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Launch of Policy Reports



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- 1.30-1.35: Welcome by Chair (Dr Amanda Kramer)
- 1.35-1.40: Introduction and background (Prof Colin Harvey)
- 1.40-2: North-South Relations (Prof Colin Harvey)
- 2-2.20: Border Controls, Free Movement, and Racism and Xenophobia (Daniel Holder, CAJ)
- 2.20-2.40: Human Rights and Equality (Prof Rory O'Connell)
- 2.40-3: Peace Process (Dr Anna Bryson & Prof Kieran McEvoy)
- 3-3.15: Coffee-Tea
- 3.15-4: Discussion
- 4-4.45: Summary and Closing Comments (Brian Gormally, Prof Rory O'Connell, & Prof Colin Harvey)

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About the Project:

This is a collaborative ESRC-funded research project between the Law Schools of Queen's University Belfast and Ulster University and the region's leading human rights organisation, the Committee on the Administration of Justice (CAJ).

Our project examines the constitutional, conflict transformation, human rights and equality consequences of Brexit for Northern Ireland

6 Key Themes: North-South relations, the Border and Free Movement, Racism and Xenophobia, Human Rights and Equality, Socio-Economic Rights, and the Peace Process

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Who are we?

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Our approach:

- 20 Semi-structured interviews
- 6 Town hall meetings
- 44 Stakeholder meetings
- Comprehensive literature review
- Conference presentations & Brexit Cafés

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Our Outputs:

- 6 policy reports
- 6 preliminary reports and analysis of the Joint Report and the draft Withdrawal Agreement and Protocol
- Written evidence, including to the House of Lords Constitution Committee, Northern Ireland Affairs Committee, Joint Committee on Human Rights (Westminster); and the House of Lords EU Home Affairs Sub-Committee
- *BrexitLawNI* blogs: including recent contributions on 'The Implications of Brexit for Asylum in NI', 'The EU (Withdrawal) Bill' and 'Equality of Citizenship'
- *BrexitLawNI* on twitter
- See our website for further details and additional outputs

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North-South Relations

- Severe Consequences for North-South Relations
- An Invisible Border?
- Negotiating the Fear of a Hard Border

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- EU membership has assisted in rendering the border on the island virtually invisible for most practical purposes and this has helped to ease tensions
- Our research reveals **widespread concern about the long-term impact of Brexit on relationships on the island of Ireland**
- We conclude that there is a need for a **Protocol that fully respects the commitments given in the EU-UK Joint Report** in order to ensure that the unique circumstances of NI are reflected in the future EU-UK relationship and any specific solutions that are proposed

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- In our view, it is difficult to see how anything short of full alignment on the island of Ireland will secure the objectives sought by participants, and in the absence of a UK-wide solution, we see merit in agreeing a package of measures or special arrangements that are respectful of NI's challenging circumstances. Such an outcome would be protective of existing North-South cooperation but also carry significant economic, social and political advantages for NI.
- We also note that the B/GFA contains solutions to some of the challenges presented by Brexit and underline the role that institutions such as the North-South Ministerial Council might play in the future. However, these mechanisms were designed before Brexit and thought will need to be given to further reform to ensure they are able to withstand and absorb the pressures and strains that will arise.

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Xenophobia and Racism in Northern Ireland:

- 'Individual' racism and xenophobia directed at migrants and perceived migrants
- Institutional and structural racism and discrimination

The BREXT mobilisation -

- the particular circumstances of Northern Ireland

‘the Council continues to work in partnership with a range of statutory agencies and community groups to facilitate the removal of flags where there is consent within the community to do so...’

‘... the removal of flags is not the responsibility of the PSNI and police will only act to remove flags in extreme circumstances, for example where life is at risk or there is a substantial, immediate risk of disorder and police action to remove flags would mitigate the risk’

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Paramilitary involvement in racist violence – living the peace process in reverse?

‘[Since B/GFA]...Northern Ireland has been dubbed “the race hate capital of Europe” with the “targeting of ethnic minorities” by loyalist paramilitaries characterised as “ethnic cleansing” by the police. The demography of Northern Ireland is changing, with eastern EU and non-white migrant workers arriving, which accentuates the reversing Protestant/Catholic differential and further undermines the “Protestant majoritarianism” on which the state was founded. Alongside “flags protests,” racist violence has become one of the principal manifestations of unionist unease.’ *Robbie McVeigh, Living the Peace Process in reverse.*

‘The irony here is that there are loyalist groups working with eastern European gangsters in the drugs trade, in prostitution and extortion. Yet these same loyalist groups are the ones behind burning out and intimidating people from places like Lithuania and Romania in areas they perceive as their own.’ *PSNI Chief Constable George Hamilton*

Racist violence largely overlooked or ignored in official initiatives to monitor and tackle paramilitary activity

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The response to racism and discrimination:

- No 'hate crimes' legislation per se, incitement to hatred legislation has led to a handful of prosecutions and review commissioned by former justice Minister
- Dominant policy is of non-intervention and to tolerate sectarian expression = consequent impact on how other forms of racism are dealt with
- Anti-discrimination legislation also 'behind' in NI and will fall further behind post-Brexit
- Application of 'Good Relations' duty in NI heavily criticised:
'...unlike the rest of the country, Northern Ireland does not interpret the "good relations" duty as including a duty to tackle racism, including sectarianism. Instead, the lack of proper definition allows this notion to be used rather as a "tool" to set aside politically contentious issues, such as legislating on the Irish language, and to justify a "do-nothing" attitude, eventually based on "perceptions" rather than objective criteria.' *Council of Europe Treaty Body*

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The response to racism and discrimination II:

‘I think the vast majority of ordinary cops are pretty good about race hate crime and sectarian hate crime, and they’re appalled by it. But there seems to be a strategic decision to ignore it ... The race hate stuff is a little bit easier for them to deal with because it tends to be more localised. But decisions about whether to remove a confederate flag are infected I think by their view about how they deal with sectarian hate crime. ... a confederate flag tends to be found in a loyalist area, ... [there is] a very clear link between race hate crime and loyalist paramilitaries in certain hotspots ... [but] even the attitude to EU and non EU people present on the island of Ireland is affected by the sectarian approach to sectarian hate crime... and they are also afraid to set an unhealthy precedent, that they will take down racist stuff but not take down sectarian stuff.’

‘I mean it’s terrifying. You see some of the symbols on bonfires, and street corners and confederate flags not being taken down, what on earth are you supposed to think? Coupled with a Brexit vote and the police saying that they will only intervene if there is a right to life issue ... it’s a fairly shocking situation we’re in.’

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NI mobilisation: getting the ethnics out?

- We heard views within unionism that there had been a significant turnout for Leave in areas that previously had low electoral participation. There were different opinions as to whether migration control or other issues had dominated.
- We heard many experiences of racist discourse directly linked to Brexit.

Was there a spike in racist attacks after the referendum?

Was there a drop off in reporting?

‘... when you look at the figures and when you speak to the people who had been actual victims post-Brexit, and they talk about [it], I ask them why they didn’t report. They said they were less likely to report post-Brexit than before, so the numbers were actually decreasing. They said they were more frightened because they were less sure that the police would protect them.’

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Institutional and structural racism and discrimination:

- There has already been a negative significant shift in the treatment of EU26 (and perceived EU) nationals since the 2016 referendum
- This has occurred both at ports and borders but also in accessing NI public services - not always clear whether such changes are the result of formal policy changes or attitudinal changes among decision makers
- Particular concern over plans to 'intensify' the application of 'hostile environment' measures towards both non-EEA and EU26 nationals
- Brexit can also create multiple differentials among Irish and British citizens in NI, as well as differentials between different groups of EU26

There is a strong argument that continued EU freedom of movement into NI is the only solution that will avoid the creation of multiple new differentials in entitlements that will make further racial profiling and broader discrimination even more widespread. This should therefore be maintained.

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Border controls and Freedom of Movement:

- Movement of people has been a marginal issue
- The Common Travel Area (CTA) as a passport free zone
- Lack of codification of reciprocal 'associated rights' of CTA
- 'One big border' hostile environment measures and NI
- Implications for peace settlement reforms to law enforcement

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Passport Controls in the CTA:

‘The development of our future immigration system will not impact on the ability to enter the UK from within the CTA free from routine border controls.’

‘I am very happy to reinforce the clear statement that there can be no racial profiling at a border, whether it be routine, quixotic or even accidental. That cannot be the policy or the direction; there cannot be even a hint of that going on at the border...’

‘There will be no checks whatever for journeys across the land border between Ireland and Northern Ireland, nor between Northern Ireland and Great Britain. As I said earlier, this includes any aspect of what those checks might look like or be interpreted to look like. That is not what will be happening.’

Minister Lord Duncan of Springbank in response to an amendment to EU (Withdrawal) Bill from Baroness Kennedy of the Shaws [HL Hansard 25 April 2018, clm 1609]

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...on the same day

‘I was queuing with approximately 15-20 people to board the boat. I was the only black person in the queue that I could see... I passed through the check-in area ...and was called to the side by one of the officers who were present, immigration or police. I remember clearly that I was asked to produce my passport...’

Home Office response: ‘Immigration Officers speak to members of the travelling public using these routes, regardless of appearance, and a consensual request for photographic ID can form part of that conversation.’

Common Travel Area – Border Free Zone

Immigration Act 1971 section 1(3) 'Arrival in and departure from the United Kingdom on a local journey from or to any of the Islands (that is to say, the Channel Islands and Isle of Man) or the Republic of Ireland shall not be subject to control under this Act...'

CT and Border Security Bill: Schedule 3 Paragraph 2-3

'An examining officer may question a person who is in the border area for the purpose of determining whether the person's presence in the area is connected with the person's entry into, or departure from, Northern Ireland.'

...A person questioned must:

- (a) give the examining officer any information in P's possession that the officer requests;
- (b) give the examining officer on request either a valid passport which includes a photograph or another document which establishes P's identity;

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Racism: Recommendations

- Official initiatives to **monitor and tackle paramilitarism** should include specific work on tackling racist (including sectarian) expression, intimidation and violence.
- Public authorities, including those with an education function, should ensure they **define and interpret the good relations duty as including positive obligations to tackle racism and sectarianism** and take forward concerted and effective action to achieve this goal.
- **A strategic policy switch from tolerance to zero tolerance of incitement to hatred.**
- The PSNI and Housing Executive review and **improve practices in relation to dealing with racist and sectarian housing intimidation.**
- Public authorities should develop and adopt policies providing for intervention to **remove items that constitute incitement to hatred or hate expression on protected grounds** and take all reasonable steps to **ensure funding or facilities they provide or endorse are not used for activities which are likely to be the sites of racist expression.**
- **NI needs equality legislation** that evolves in step with international standards and best practice in a post-Brexit, such provision should be underpinned with the implementation of a **Bill of Rights for NI.**

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Border Controls (& Racism): Recommendations

- **EU freedom of movement should be retained in NI.** It has so far not proven possible to envisage any other solution that is not going to create multiple new differentials in entitlements - making further racial profiling and broader discrimination even more widespread.
- The UK should desist from its planned roll out of **'hostile/compliant environment' measures in NI**, and retract those which have already been put in place.
- Specific safeguards should be introduced, in accordance with international best practice, to **prevent racial profiling across the public sector.**
- **UK and Ireland should codify and legally underpin CTA for both free movement and reciprocal rights including a treaty with a dispute resolution mechanism,** and incorporate the position there be no passport checks in CTA and no racial profiling.
- Review and remedy apparent misuse of existing Schedule 7 border controls and abandon current attempt to legislate for passport control under the guise of border security.

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Human Rights and Equality, including Socio-Economic Rights

Centrality of Rights:

- Human Rights
- Equality
- Socioeconomic Rights

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Failure to Deliver:

- EU law as a backstop and a driver for change

A frightful mess:

- EU Withdrawal Act – retains most EU law as ‘retained EU Law’
- Does not the Charter of Fundamental Rights
- Powers to amend Retained EU Law

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A Frightful Mess:

- The Draft Protocol:

‘RECOGNISING that Irish citizens in Northern Ireland, by virtue of their Union citizenship, will continue to enjoy, exercise and have access to rights, opportunities and benefits, and that this Protocol should respect and be without prejudice to the rights, opportunities and identity that come with citizenship of the Union for the people of Northern Ireland who choose to assert their right to Irish citizenship as defined in Annex 2 of the British- Irish Agreement “Declaration on the Provisions of Paragraph (vi) of Article 1 in Relation to Citizenship”’

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A Frightful Mess:

- The Draft Protocol:

‘1. The United Kingdom shall ensure that no diminution of rights, safeguards and 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, and shall implement this paragraph through dedicated mechanisms.’

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Enforceability:

- Loss of supremacy (except for Pre-exit laws)
- General principles of law cannot give rise to a cause of action
- Francovich remedy abolished
- Court of Justice of the EU (note Draft protocol Chapter 3)

Equivalence

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Birthright Clause:

- Joint Report:

‘The people of Northern Ireland who are Irish citizens will continue to enjoy rights as EU citizens, including where they reside in Northern Ireland. Both Parties therefore agree that the Withdrawal Agreement should respect and be without prejudice to the rights, opportunities and identity that come with European Union citizenship for such people and, in the next phase of negotiations, will examine arrangements required to give effect to the ongoing exercise of, and access to, their EU rights, opportunities and benefits.’

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Economic impact of Brexit:

- 'Fragile' economy
- No deal – 12% drop in GDP; FTA deal 8% drop; EEA type deal – 2.5% drop
- Importance of migrant workers to agri-food and retail sectors

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EU Funding:

- 'EU funds have been hugely important to our economy and the peace process. Since 1994, for example, we have benefitted to the tune of €13 billion of funding from Europe and during the period 2014-2020 we would expect to draw down over €3.5 billion.'
- Both the UK and the EU have indicated they wish to see funding continued though the exact mechanisms for this has not yet been settled.

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Health:

- Migrant and cross-border workers
- Shared provision of health services

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Looking forward:

‘I suspect that where ever we are economically in 5 or 10 years’ time, the idea that the cure to all our social and economic ills, to the increasing inequality we face, that will somehow all be resolved by getting out of the EU isn’t going to happen, and my concern is well, that level of discontent with society at large, if those levels of inequality are still there, then it means that that disgruntlement is still there, ripe for exploitation and this time it won’t be membership of the EU that will be the ground on which you can ferment that. And my terrible fear to be honest is that what will ferment it, will be around issues of race, migration and immigration.’

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Recommendations:

- Position of ECHR and HRA
- Human Rights and Equality Impact Assessments
- Amend EU Withdrawal Act
- Bill of Rights for NI
- Section 75 and Single Equality Act
- Protect EU Charter
- Charter of Rights
- Citizenship
- Political Rights
- Draft Protocol and the Backstop
- Single Market and Customs Union, no border East-West or North-South

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Brexit and The Peace Process

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Brexit & the Peace Process: Key Themes

- The EU and the NI Peace Process
- Anglo-Irish Relations and the EU
- Political Relationships in NI
- The 'Mainstreaming' of Irish Reunification
- The Limitations of Law
- Dissident Republicans and the Governance of Security

The EU & the NI Peace Process

Historic Peace Agreements:

- All Agreements from A.I.A. premised on Irish & UK membership
- Brexit – withdrawal of key buffer and protection against ‘solo runs’

Belfast/Good Friday Agreement:

- Unique relationship between the 2 countries as ‘partners in the EU’
- Article 17 of B/GFA requires that the NSMC shall consider the EU dimension of relevant EU policies and programmes
- Brexit undermines spirit and substance of B/GFA

EU Financial Support:

- Structural & Investment Programmes
- PEACE programmes (€1.3 billion + €229 million)
- EU contributions to IFI & Interreg (€1.13 million)
- No firm commitment to continue such funding

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Anglo-Irish Relations & the EU:

- Historic mistrust and mutual misunderstanding
 - View from London that NI was exclusively a UK issue
 - Patrick Hillery, Min for Foreign Affairs, in 1969 raised NI at UN:

‘Although we in Ireland have lived for some time with the reality of British control over the North of our country, we do not in any way concede to them the right to exercise jurisdiction there.’
- Common membership of EU significantly improved relations
 - Logistics of multi-lateral meetings – platform for NI discussions
 - Political, intellectual and personal respect
 - Nurturing ‘habits of co-operation’

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Impact of Brexit on Anglo-Irish Relations:

Both governments remain committed to Peace Process

But naïve to suggest that relations have not been strained

‘We had a change of government, south of the Border, and with quite a strong influence from Sinn Féin, and that had an impact in terms of the approach.’

David Davis, 10 April 2018, QUB

The effect of British and Irish politicians and officials no longer working together at EU level after Brexit has been given insufficient attention: ‘We had a great relationship. The Irish government, the British government - others had before us and after us as well.’ *Bertie Ahern, 10 April 2018, QUB*

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Political Relationships in NI:

- Voting pattern on Brexit polarised on ethno-national lines:
 - 2/3 of self-described 'unionists' voted LEAVE
 - Almost 90% of self-described 'nationalists' voted REMAIN
 - Overall, 56% of NI electorate voted REMAIN
- DUP – traditionally Eurosceptic, pro-Brexit
- UUP – anti-Brexit, now accepts 'will of the British people'
- SF – traditionally Eurosceptic but strongly anti-Brexit
- SDLP – traditionally pro-European, strongly anti-Brexit
- Alliance – pragmatic - seeking 'softest possible' Brexit

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Impact of Brexit on Political Relations:

- Brexit was one of the factors contributing to collapse of Assembly in Jan 2017 – and it remains a divisive issue
- This runs counter to the thrust of the B/GFA which was to dull some of the traditional cleavages between nationalism and unionism and to accommodate those who regard themselves as British or Irish – or both – and / or European

‘The Belfast Agreement tried its best to resolve that tension...Brexit has changed everything for them [nationalists]...Their perception post the Brexit referendum of this was that English nationalists had come in over their heads and denied a part of their identity which was critical to them feeling comfortable about living here.’ *UUP MLA interviewed by BrexitLawNI*

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The 'Mainstreaming' of Irish Reunification within Nationalism:

- Enlivening of debate on united Ireland

‘I believe we are on course for a referendum and a big constitutional debate’ *Sinn Féin President, Mary-Lou McDonald*

- Emboldening of moderate nationalists

‘the EU needs to prepare for a United Ireland’ *former Taoiseach, Enda Kenny, at Magill Summer School*

‘I think there is now a route for actually winning a border poll. I think we need to have one after Brexit, when the dust settles.’ *SDLP leader, Colum Eastwood*

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Concerns within Unionism and Loyalism:

- ‘For the first time I’ve had friends who would be unionists but are business people who trade with Dublin, with the Republic, just asking the question, “what would be wrong with a united Ireland?”’ *UUP MLA, interviewed by BrexitLawNI, Jan 2018*
- ‘I don’t expect my house to burn down, but I still insure it’
Peter Robinson, July 2018
- ‘The one thing that would provoke loyalist paramilitaries is the present Irish government saying silly things about the border and the constitutional issue.’ *David Trimble, April 2018*

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The Limitations of Law:

- Threats to rights-based equality provisions contained within EU Charter of Fundamental Rights (ECFR)
- Nationalists look to Europe as final court of appeal
- Recent decisions underline reluctance to interfere:
 - Agnew v McCord
 - Does Brexit indicate change in constitutional status of NI as set out in B/GFA?
 - Miller
 - Should UK Parliament consult devolved Assemblies before enacting Article 50?
- NI Act 1998 and B/GFA – more than simple devolution act
- Reenergising of Bill of Rights for NI debate – human rights are for all!

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Dissident Republicanism:

- Background to dissident republicanism
 - Military: RIRA, CIRA, ONH
 - Political: 32 County Sovereignty Movement, Éirígí, Saoradh
- Capacity and community support
- Dissident threat in historical context
 - Levels of support for 'armed struggle'
 - Symbolic significance of border
 - Spill-over from one generation to next

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Impact of Brexit on Dissident Republicans:

- Brexit as 'manna from heaven' - 'the harder the better' *Saoradh spokesperson interviewed for BrexitLawNI*
- 'Brexit has the potential to break up the British state... with the inevitable infrastructure of a hard border imminent, this will drive home to the Irish people the partition of our country... and as history teaches us it will inevitably stoke the fires of resistance against British rule in Ireland.' *Packy Carty addressing dissident republicans at Milltown Cemetery, Easter 2018*
- 'I know that if there are customs posts or any kind of posts they will be attacked.' *veteran republican, South Armagh, interviewed for BrexitLawNI*
- 'There's a feeling that as regards the Troubles and the conflict, Northern Ireland is sorted and we don't need to worry about it, when actually we're working flat out 24/7 to keep a lid on it...future physical infrastructure or border officials would become targets for dissident republicans and require police protection.' *PSNI Chief Constable, George Hamilton, Sept 2018*

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Ways Forward:

- Anglo-Irish 'habits of cooperation' must be safeguarded
- Future peace-process related funding should be protected
- Constitutional fundamentals of B/GFA must be respected
- In particular, special constitutional of status of NI must be protected
- Reciprocal UK-EU Agreement necessary to maintain all existing rights of EU citizens in NI
- UK government must guarantee equality of rights of Irish and British citizens living in NI
- Bill of Rights for NI should be enacted
- Any future border poll must respect human rights, equality and identity concerns of all
- Hard border should be avoided at all costs

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Questions?

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Summary and Closing Comments:

- Brian Gormally, Director of CAJ
- Prof Rory O'Connell, Ulster University
- Prof Colin Harvey, Queen's University Belfast

Thank you!

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