunday', 29 September 2020.

383 *Ibid.*

384 Email from Madden and Finucane to NI Human Rights Commission, 27 October 2020.

The Commission remains concerned that the UK continues to fail to implement ECtHR judgments stipulating measures to achieve effective investigations into ‘Troubles-related’ deaths. The Commission is particularly concerned that it has been nineteen years since the *McKerr* judgment and the ECtHR’s ruling is still not fully implemented. This continued failure is itself resulting in further findings of violations against the UK.

The Commission continues to advise that a statute of limitation restricting the prosecution of State actors would be incompatible with Articles 2 and 3 of the ECHR.

Legacy inquests and inquiries

Between 2015 and 2019, the UN Human Rights Committee,³⁸⁵ Pablo de Greiff, the then UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and guarantees of non-repetition,³⁸⁶ and the CoE Committee of Ministers have called for prompt, adequate and effective resourcing of legacy inquests and inquiries.³⁸⁷

The UN Committee against Torture³⁸⁸ and UN Human Rights Committee have also specifically called for an inquiry into the killing of Patrick Finucane.³⁸⁹ In September 2020, the CoE Committee of Ministers “expressed their deep concern that a decision has still not been made on how to react to the [UK] Supreme Court judgment and underlined that it is urgent that the [UK Government]... take such a decision without further delay”.³⁹⁰

Legacy inquests

Funding for legacy inquests had been delayed for a number of years.³⁹¹ In 2019, following a legal challenge,³⁹² the Department of Justice NI established a new Legacy Inquest Unit within the Coroner’s Service under the remit of the Lord Chief Justice. The Legacy Inquest Unit is to complete its work within five years, starting in 2019/2020.

There is a legacy caseload of 52 cases relating to 93 deaths. These are made up of one inquest in which findings have been given and a final legal ruling is awaited, five inquests (the Ballymurphy series) in which findings are awaited, two in which hearings have commenced and are adjourned, and 44 which are pending.³⁹³

385 CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015, at para 11(b).

386 A/HRC/34/62/Add.1, ‘Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence, Pablo de Greiff on his Mission to the UK of Great Britain and NI’, 17 November 2016, at para 39.

387 CM/Notes/1340/H46-30, ‘CoE Committee of Ministers: *McKerr Group v the UK – Supervision of the Execution of the European Court’s Judgments*’, 14 March 2019.

388 CAT/C/GBR/CO/6, ‘UN Committee against Torture, Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 7 June 2019, at para 41(d).

389 CCPR/C/GBR/CO/7, ‘UN Human Rights Committee Concluding Observations on the Seventh Periodic Report of the UK of Great Britain and NI’, 17 August 2015, at para 8.

390 CM/Notes/1377bis/H46-44, ‘CoE Committee of Ministers Decision: *McKerr Group v UK (Application No 28883/95)*’, 3 September 2020, at para 3.

391 ‘Legacy inquests in NI “can be dealt with in five years”’, *BBC News*, 12 February 2016.

392 *In the Matter of an Application by Brigid Hughes for Judicial Review* [2018] NIQB 30, at para 12.

393 DH-DD(2020)931, ‘CoE Committee of Ministers Communication from the Authorities in the *McKerry Group of Cases v UK (Application No 28883/95)*’, 28 October 2020, at 4.

A schedule had been set to hear preliminary hearings into all the outstanding cases starting September 2019, with the exception of the nine Stalker and Sampson cases into an alleged Royal Ulster Constabulary shoot-to-kill policy in the 1980s. Mr Justice O'Hara and Mr Justice McAlinden have been allocated these nine cases.³⁹⁴

In 2019, the Lord Chief Justice, Sir Declan Morgan, confirmed that “representatives for the families and the relevant agencies have been asked to provide an update on each case in advance of these hearings”.³⁹⁵ The Lord Chief Justice also emphasised that “it is important that all those involved work together to ensure that legacy inquest cases are prepared for hearing expeditiously and that disclosure issues are identified early and, through collaboration and dialogue, that reasonable and proportionate solutions are found”.³⁹⁶

The first full hearings were to start in April 2020 and a thematic approach to the hearing schedule was being considered to avoid the potential of missing the bigger picture.³⁹⁷ These initial hearings have been allocated to a Coroner or judge.³⁹⁸ However, due to COVID-19 all non-urgent court business, including legacy inquests, were adjourned on 20 March 2020. This is subject to ongoing review.³⁹⁹ To mitigate the impact, the Presiding Coroner, Mrs Justice Keegan, who was due to leave this post is continuing in this role and consideration is being given to dealing with directions by way of written submissions and remote working. However, Mrs Justice Keegan stated that “the task of case management will undoubtedly be difficult and take an appreciable period of time”.⁴⁰⁰ The UK Government has stated that the delay due to COVID-19 “will have an impact on the timeline for the Five Year Plan, however, because the full impact of the pandemic on legacy inquests is not yet known, the overall impact on the timeline cannot yet be assessed”.⁴⁰¹

In October 2020, no legacy inquests had taken place since COVID-19 related measures were introduced, with hearings to be listed going forward “where possible”.⁴⁰²

Finucane

In 2015, the Finucane family unsuccessfully challenged in the NI High Court the decision of the then Secretary of State of NI to hold a review into the death rather than a public inquiry of the kind recommended following a judicial review by Judge Peter Cory.⁴⁰³ A further appeal to the NI Court of Appeal in 2017 was unsuccessful.⁴⁰⁴

394 Judiciary NI, ‘Press Release: Statement from the Presiding Coroner Mrs Justice Keegan – Legacy Inquests’, 4 May 2020.

395 ‘The Lord Chief Justice, Declan Morgan’s, Opening of Term Address 2019’, Royal Courts of Justice, 5 September 2019.

396 Ibid.

397 ‘Families assured over timeframe for legacy inquests’, *Belfast Telegraph*, 7 June 2019.

398 Judiciary NI, ‘Press Release: Statement from the Presiding Coroner Mrs Justice Keegan – Legacy Inquests’, 4 May 2020.

399 Ibid.

400 Ibid.

401 DH-DD(2020)931, ‘CoE Committee of Ministers Communication from the Authorities in the McKerry Group of Cases v UK (Application No 28883/95)’, 28 October 2020, at 4.

402 Ibid, at 4.

403 *Finucane’s (Geraldine) Application* [2015] NIQB 57.

404 ‘Finucane family consider legal options after losing appeal for public inquiry’, *Belfast Telegraph*, 21 February 2017.

In February 2019, the UK Supreme Court unanimously made a declaration that there has not been an Article 2 ECHR compliant inquiry into the death of Patrick Finucane. The UK Supreme Court identified the lack of ability of Sir Desmond to compel the attendance of witnesses or cross-examine witnesses on the veracity of their evidence as limitations of the De Silva review.⁴⁰⁵

The UK Supreme Court did not order a public inquiry, noting that:

*it is for the State to decide, in light of the incapacity of Sir Desmond de Silva's review and the inquiries which preceded it to meet the procedural requirement of Article 2, what form of investigation, if indeed any is now feasible, is required in order to meet that requirement.*⁴⁰⁶

The UK Government still has not provided a formal response to the UK Supreme Court's decision that there had not been an Article 2 ECHR compliant inquiry into the death of Pat Finucane.⁴⁰⁷ In January 2020, the Finucane family were granted leave by the High Court to judicially review the UK Government's delay in implementing the UK Supreme Court's decision.⁴⁰⁸

In February 2020, the UK Government stated that it would provide a formal response to the UK Supreme Court's decision "within a matter of weeks".⁴⁰⁹ The formal response was not provided. In October 2020, a representative of the Secretary of State for NI committed to the UK Government providing a decision on whether it would undertake an inquiry into Pat Finucane's death by end of November 2020.⁴¹⁰ In November 2020, four political parties (Alliance Party, Green Party, SDLP and Sinn Fein) jointly wrote to the Secretary of State NI, Brandon Lewis MP, calling for him to "act in the public interest" and hold a public inquiry into Pat Finucane's murder.⁴¹¹ On 30 November 2020, the Secretary of State NI confirmed that the UK Government does not intend to hold a public inquiry into Pat Finucane's death at this point in time, stating that "I am not taking the possibility of a public inquiry off the table at this stage, but it is important we allow ongoing Police Service NI and Police Ombudsman NI processes to move forward".⁴¹² The Police Service NI issued a statement confirming there are currently no new lines of inquiry and it will decide if a further review is necessary. If so, it is highly likely that any review will need to be conducted independently of the Police Service NI due to the "accepted position of State involvement in this matter".⁴¹³

405 *In the Matter of an Application by Geraldine Finucane for Judicial Review (NI)* [2019] UKSC 7.

406 *Ibid.*, at para 153.

407 *Ibid.*, at para 153; *In the Matter of an Application by Geraldine Finucane for Judicial Review (NI)* [2017] UKSC 58.

408 Cate McCurry, 'Government to respond to Supreme Court ruling over Pat Finucane death "in weeks"', *Belfast Telegraph*, 21 February 2020.

409 *Ibid.*

410 Alan Erwin, 'Pat Finucane public inquiry decision by end of November, pledges Brandon Lewis', *Belfast Telegraph*, 12 October 2020.

411 'Pat Finucane killing: Parties call for public inquiry', *BBC News*, 23 November 2020.

412 'Pat Finucane: No public inquiry into Belfast lawyer's murder', *BBC News*, 30 November 2020.

413 Police Service NI, 'Press Release: Statement from Chief Constable Simon Byrne following the announcement from the Secretary of State on the murder of Pat Finucane', 30 November 2020.

Highlighting the UK Supreme Court judgment, the Finucane family has stated that it will continue to campaign for a full public inquiry.⁴¹⁴

Recommendation

The Commission calls on the NI Executive and UK Government to continue to support the work of the Legacy Inquests Unit, to ensure that all investigations are fully compliant with Article 2 of the ECHR. The Commission appreciates the difficulties created by COVID-19, but further urges that there are no undue delays to the hearing schedule and timeframe for the Legacy Inquest Unit.

The Commission further recommends that an Article 2 right to life compliant inquiry is conducted as soon as possible into the death of Patrick Finucane, in line with the judgment of the UK Supreme Court.

Right to liberty and security of person

Remand of children

In June 2016, the UN CRC Committee noted that throughout the UK, including NI:

*the number of children in custody remains high, with disproportionate representation of ethnic minority children, children in care, and children with psycho-social disabilities, and detention is not always applied as a measure of last resort.*⁴¹⁵

The UN CRC Committee recommended that the UK Government and NI Executive “establish the statutory principle that detention should be used as a measure of last resort and for the shortest possible period of time and ensure that detention is not used discriminatorily against certain groups of children”.⁴¹⁶

In 2015, the UN Human Rights Committee made a similar concluding observation, which in addition recommended that “suitable bail packages are available to child defendants in NI”.⁴¹⁷

In March 2016, the then Minister of Justice, David Ford, announced key findings from an internal scoping study into children in the justice system.⁴¹⁸ His statement included a recommendation “to develop the disposals available to the judiciary and reduce the use of custody to make it truly a measure of last resort”.⁴¹⁹

414 ‘Pat Finucane: No public inquiry into Belfast lawyer’s murder’, *BBC News*, 30 November 2020.

415 CRC/C/GBR/CO/5, ‘UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 12 July 2016, at para 77.

416 *Ibid.*

417 NI Human Rights Commission, ‘Submission to the UN Committee on the Rights of the Child on the UK’s Fifth Periodic Report on compliance with the UN CRC’ (NIHRC, 2015), at para 23.

418 Minister of Justice, ‘Children in the Justice System: Scoping Study, Ministerial Statements – in the NI Assembly’, 14 March 2016.

419 *Ibid.*

In 2019/2020, the total number of admissions to the Juvenile Justice Centre was 298, which is 11.6 per cent lower than the 337 admissions in 2018/2019.⁴²⁰ Of these, 197 (66.1 per cent) were related to the Police and Criminal Evidence Act 1984, 95 (31.9 per cent) to remand and 6 (2 per cent) were sentencing admissions.⁴²¹ Since 2015/2016, the proportion of admissions attributed to remand have decreased from 35.9 per cent to 31.9 per cent in 2019/2020.⁴²²

In 2019/2020, there were 416 movements within the Juvenile Justice Centre, which included 190 (45.7 per cent) to remand.⁴²³ This included new admissions and internal change of status. The number of remand movements decreased by 5.9 per cent from 2018/2019.⁴²⁴

In 2019/2020, the total average daily population in the Juvenile Justice Centre was 17 children.⁴²⁵ Of these, 11 (66.7 per cent) are children on remand.⁴²⁶ In 2019/2020, there were total number of 6,177 custody days provided by the Juvenile Justice Centre.⁴²⁷ Of these 4,122 custody days (66.7 per cent) were attributed to children on remand, a decrease of 16.6 per cent from 2015/2016.⁴²⁸

Legislative changes

In May 2017, the Department of Justice committed to introducing a Children's Bill in 2020. Reflecting findings of the internal scoping study:

*the intention is to use this Bill to consolidate all legislation pertaining to children in justice into one place. Our intention is also to repeal all orders relating to community and custodial disposals for under-18s and create one new community order and one or possibly two custodial orders. It is also likely to include provisions relating to the use of remand and of bail, including the possible introduction of a 'real prospects' test and the potential removal of the Juvenile Justice Centre as a Place of Safety.*⁴²⁹

The Children's Bill and the outlined additional measures are not due to be introduced until the new NI Assembly mandate in 2022.⁴³⁰ They have also not been committed to within the New Decade, New Approach agreement.⁴³¹

However, in November 2020, the Minister of Justice, Naomi Long MLA, confirmed that the Justice (Miscellaneous Provisions) Bill, which is due to be introduced to the NI Assembly in early 2021, will include proposals that:

420 Analytical Services Group, 'NI Youth Justice Agency Annual Workload Statistics 2019/20' (DoJ, 2020), at 12.

421 Ibid.

422 Ibid.

423 Ibid, at 18.

424 Ibid.

425 Ibid.

426 Ibid.

427 Ibid, at 39.

428 Ibid.

429 Declan McGeown, 'Scoping Study Stakeholder Update' (DoJ, 2017).

430 Email correspondence between NI Human Rights Commission and Department of Justice, 20 July 2020.

431 NI Office, 'New Decade, New Approach' (NIO, 2020).

*aim to strengthen the right to bail for children, and introduce specific conditions which must be met before a child can be remanded in custody, with a view to ensuring that custody is used as a last resort, in line with our international obligations.*⁴³²

Review of facilities

In December 2018, the Department of Health and Department of Justice published a review of regional specialist facilities for children and young people in NI. The primary recommendation of the review was the establishment of a new integrated Regional Care and Justice Campus for NI, which would encompass the current Secure Care Centre at Lakewood and the Juvenile Justice Centre at Woodlands.⁴³³ Throughout 2019 and 2020, the Departments have taken steps towards the introduction of an integrated care and justice campus in NI, including through the establishment of a stakeholder reference group, which the Commission is serving as an observer on. In October 2020, the Department of Justice and Department of Health jointly consulted on the proposed plans, to which the Commission intends to respond.⁴³⁴

Recommendation

The Commission notes the high number of children held in pre-trial detention in NI. The Commission welcomes the Department of Justice's proposed legislative amendments to enshrine the principle that a child should be held in pre-trial detention only as a measure of last resort and that suitable accommodation will be provided within a reasonable time if released on bail. The Department of Justice should promptly implement the outcome. In addition, a range of non-custodial accommodation arrangements should be developed for children awaiting trial who cannot return to their homes.

Freedom from torture, inhuman and degrading treatment

Physical punishment of children

In July 2016, the UN CRC Committee reiterated its recommendation to abolish the physical punishment of children in the UK in all settings, recommending that the UK Government and NI Executive:

- a) *prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as 'reasonable chastisement';*
- b) *ensure that corporal punishment is explicitly prohibited in all schools and educational institutions and all other institutions and forms of alternative care;*

⁴³² NI Assembly Hansard, 'Written Question - Custody of Children - Naomi Long MLA - AQO 992/17-22', 2 November 2020.

⁴³³ Health and Social Care Board, 'Review of Regional Facilities for Children and Young People: Review Report' (HSCB, 2019), at 100.

⁴³⁴ Department of Health and Department of Justice, 'Consultation on Establishment of a Regional Care and Justice Campus' (DoH and DoJ, 2020).

- c) *strengthen its efforts to promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the general acceptance of the use of corporal punishment in child-rearing.*⁴³⁵

The Law Reform (Miscellaneous Provisions) (NI) Order 2006 continues to allow for a defence of reasonable punishment of a child, and provides that this is a defence to a charge of common assault tried summarily. This reflects the situation in England, pursuant to section 58 of the Children's Act 2004, but is contrary to changes that are coming into effect in Scotland and Wales.

In November 2019, the Children (Equal Protection from Assault) (Scotland) Act 2019 was given Royal Assent. This Act prohibits the physical punishment of children by parents and others caring for them and came into force in Scotland in November 2020. In March 2020, the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 was given Royal Assent. This Act will come into force in Wales in March 2022.

The Children Act 2011 and Children First Act 2015 abolished the statutory and common law defence of reasonable chastisement in Ireland.

The UK Government's justification for the continued approach in England is provided in its report to the 2017 UN Universal Periodic Review in which it stated that it "does not condone any violence towards children and has clear laws to deal with it. But parents should not be criminalised for giving a child a mild smack in order to control their behaviour".⁴³⁶

In October 2018, an epidemiological study of 88 countries published in the British Medical Journal Open reported that:

*in countries where full bans on corporal punishment were in force, the prevalence of physical fighting was 69 per cent lower among young men and 42 per cent lower among young women than it was in countries without any ban. In countries operating a partial ban, which include the UK, the USA and Canada, the prevalence of physical violence was lower only among young women (56 per cent).*⁴³⁷

The researchers believe that "these results support the hypothesis that societies that prohibit the use of corporal punishment are less violent for youth to grow up in than societies that have not".⁴³⁸

The Department of Justice does not collate statistics on when the defence of reasonable chastisement is successfully pleaded.

435 CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 40.

436 HM Government, 'Universal Periodic Review, UK, British Overseas Territories and Crown Dependencies National Report' (HM Government, 2017), at para 78.

437 British Medical Journal, 'Press Release: National bans on slapping children linked to less youth violence', 15 October 2018.

438 Ibid.

Recommendation

The Commission recommends that the Department of Justice repeal the defence of reasonable chastisement of a child and devise and implement a strategy to effectively promote positive and non-violent forms of discipline and respect for children's equal right to human dignity and physical integrity, with a view to eliminating the use of physical punishment in child-rearing.

Freedom from slavery

Child, early and forced marriage

Reflecting its General Comments No 4⁴³⁹ and 20,⁴⁴⁰ in May 2016 the UN CRC Committee recommended that the UK Government and the NI Executive raise the minimum age of marriage to 18 years.⁴⁴¹ In 2019, the UN CEDAW Committee⁴⁴² and UN CAT Committee emphasised the need for the UK Government and the NI Executive to strengthen efforts and effectiveness in combating forced marriage, including preventative and protection measures.⁴⁴³

The Marriage (NI) Order 2003, which is a responsibility of the Department of Finance, permits the marriage of a child aged 16 or 17 years with the consent of their parents or legal guardians or the courts.

In 2019, there were 54 girls and 14 boys married in NI.⁴⁴⁴ Compared to 2018, there was no change in the number of boys married, but an increase of 19 (from 35) for the number of girls.⁴⁴⁵

The Home Office has implemented a number of UK-wide measures for tackling forced marriage, including awareness raising campaigns.⁴⁴⁶

Recommendation

The Commission recommends legislation is introduced to repeal all legal provisions permitting the marriage of children in NI and increase the minimum age for marriage to 18 years, for both girls and boys. The Commission further recommends that efforts to combat forced marriages are strengthened, including by sensitising parents on the need for full and free consent of their daughter or son, to her or his marriage.

439 CRC/GC/2003/4, 'UN CRC Committee General Comment No 4: Adolescent Health and Development in the Context of the UN CRC', 1 July 2003.

440 CRC/C/GC/20, 'UN CRC Committee General Comment No 20: Implementation of the Rights of the Child during Adolescence', 6 December 2016.

441 CRC/C/GBR/CO/5, 'UN Committee on the Rights of the Child Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 19.

442 CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 59(b).

443 CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 57(f).

444 Email correspondence between NI Statistics and Research Agency and NI Human Rights Commission, 17 August 2020.

445 Statistics provided to NI Human Rights Commission by NI Statistics and Research Agency, 8 November 2019.

446 Home Office, 'Press Release: What the Government is doing to tackle forced marriage', 24 May 2019.

Children missing from care

In 2016, the UNCRC Committee expressed concerns about the practice of children in NI being placed in secure accommodation and recommended that the NI Executive:

*ensure that secure accommodation in NI is only used as a measure of last resort and for the shortest possible period of time, address the reasons for repeated or lengthy stays in such accommodation and develop alternatives to secure accommodation.*⁴⁴⁷

In 2018, the Department of Health and the Department of Education consulted on a draft strategy for children in care.⁴⁴⁸ It was expected that the resulting proposed strategy would be published by early 2020, however, this still remains awaited. It is notable that this strategy was not specifically listed in the strategies committed to within the New Decade, New Approach agreement.⁴⁴⁹

In the course of the Commission's community engagements, the issue of children going missing from care facilities was raised on a frequent basis. In 2019/2020, the Police Service NI received 2,300 missing persons reports from Residential Children's Homes, relating to 205 children.⁴⁵⁰ Compared to 2018/2019, this is 90 more missing person reports (previously 2,210) with the number of children reported going missing increasing by four (from 201 children).⁴⁵¹ In 2019/2020, 16 children were reported missing 41 or more times, with the most frequent missing young person being reported 91 times.⁴⁵² This is an increase from 2018/2019 when 12 of the children that went missing were reported as such more than 50 times, with the most frequent missing young person being reported 63 times.⁴⁵³ During the Commission's community visits, local police officers expressed concerns regarding a 'revolving door' effect where a young person is returned to residential care, after which they subsequently abscond again. It has been noted that there is a "particular link" between children going missing from care and child sexual exploitation.⁴⁵⁴

Article 44 of the Children (NI) Order 1995, provides the circumstances under which a child can be placed in secure accommodation, including where they are likely to abscond and likely to suffer significant harm if they do abscond.⁴⁵⁵ However, reports have suggested that the use of secure accommodation does not deal with the underlying issue in respect of going missing from care and that there is also a problem with accessing secure accommodation when it is needed.

447 CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016.

448 Department of Health and Department of Education, 'Strategy for Looked After Children: Improving Children's Lives' (DoH and DoE, 2018).

449 NI Office, 'New Decade, New Approach' (NIO, 2020), at 27.

450 Email from Police Service NI to NI Human Rights Commission, 14 October 2020.

451 Email from Police Service NI to NI Human Rights Commission, 21 August 2020.

452 Email correspondence from Police Service NI to NI Human Rights Commission, 14 October 2020.

453 Email from Police Service NI to NI Human Rights Commission, 21 August 2020.

454 Safeguarding Board for NI, 'Getting Focused and Staying Focused, Looked After Children, Going Missing, and Child Sexual Exploitation, A Thematic Review' (QUB, 2015), at 25.

455 Article 44, Children Order (NI) 1995.

Since 2017, the Commission has engaged with the Police Service NI and Health and Social Care Board NI on this issue. In February 2020, the Commission met with both organisations and was informed of a number of developments. The Police Service NI has work ongoing to identify and engage with the most frequent missing children. On a monthly basis, data is gathered for children who have been reported missing three or more times (in a rolling six months) and further information is added in terms of involvement as a victim or suspect in certain crime types. This information is sent to the local policing district to ensure a focus of engagement, prevention and early interaction.⁴⁵⁶

The Police Service NI and Health and Social Care Board have been conducting joint work aimed at tackling the issue of children going missing from care. This included running pilots of specific training for police officers on how to deal with children in care. Progress in rolling this training out across all districts has been delayed by COVID-19.⁴⁵⁷ A NI Framework for Integrated Therapeutic Care has been developed with work ongoing to develop the building blocks of the framework in more detail. Implementation leads in each Trust area are in the process of being appointed and will undertake initial pre-implementation preparatory work with the intention of progressing to the implementation phase in May 2021.⁴⁵⁸

Much of the work has focused within the Western Trust area, with positive feedback. Limited human and financial resources were identified as constraints, however, it was reported that there was better communication and understanding of the issues within health and social care and police on the ground. More broadly, this work has had a positive impact and resulted in a year-on-year reduction of children being reported as missing from care.

The Police Service NI and Health and Social Care representatives are engaging across NI, however there is not yet consistency across all areas. Work is ongoing to establish the type and frequency of interface engagement and an agreement will be made regarding attendance and frequency of meetings in due course.⁴⁵⁹ The Police Service NI has issued via email, updated operational guidance on missing persons, which is emphasised in student officer training. There are plans to extend this training to qualified district officers.⁴⁶⁰ The Police Service NI also has plans to expand disaggregation of available data to include smaller age brackets (for example 18-21 years old or 21-25 years old) and extend to statistics on drug use, missing persons, violent crime and sexual exploitation.⁴⁶¹ Data that is currently disseminated to local districts includes children who have repeatedly gone missing three or more times in a six month period with additional information, including reference to any involvement in violent crime, sexual crime or drugs.⁴⁶²

456 Email from Police Service NI to NI Human Rights Commission, 14 October 2020.

457 Email from Police Service NI to NI Human Rights Commission, 21 August 2020.

458 Ibid.

459 Ibid.

460 Ibid.

461 Ibid.

462 Ibid.

Consideration is being given to including developing a contractual agreement between older children and the children's home as an example of an effective way of working within the pending regional guidance on missing children.⁴⁶³ Such agreements aim to provide the young person with an element of autonomy and teach them about responsibility, in preparation for the transition from children's homes into independent living.

A Protocol for Children Missing from Care and Homes continues to be developed. An additional evaluative piece has been completed by Queen's University Belfast analysing the views of young people, staff and Police Service NI on being missing, what it means and how best to respond to this issue. The findings of this research will be taken into account within the revised regional guidance on missing children and incorporated into joint Police Service NI and Health and Social Care Trust training on this issue.⁴⁶⁴

Recommendation

The remains concerned at the number of children who have regularly been reported as having gone missing from care. The Commission recommends that effective steps are implemented and monitored by key agencies across NI. The Commission further recommends that a comprehensive, human rights based strategy for children in care which includes measures and an action plan for tackling the issue of children going missing from care, is published and implemented without further delay.

Child sexual exploitation

Between 2014 and 2019, the UN CRC Committee and UN CEDAW Committee have repeatedly raised the need to shift the burden of proof from the prosecution to the perpetrator in legislation governing specific sexual offences.⁴⁶⁵ In particular:

*the Sexual Offences (NI) Order 2008, for certain grave offences of sexual exploitation of children between 13 and 16 years of age, such as meeting a child following sexual grooming, engaging in sexual activity with a child, arranging or facilitating a child sex offence, the defendant may claim that he/she believed the victim to be above 16 years.*⁴⁶⁶

In June 2018, the UK ratified the CoE Convention on the Protection of Children and Young People against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention). This imposes obligations on the UK

⁴⁶³ Ibid.

⁴⁶⁴ Email from Police Service NI to NI Human Rights Commission, 21 August 2020.

⁴⁶⁵ CRC/C/OPSC/GBR/CO/1, 'UN CRC Committee Concluding Observations on the Report Submitted by the UK of Great Britain and NI under Article 12, Paragraph 1, of the Optional Protocol to the UN CRC on the Sale of Children, Child Prostitution and Child Pornography', 8 July 2014, at para 29; CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 35(g).

⁴⁶⁶ CRC/C/OPSC/GBR/CO/1, 'UN CRC Committee Concluding Observations on the Report Submitted by the UK of Great Britain and NI under Article 12, paragraph 1, of the Optional Protocol to the UN CRC on the Sale of Children, Child Prostitution and Child Pornography', 8 July 2014, at para 27.

Government and NI Executive to undertake preventative measures to combat child sexual exploitation and to take additional steps to raise awareness of the issue amongst children and those who work with children.

An Independent Inquiry into Child Sexual Exploitation in NI was initiated by the Ministers for Health, Justice and Education published its report in November 2014.⁴⁶⁷ The recommendations address the need for legislative reform in a number of areas, including addressing a gap in protection under the Sexual Offences (NI) Order 2008.⁴⁶⁸

In June 2020, the Criminal Justice Inspection NI published its inspection report on child sexual exploitation, which considers the frontline response and investigation of child sexual exploitation.⁴⁶⁹ This report noted concern “that little was known about the perpetrators of child sexual exploitation and the criminal justice system was urged to develop its response in this respect”.⁴⁷⁰ It found that:

*a review of a sample of files held by the Public Prosecution Service NI showed that where the Police Service NI had passed files to prosecutors, evidence of case building and identification of factors pertinent to child sexual exploitation was at times good. However, the Public Prosecution Service NI needed to better support prosecutors to reflect how factors related to exploitation and grooming had been weighted in decisions. Myths and stereotypes including about children having ‘demonstrated affection’ required to be addressed in the planning of cases. Public Prosecution Service NI staff instructions specific to child sexual abuse and exploitation were needed.*⁴⁷¹

It also found that “where cases did progress to court, support for children was required”.⁴⁷² It noted positive steps such as the National Society for the Prevention of Cruelty to Children Young Witness Service and Victim Support NI’s pilot Children’s Independent Sexual Violence Advocate service, but highlighted that consideration should be given to the Gillen Review recommendations.⁴⁷³ Also that:

*within the Public Prosecution Service NI and the NI Courts and Tribunals Service, a tailored child safeguarding procedure to enhance internal governance and direction on this, including the considerations that the Equal Treatment Bench Book outlined, would be of benefit.*⁴⁷⁴

The Barnahus (children’s house) model was proposed as the preferred approach.⁴⁷⁵

467 Kathleen Marshall, ‘Child Sexual Exploitation in NI Report of the Independent Inquiry’ (RQIA, 2014), at 149.

468 Ibid, at Recommendation 14.

469 Criminal Justice Inspection NI, ‘Child Sexual Exploitation in NI: An Inspection of the Criminal Justice System’s Response’ (CJINI, 2020).

470 Ibid, at 80.

471 Criminal Justice Inspection NI, ‘Child Sexual Exploitation in NI: An Inspection of the Criminal Justice System’s Response: Summary’ (CJINI, 2020), at 8.

472 Ibid.

473 Ibid.

474 Ibid.

475 Ibid.

In October 2020, following a consultation on proposals aimed at implementing the Independent Inquiry into Child Sexual Exploitation in NI's recommendations,⁴⁷⁶ the Minister of Justice, Naomi Long MLA, committed to legislative amends. These focus on introducing provisions that remove terms such as 'child prostitution' from current legislation, legislate against adults masquerading as children online, and include live streaming in relevant sexual offences. These changes are to be included within the Miscellaneous Provisions Bill, which is due to be introduced to the NI Assembly in 2021.⁴⁷⁷

Recommendation

The Commission recommends the urgent introduction of legislation to ensure the burden of proof is reversed to protect child victims of sexual offences.

The Commission also recommends that specialised training for professionals and measures reflective of the Barnahus Model are adopted within the criminal justice system in relation to cases concerning child sexual exploitation.

Right to fair trial and the administration of justice

Age of criminal responsibility

In 2016, the UN CRC Committee reiterated its recommendation that the UK Government and NI Executive "raise the minimum age of criminal responsibility in accordance with acceptable international standards".⁴⁷⁸ This was supported by the UN CAT Committee in its 2019 concluding observations on the UK Government's implementation of the UN CAT.⁴⁷⁹

In 2019, the UN CRC Committee's General Comment No 24 stated:

*under Article 40(3) of the [UN CRC] Convention, State parties are required to establish a minimum age of criminal responsibility, but the article does not specify the age. Over 50 States parties have raised the minimum age following ratification of the [UN CRC] Convention, and the most common minimum age of criminal responsibility internationally is 14. Nevertheless, reports submitted by State parties indicate that some States retain an unacceptably low minimum age of criminal responsibility.*⁴⁸⁰

The age of criminal responsibility remains at ten years old in NI, as in England and Wales. However, the Age of Criminal Responsibility (Scotland) Act 2019 raises the age of criminal responsibility in Scotland to twelve.

⁴⁷⁶ Meeting between Department of Justice and NI Human Rights Commission, 23 October 2018.

⁴⁷⁷ Department of Justice, 'Press Release: Measures to strengthen laws protecting children from sexual exploitation to be taken forward', 20 October 2020.

⁴⁷⁸ CRC/C/GBR/CO/5, 'UN CRC Committee Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI', 12 July 2016, at para 79.

⁴⁷⁹ CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 7 June 2019, at para 23.

⁴⁸⁰ CRC/C/GC/24, 'UN CRC Committee General Comment No 24: Children's Rights in the Child Justice System', 18 September 2019, at para 21.

In 2011, a Department of Justice review concluded that “the minimum age should be increased to 12 forthwith and, following a period of review and preparation, perhaps to 14, which has some historical and current significance for criminal law in NI”.⁴⁸¹

In August 2020, the Minister of Justice, Naomi Long MLA, wrote to other NI Executive Ministers seeking their views on raising the age of criminal responsibility in NI. Responses have been received from the Ministers for Communities, Finance and Infrastructure.⁴⁸²

In September 2020, there were eight individuals under the age of 18 in custody in NI, with the youngest being 13 years old.⁴⁸³

Recommendation

In line with the UN CRC Committee's General Comment No 24, the Commission calls on the Department of Justice to introduce legislation to the NI Assembly, which raises the minimum age of criminal responsibility to 14 years old.

Compensation for a miscarriage of justice

The Anti-social Behaviour, Crime and Policing Act 2014 redefined the test for a miscarriage of justice to require an applicant who has been wrongfully imprisoned to prove his or her innocence of a crime in order to obtain compensation.⁴⁸⁴ This new test applies for all offences in England and Wales and for offences related to terrorism in NI. The new test is contained within the Criminal Justice Act 1988, section 133(1ZA).

The Commission had previously advised that this approach was a disproportionate limitation of the UN ICCPR, Article 14(6), which states:

*when a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributed to him.*⁴⁸⁵

In January 2019, the UK Supreme Court considered an application that the Criminal Justice Act 1988, section 133 was unlawful, as it was contrary to the presumption of innocence within Article 6(2) ECHR.⁴⁸⁶ By a majority of five-to-two, the Supreme Court dismissed the application that the law violated the ECHR and declined to make a declaration of incompatibility.⁴⁸⁷ Lead judgment was given by Lord Mance, who, when considering whether

481 Department of Justice, 'A Review of the Youth Justice System in NI' (DoJ, 2011), at 107.

482 Allan Preston, 'Moves made to increase the age of criminality in NI'. *Belfast Telegraph*, 20 September 2020.

483 Ibid.

484 The Anti-Social Behaviour, Crime and Policing Act 2014 makes amendments to section 133 of the Criminal Justice Act 1988.

485 NI Human Rights Commission, 'The 2013 Annual Statement: Human Rights in NI' (NIHRC, 2013), at 29.

486 *R (on the application of Hallam) v Secretary of State for Justice* [2019] UKSC 2.

487 Ibid.

the UK Supreme Court was bound by the reasoning of the 2013 ECtHR judgment of *Allen v UK*, did not feel that the ECtHR had set a clear precedent.⁴⁸⁸ He stated “speaking for myself, I cannot regard the current state of ECtHR’s case law as coherent or settled on the points critical to this appeal”.⁴⁸⁹

Recommendation

The Commission calls on the UK Government to review the test for a miscarriage of justice, in line with the UN Human Rights Committee’s concluding observation, to ensure its compatibility with the UN ICCPR, Article 14(6).

Right to private and family life

Access to financial support for unmarried couples

In August 2018, the UK Supreme Court ruled that the requirement that couples are married in order to access Widowed Parent’s Allowance was in violation of the right to private and family life under Article 8 ECHR and was also discriminatory, contrary to Article 14 ECHR.⁴⁹⁰ Despite the UK Supreme Court’s ruling, substantive proposals to change the law have yet to be introduced in the UK Parliament.

In October 2019, the Work and Pensions Committee published a report, noting the continued delay in remedying the position and meeting its stated aim of “making bereavement benefits more accessible as quickly as possible”.⁴⁹¹

In July 2020, the Parliamentary Under-Secretary of State for Employment, Mims Davies MP, announced the UK Government’s intention to lay a Remedial Order to remove the human rights incompatibilities by extending entitlement to Widowed Parent’s Allowance and Bereavement Support Allowance to cohabitants with children.⁴⁹²

Commission’s case

In August 2018, the Commission issued proceedings on behalf of an individual who was denied access to her late partner’s pension by the Ministry of Defence, on the grounds that they were not married. The Commission argues that there is no objective and justifiable reason for treating the individual differently to a married woman in her circumstances and that the failure to make provision for her, and others like her, is in violation of the right to private and family life (Article 8 ECHR), the right to peaceful enjoyment of possessions (Article 1 of the First Protocol ECHR) and is discriminatory contrary to Article 14 ECHR.

488 *Allen v UK* (2013) 63 EHRR 10.

489 *R (on the Application of Hallam) v Secretary of State for Justice* [2019] UKSC 2, at para 73.

490 *In the Matter of an Application by Siobhan McLaughlin for Judicial Review (NI)* [2018] UKSC 48.

491 House of Commons Work and Pensions Committee, ‘Bereavement Support Payment - First Report of Session 2019–20’ (WPC, 2019), at para 75.

492 House of Commons Hansard, ‘Response to Written Question: Bereavement Benefits - Mims Davies MP - 76930’, 27 July 2020.

The case has been delayed due to COVID-19. In October 2020, the Commission received confirmation that the case is to progress remotely in due course.

Recommendation

The Commission is concerned that access to certain social security benefits and pensions on the grounds of marriage/civil partnership discriminates against those who are unmarried, with particular ill-effect on women, children and same sex couples. The Commission recommends that the criteria for social security benefits and pensions is widened to allow couples in long term, cohabiting relationships access to these benefits.

Right to an adequate standard of living and to social security

Anti-poverty strategy

In June 2015, the NI High Court ruled that the NI Executive had failed to adopt an identifiable strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need in furtherance of its obligation to do so under the NI Act 1998, section 28E.⁴⁹³

In 2016, the UN ICESCR Committee, recommended that an anti-poverty strategy was adopted in NI.⁴⁹⁴ In April 2019, Professor Philip Alston, the UN Special Rapporteur on Extreme Poverty, published a report on his visit to the UK, warning that “in NI, the suspension of the devolved coalition government forecloses the possibility of any major efforts to tackle poverty and results in an accountability vacuum”.⁴⁹⁵

In 2018/2019, for the first time since 2013/2014, absolute poverty levels have increased in NI for children, individuals and working age adults.⁴⁹⁶ Pensioners are the only group of people who have experienced a decrease in absolute poverty levels in 2018/2019.⁴⁹⁷

The New Decade, New Approach agreement renewed the commitment to developing an anti-poverty strategy.⁴⁹⁸ In October 2020, the Department for Communities published an indicative timetable for the development and publication of the anti-poverty strategy. Development of this strategy adopts a co-design approach, which includes appointing an Expert Advisory Panel and undertaking ongoing engagement with a Co-Design Group and cross-departmental working group made up of key stakeholders. The Expert Panel has been tasked with gathering evidence to inform the strategy and is due to provide a report to the Department

493 *Committee on the Administration of Justice and Brian Gormally's Application* [2015] NIQB 59.

494 E/C.12/GBR/CO/6, 'UN ICESCR Committee Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI', 14 July 2016, at para 48.

495 A/HRC/41/39/Add.1, 'Report of the Special Rapporteur on Extreme Poverty and Human Rights: Visit to the UK of Great Britain and NI', 23 April 2019, at para 87.

496 Department for Communities, 'Poverty Bulletin: NI 2018/19' (DfC, 2020), at 3.

497 *Ibid.*

498 NI Office, 'New Decade, New Approach' (NI Office, 2020), at 9.

for Communities by the end of December 2020. The Co-Design Group and cross-departmental working group are due to regularly meet from November 2020 until at least finalisation of themes and the action plan in June 2021. The strategy is due to be subject to public consultation in August 2021, followed by its publication in December 2021. The Commission is a member of the Co-Design Group for the anti-poverty strategy.⁴⁹⁹

Recommendation

The Commission stresses that the continued failure of the NI Executive to introduce an anti-poverty strategy in NI based on objective need is unacceptable and should be remedied urgently.

Right to health

Relationship, sexuality and gender identity education

In 2018, the UN CEDAW Committee's Inquiry into the impact of restrictive access to termination of pregnancy for women and girls in NI, found that "NI youth are denied the education necessary to enjoy their sexual and reproductive health and rights"⁵⁰⁰ and "that access to abortion services and contraceptives are not statutory requirements of the advisory curriculum".⁵⁰¹ The UN CEDAW Committee stated that:

*these factors point to State negligence in pregnancy prevention through failure to implement its recommended curriculum on Relationship and Sexuality Education and ensure age-appropriate, culturally sensitive, comprehensive and scientifically accurate sexuality education.*⁵⁰²

In terms of access to reproductive health services and contraceptives, the UN CEDAW Committee noted:

*the centralised and limited availability of facilities in NI providing information, counselling and services in family planning, and particularly about options to access legal abortions in or outside NI. Furthermore, medical professionals are neither trained nor encouraged to provide information on abortion options and rely on this information being provided by non-governmental entities.*⁵⁰³

This resulted in women having difficulties in obtaining modern forms of contraception.⁵⁰⁴

The UN CEDAW Committee recommended that the NI Executive:

499 Department for Communities, 'Social Inclusion Strategies'. Available at: <https://www.communities-ni.gov.uk/articles/social-inclusion-strategies>

500 CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018, at para 19.

501 Ibid, at para 44.

502 Ibid.

503 Ibid, at para 45.

504 CEDAW/C/OP.8/GBR/1, 'UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW', 6 March 2018, at para 46.

*make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation.*⁵⁰⁵

In 2019, the UN CEDAW Committee reiterated this recommendation in its concluding observations on the UK.⁵⁰⁶

The current structure of the curriculum based on the Education (Curriculum Minimum Content) Order (NI) 2007 sets out the minimum content for each area of learning at each key stage, thus enabling a degree of flexibility for schools. Relationships and sexuality education is a statutory component of key stages three and four,⁵⁰⁷ however, a school can provide such education in line with its ethos,⁵⁰⁸ which can include an opposition to contraception.

In 2015, the Council for the Curriculum, Examinations and Assessment introduced updated guidance on relationship and sexuality education for post-primary schools. A 'Relationships and Sexuality Hub' has also been developed, which contains materials for schools to choose from regarding such education. Women's Aid also delivers 'Helping Hands', a preventative education programme funded by the Department of Education, to some NI primary schools.⁵⁰⁹ However, this programme is not mandatory. Furthermore, in 2019, the Education Authority NI published its non-statutory guidance for supporting transgender pupils in schools, education other than at school centres, and youth services.⁵¹⁰

The framework for schools' delivery of relationship, sexuality and gender identity education is significantly less clear than, for example, in England and elsewhere in the UK where the public sector equality duty also applies to schools. Engagement with civil society organisations also indicates that the lack of a standardised approach across schools in NI is seeing a disparity regarding the effectiveness of relationship, sexuality and gender identity education that pupils in NI are receiving.⁵¹¹

Monitoring project

Section 9(1) of the NI (Executive Formation etc) Act 2019 states that "the Secretary of State must ensure that the recommendations in paragraphs 85 and 86 of the UN CEDAW report are implemented in respect of NI". These recommendations include the provision of education on sexual and

505 Ibid, at para 86(d).

506 CEDAW/C/GBR/CO/8, 'UN CEDAW Committee Concluding Observations on the Eighth Periodic Report of the UK of Great Britain and NI', 14 March 2019, at para 41(c).

507 Education (NI) Order 2006.

508 NI Curriculum, 'Relationships and Sexuality Education Guidance: An Update for Post-Primary Schools' (NI Curriculum, 2019).

509 Women's Aid, 'Primary Schools'. Available at: <https://www.womensaidni.org/about-us/our-work/preventative-education/working-with-children-in-primary-schools/>

510 Education Authority NI, 'Guidance for Schools, EOTAS Centres and Youth Service on Supporting Transgender Young People' (EA, 2019).

511 Meeting between Informing Choices and NI Human Rights Commission, 7 August 2020; Roundtable with Civil Society Organisations on NI Human Rights Commission's Monitoring of Reproductive Healthcare Services and Education on NI, 2 September 2020; Meeting between Brook and NI Human Rights Commission, 30 September 2020.

reproductive health and “non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services”.⁵¹²

In 2020, regarding the education aspect, the Commission met with the Department of Education and is engaging with civil society organisations that conduct work on reproductive healthcare education in NI.

Recommendation

The Commission recognises that the NI (Executive Formations etc) Act 2019 creates a statutory duty on the Secretary of State to provide for age appropriate, scientifically accurate education on sexual and reproductive health and rights as a compulsory component of the curriculum for adolescents covering the prevention of early pregnancy and access to terminations. The Commission recommends that concrete steps are taken by the Department of Education and other relevant public authorities to fully implement these obligations in line with the UN CEDAW Committee’s recommendations.

Implementation of legislative reform on termination of pregnancy

In 2018, in addition to recommending the adoption of legislation to decriminalise termination of pregnancy in NI and to legalise access to termination services in certain circumstances,⁵¹³ the UN CEDAW Committee recommended that the UK Government and NI Executive:

adopt evidence-based protocols for healthcare professionals on providing legal abortions particularly on the grounds of physical and mental health and ensure continuous training on the protocols...

provide information on sexual and reproductive health services, including on all methods of contraception and access to abortion services;

ensure the accessibility and affordability of sexual and reproductive health services and products; [and]

*provide women with access to high-quality abortion and post-abortion care in all public health facilities and adopt guidance on doctor-patient confidentiality in that area.*⁵¹⁴

In June 2019, the UN CAT Committee supported this by recommending that the UK Government and NI Executive:

ensure that all women and girls in the State party, including in NI, have effective access to termination of pregnancy in situations in which its continuation is likely to result in severe pain and suffering, such as when the pregnancy is the result of rape or incest or in cases of fatal foetal impairment, in addition to cases in which the life or health of the pregnant person is at risk. The State party should also

512 CEDAW/C/OP.8/GBR/1, ‘UN CEDAW Committee Inquiry Concerning the UK of Great Britain and NI under Article 8 of the Optional Protocol to the UN CEDAW’, 6 March 2018, at para 86(a) and 86(d).

513 Ibid, at paras 85(a), 85(b) and 85(c).

514 Ibid, at paras 85(d), 86(a), 86(b) and 86(c).

*ensure that women and girls in NI have effective access to post-abortion health care and that neither patients nor their doctors face criminal sanctions or other threats for seeking or providing such care.*⁵¹⁵

The Department of Health has not commissioned the required healthcare services to implement the Abortion (NI) Regulations 2020 or subsequent Abortion (NI) (No 2) Regulations 2020 in practice. The Department of Health has also not provided guidance on the provision of services in general or to cover services during the pandemic, particularly given travel restrictions imposed by COVID-19.

At the start of April 2020, in an initial response to the lacuna, the independent charity British Pregnancy Advisory Service extended its 'telemedicine option' to NI for a short period, but this option quickly ceased following direction from the Department of Health.⁵¹⁶ Between mid-April and start of June 2020, health and social care trusts in NI guided by the regulations gradually started providing certain services within their existing resources and without formal support from the Department of Health. The health and social care trusts in NI took the view that while this approach is not appropriate or sustainable in the longer term, the service was necessary particularly given the restrictions on travel due to COVID-19 and the impact this has had on women accessing services in other parts of the UK and Ireland.⁵¹⁷ This is with the knowledge that, women, girls and transgender men that do not meet the criteria of the trusts' services are still expected to travel to England or Ireland to access termination services, with increased uncertainty and stress due to COVID-19 risks and restrictions.

Between start of June and early October 2020, termination services up to ten weeks were available in all health and social care trusts in NI, subject to available resources.⁵¹⁸ Two of the five health and social care trusts were offering terminations up to 12 weeks for patients that live within their Trust area.⁵¹⁹ When operating, these services are facilitated by Informing Choices NI, who act as a central access point.⁵²⁰ In person consultation with a doctor is required and the first pill must be taken at the clinic, with the second pills taken at home.

By 30 September 2020, there had been 647 terminations in NI under the new arrangements.

From start of October 2020 termination services introduced by the health and social care trusts have experienced a roll back. The Northern Health and Social Care Trust is no longer offering any termination services due

515 CAT/C/GBR/CO/6, 'UN CAT Committee Concluding Observations on the Sixth Periodic report of the UK of Great Britain and NI', 7 June 2019, at para 47.

516 British Pregnancy Advisory Service, 'Pills by Post - Remote Abortion Pill Treatment'. Available at <https://www.bpas.org/abortion-care/abortion-treatments/the-abortion-pill/remote-treatment/>; Meeting between Informing Choices and NI Human Rights Commission, 7 August 2020.

517 Meetings between NI Human Rights Commission, Health and Social Care Trusts and Royal Colleges of Healthcare Professionals, August-October 2020.

518 Brendan Hughes, 'Central access point' launched for abortion services in NI', *Irish News*, 16 April 2020; Meeting between Informing Choices and NI Human Rights Commission, 7 August 2020.

519 Meetings between NI Human Rights Commission, Health and Social Care Trusts and Royal Colleges of Healthcare Professionals, August-October 2020.

520 Informing Choices NI, 'Central Access Point'. Available at: <https://informingchoicesni.org/central-access-point>

to lack of commissioning from the Department of Health and having to reassign resources to enable non-emergency healthcare services that had been suspended due to COVID-19 to be resumed. This has created a disparity within NI, as those registered within the Northern Trust area that require a termination for a non-medical reason are not able to access termination services in other trusts due to lack of resources. Consequently, those affected are having to either travel outside NI or use unregulated services to access a termination.

In October 2020, the remaining four health and social care trusts continue to provide termination services, but these now only extend to individuals that are less than 10 weeks pregnant.⁵²¹ Thus those between 10 and 12 weeks pregnant, unless a termination is required for a medical reason, are not able to access termination services in NI in line with the Abortion Regulations and face having to travel or use unregulated services. There is also the risk that the other trusts will have to cease offering any termination services due to lack of commissioning by the Department of Health, which is contrary to the Abortion Regulations and would mean that terminations without a medical reason would not be available in NI.

Termination services up to 24 weeks or without a gestational time limit in line with the Abortion Regulations are mainly performed by the Belfast Health and Social Care Trust. In October 2020, this continued to be the case. Other health and social care trusts either questioned the legality of offering such services without the support of the Department of Health or lacked the equipment and resources to do so.⁵²²

Recommendation

The Commission recommends that the Department of Health expeditely commission and fund a specified central service in order to meet the UN CEDAW Committee's recommendations.

521 Meetings with Health and Social Care Trusts, Royal Colleges of Healthcare Professionals and Informing Choices NI, August-October 2020.

522 Ibid.

Chapter 5: Issues making no progress

For the majority of issues, there has been a lack of development on taking the necessary steps for resolution in 2020. It is important to highlight such inaction, as it can be just as detrimental as a regressive development – the longer the issue remains unaddressed, the greater the impact on those affected and the harder it is to remedy. The New Decade, New Approach agreement offered hope of a resolution for some of these issues, but from the outset it was acknowledged that this agreement was aspirational and subject to funding. Consequently, it is not fully and comprehensively possible to establish if this lack of development would be any different if the newly established devolved institutions were not having to realign operations to deal with COVID-19.

All of the issues set out in this chapter are ‘amber’; meaning they may not be at a level that constitutes an ongoing violation or abuse of human rights, but require action by the UK Government, NI Executive or relevant public authorities.

Equality and non-discrimination

There has been a lack of movement in introducing:

1. a Single Equality Act in NI.
2. legislation to extend protections against age discrimination to include the provisions of goods, facilities and services.
3. effective steps to ensure that any change to the gender recognition process within the UK does not in effect deny transgender individuals in NI from accessing a legal gender recognition process.
4. a self-declaration model for identifying gender in NI.
5. legislation providing for intersectional multiple discrimination claims in NI.
6. a Central Regional Disability Forum by the Department for Communities.
7. a statutory definition of 'sectarianism' or 'good relations'.

Right to life

There has been a lack of movement in introducing:

8. legislative amendments to guarantee the independence of inquiries established under the Inquiries Act 2005.

Right to liberty and security of the person

There has been a lack of movement in introducing:

9. effective steps to address the UK's broad definition of terrorism, despite the Counter-Terrorism and Border Security Act 2019.
10. a Home Office-led review of the exercise of arrest powers under section 41 of the Terrorism Act 2000.
11. a statutory prohibition on imprisonment for fine default.
12. a statutory prohibition of imprisoning children with adults, under the Criminal Justice (Children) (NI) Order 1998.
13. a separate custodial facility for women in NI.
14. effective steps to ensure the safety of women immigration detainees that continue to be detained with male detainees in Larne House.

Freedom from torture, inhuman and degrading treatment

There has been a lack of movement in introducing:

15. a free-standing offence in NI where an individual, who has the care of another individual by virtue of being a care worker, ill-treats or wilfully neglects that individual.
16. a full, independent, judge-led inquiry into allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas and rendition.
17. a statutory requirement for judicial scrutiny before exercising the power to deprive an individual of their UK citizenship.
18. legislation to criminalise stalking.
19. an action plan for female genital mutilation in NI.
20. effective remedy for victims of human rights violations in NI, outside the remit of the Historical Institutional Abuse Inquiry.
21. comprehensive training of all staff in Larne House on ways of identifying and reporting torture among detainees.
22. a requirement that healthcare professionals dealing with detained asylum seekers are independent of the company running Larne House.

Right to fair trial and the administration of justice

There has been a lack of movement in introducing:

23. promptly a remedial order that will amend section 9(3) of the Human Rights Act and effectively address the inability of certain victims of human rights violations from receiving financial compensation, in line with the House of Commons and House of Lords Joint Committee of Human Rights' proposal.
24. statutory custodial time limits and other concrete measures to reduce avoidable delay in the criminal justice system.

Right to private life

There has been a lack of movement in introducing:

25. an Adoption and Children Act in NI.
26. a Committee to authorise the processing of confidential information under the Health and Social Care (Control of Data Processing) Act 2016 to ensure adequate legal protection against arbitrariness.
27. suitable methodology for recording the community background of individuals stopped and searched under the Terrorism Act 2000 and Justice and Security (NI) Act 2007 throughout NI.

Freedom of religion and belief, expression, association and right to participate in public and political life

There has been a lack of movement in introducing

28. legislation to abolish the common law offence of blasphemy and blasphemous libel in NI.
29. legal measures to ensure defamation law in NI strikes a fair balance between the right to freedom of expression and the right to private life.
30. devolution of responsibility for parades and protests to the NI Assembly.

Right to work and to just and favourable conditions of work

There has been a lack of movement in introducing:

31. a statutory duty to provide affordable and accessible childcare provision.
32. an increase to minimum age of recruitment to the Armed Forces from 16 to 18.
33. regulations to give effect to mandatory gender pay gap reporting in the Employment Act (NI) 2016.

Right to an adequate standard of living and to social security

There has been a lack of movement in introducing:

34. an up-to-date Housing Strategy for NI.
35. a repeal of the two-child tax credit limit.
36. practically available separate payments for male and female partners for Universal Credit.
37. the Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2018, which would amend the 2013 Act to ensure it is compliant with ECHR, Article 6.
38. prompt and full implementation of all the recommendations of independent review into Personal Independent Payment commissioned by the Department for Communities.
39. legal and other reforms to improve provision of Travellers' accommodation to:
 - enable NI Housing Executive to provide caravans;
 - extend Race Relations (NI) Order 1997's duties to all public authorities;
 - repeal Unauthorised Encampments (NI) Order 2005;
 - monitor use of Housing Benefit.

Right to health

There has been a lack of movement in introducing:

40. an amendment or policy direction to ensure a full set of General Practitioner services is genuinely available to any person, including undocumented or irregular migrants.
41. a dedicated Emergency Department minimum care standards.
42. a Review of Mental Capacity (NI) Act 2016 to ensure the best interests and views of the child are taken into account in cases of mental health treatment of children below the age of 16.

Right to education

There has been a lack of movement in introducing:

43. a non-selective system of post-primary school admission in order to abolish the two tier system of education in NI.
44. a Traveller Education Monitoring Group.
45. commencement of the Addressing Bullying in Schools (NI) Act 2016.

Constitutional protections

There has been a lack of movement in introducing:

46. a Charter of Rights for the island of Ireland.

Annex - Traffic light summary of issues for 2020

Equality and non-discrimination

- Age Discrimination
- Business and human rights
- Consolidating, strengthening and clarifying equality protections
- Discrimination on the grounds of sexual orientation
- Equal marriage and civil partnerships
- Gender equality strategy
- Gender recognition
- Hate crimes
- Intersectional multiple discrimination
- Persons with disabilities
- Racial equality
- Sectarianism

Right to life

- Conflict related investigations: transitional justice and individual cases
- Inquiries Act 2005
- Legacy inquests and inquiries
- Rule of law: non-state actors

Right to liberty and security of the person

- Alternatives to imprisonment
- Definition of terrorism
- Imprisonment for fine default
- Imprisonment of children with adults
- Powers of arrest under the Terrorism Act 2000
- Remand of children
- Women in prison

Freedom from torture, inhuman and degrading treatment

- Abuse in health and social care settings
- Allegations of torture and cruel, inhuman or degrading treatment or punishment overseas
- Deprivation of citizenship
- Domestic and sexual violence and abuse
- Female genital mutilation
- Historical abuse of children and adults
- Mechanisms to identify victims of torture detained in immigration facilities
- Physical punishment of children
- Prison review and conditions
- Spit and bite guards
- Strip searches
- Refugee resettlement
- Victims' payments

Freedom from slavery

- Child, early and forced marriage
- Child sexual exploitation
- Children missing from care
- Modern slavery and human trafficking

Right to fair trial and the administration of justice

- Access to justice
- Age of criminal responsibility
- Avoidable delay
- Closed material proceedings
- Compensation for a miscarriage of justice
- Non-jury trials

Right to private and family life

- Access to financial support for unmarried couples
- Alternatives care arrangements for children
- Anonymity: children and pre-charge proceedings
- Biometric data
- Environmental regulation
- Health and Social Care (Control of Data Processing) Act 2016
- Rehabilitation of offenders
- Stop and search

Freedom of religion and belief, expression, association and right to participate in public and political life

- Blasphemy
- Defamation
- Freedom of expression of journalists
- Parades and protests
- Participation of women in public and political life

Right to work and to just and favourable conditions of work

- Accessible childcare
- Armed Forces Covenant
- Children in the Armed Forces
- Gender pay gap

Right to an adequate standard of living and to social security

- Anti-poverty strategy
- Carers
- Child poverty strategy
- Crisis fund
- Homelessness
- Asylum financial support
- Social housing
- Social security
- Travellers' accommodation
- Unauthorised Encampments (NI) Order 2005

Right to health

- Access to healthcare for irregular migrants
- Emergency healthcare
- Implementation of legislative reform on termination of pregnancy
- Legislative reform on termination of pregnancy
- Mental capacity
- Mental health
- Oral health
- Relationship, sexuality and gender identity education

Right to education

- Academic selection
- Bullying in schools
- Educational needs of specific groups of children
- Integrated education
- Shared education
- Special educational needs

Right to participate in the cultural life of the community

- The Irish language and Ulster Scots

Constitutional protections

- A Bill of Rights for NI
- A Charter of Rights for the island of Ireland
- National human rights institution
- Other constitutional reforms
- UK's exit and transition from Membership of the EU



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