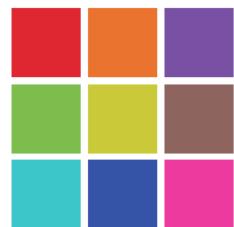




Equality  
Coalition



# POST-BREXIT CITIZENSHIP STATUS: DIVIDED BY THE RULES?



Report on a conference held in the Moot Court Room, School of Law,  
Queen's University Belfast, 4 March 2019

March 2019



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# INTRODUCTION

This one-day conference from BrexitLawNI and the Equality Coalition took place in the Moot Court Room in the School of Law, Queen's University Belfast, on Friday 4 March 2019.

## THE ORGANISERS

The conference was organised in partnership between BrexitLawNI and the Equality Coalition.

It was supported by the UNISON Campaign Fund and Queen's University Belfast.



**BrexitLawNI** 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). The project examined the constitutional, conflict transformation, human rights and equality consequences of Brexit. Six BrexitLawNI project reports were produced in 2018 and are available online via [www.brexitlawni.org](http://www.brexitlawni.org)

The **Equality Coalition** is co-convened by CAJ and the trade union, UNISON. It is a civil society alliance of non-governmental organisations (NGOs) and trade unions, who aim to promote equality in Northern Ireland. Cumulatively, the 80 member organisations in the Equality Coalition work across all nine equality categories covered by Section 75 of the Northern Ireland Act 1998, as well as on other recognised protected equality grounds. Founded in 1996, the Equality Coalition has been instrumental in putting equality at the forefront of the agenda.

## THE CONFERENCE

The conference examined the risks of hardened entitlement boundaries between different groups of citizens in a post-Brexit Northern Ireland, where the existing paradigm of two main citizenship categories (EU and non-EU) will be expanded to include many more sub-divisions should the current Brexit proposals proceed.

Topics explored at the conference included: entitlements differentials; citizenship status and rights; racial profiling; compliance with the Belfast/Good Friday Agreement; 'hostile environment' measures; the scope of the 'Common Travel Area'; and the retained EU citizens' rights provisions under the EU Settlement Scheme.

The conference took place just a month before the UK's proposed 'exit day' from the EU, amid the general climate of political uncertainty around the process. Reflecting this, the conference attracted a capacity audience of one hundred delegates, with many dozens more on a waiting list. The audience included key NGOs, trade unions, Equality Coalition member groups, academics and students, senior policy makers from the British and Irish governments, the media, and many others.

The conference provided a platform for discussion at a key juncture. We hope the expert testimony from the panel discussions recorded in this report will be a useful resource for some time to come.

Colin Harvey, QUB; Patricia McKeown, UNISON; Daniel Holder, CAJ

# CONFERENCE PROGRAMME

**9.30AM      REGISTRATION**

**10AM      WELCOME AND OVERVIEW**

- **Welcome:** Professor Colin Harvey (BrexitLawNI Principal Investigator & Professor of Human Rights Law at QUB) Patricia McKeown (UNISON Regional Secretary & Equality Coalition Co-Convenor)
- **Overview:** Daniel Holder (CAJ Deputy Director & Equality Coalition Co-Convenor)

**10.30AM    PANEL 1: Implications of Brexit for EU26, EEA and non-EU migrants in NI**

- **Chair:** Professor Colin Harvey
- **Panel:** Una Boyd (CAJ Immigration Project Coordinator)  
Nathalie Donnelly (Local Organiser for UNISON)

**11.45AM    PANEL 2: Political representatives on post-Brexit citizenship status**

- **Chair:** Professor Kieran McEvoy (Professor of Law and Transitional Justice, QUB)
- **Panel:** Steven Agnew (MLA, Green Party NI)  
Stephen Farry (MLA, Alliance)  
Claire Hanna (MLA, SDLP)  
Mike Nesbitt (MLA, UUP)  
Niall Ó Donnghaile (Senator, Sinn Féin)  
Peter Weir (MLA, DUP)

**12.45PM    LUNCH**

**1.30PM      AFTERNOON OPENING SESSION**

- **Overview:** Brian Gormally (CAJ Director)

**1.45PM      PANEL 3: Implications of Brexit for British and Irish citizens in NI**

- **Chair:** John Patrick Clayton (Policy Officer, UNISON)
- **Panel:** Emma DeSouza (Immigration and Citizen Rights Campaigner)  
Jane Morrice (UK Member of the Brussels-based European Economic and Social Committee & Honorary President of European Movement NI)  
Niall Murphy (Solicitor, KRW Law)  
Terence Wright (Community Unionist)

**3.15PM      CLOSING PLENARY**

- **Chair:** Dr Anna Bryson (Senior Lecturer, QUB)
- **Panel:** Members of the BrexitLawNI and Equality Coalition teams.

**4PM          END OF CONFERENCE**

# WELCOME & OPENING COMMENTS

## PATRICIA McKEOWN

Regional Secretary, UNISON & Equality Coalition Co-Convenor



### SPEAKER BIO:

Patricia is Regional Secretary of UNISON, the Public Service Union, and one of the most senior trade unionists in Ireland.

She is Co-Convenor of the Equality Coalition. She was President of the Irish Congress of Trade Unions from 2007 to 2009 and was also Chairperson of its Northern Committee (from 2005 to 2007).

She is a former Deputy Chairperson of the EOCNI. Patricia is a worker representative for Ireland on the EU European Economic and Social Committee.

### SYNOPSIS: Patricia opens conference proceedings.

Today's event is organised collaboratively by BrexitLawNI and the Equality Coalition. BrexitLawNI is a partnership between the University of Ulster, Queen's University Belfast and CAJ.

The Equality Coalition, as I think most of you in the room already know, has been around for a very long time and over that time has tremendously expanded. The Coalition is an umbrella organisation covering a wide range of individual organisations, each in their own way committed to the pursuit of equality of opportunity and to human rights. It's a framework within which we would want to see the return of devolved government, with that equality and human rights commitment. The coalition itself is co-convened by CAJ and UNISON.

It came into existence in order to push for strong legislation on equality and human rights in the Northern Ireland Act 1998 and it has stayed in existence in an attempt to ensure the legislation's effective implementation.

Today is also the start of a whole range of activity that will culminate in International Women's Day. There are literally hundreds of events being organised up and down the country. Heaven knows that women's rights are among those rights facing the very forefront of the attack post-Brexit, and we are extremely concerned about that. Hence the importance of ensuring that we find some way to protect equality and human rights in this dreadful process. The clock is ticking.

I am departing from here as the Irish Congress of Trade Unions has secured a series of meetings tomorrow in Brussels with the European Commission and the Barnier team. That is, if you like, our last attempt to make sure that nobody blinks between now and the 29 of March because there is a real danger that we could be the casualties, despite the strong commitments being made by all the governments on the other side of Brexit. There is every possibility that we could be the sacrifice, and we need to be alert to that.

We would like you to participate today. It's extremely important that we make this last push before that deadline, but I've a funny feeling that we are all going to have to be working collaboratively on these issues for a very long time to come.

# OVERVIEW

## DANIEL HOLDER

CAJ Deputy Director & Equality Coalition Co-Convener



## SPEAKER BIO:

Since 2011, Daniel has been employed as the Deputy Director of CAJ.

Prior to this, he worked in the policy team of the Northern Ireland Human Rights Commission (NIHRC) for five years, and before that led a migrant worker equality project run by the South Tyrone Empowerment Programme (STEP) and Dungannon Council. He also previously worked in Havana, Cuba, as a language professional for the University of Havana, a press agency and Cuba's national broadcaster, ICRT.

He has a primary degree in Spanish and Sociology, as well as an LLM in Human Rights Law, both from Queen's University Belfast.

## SYNOPSIS: Daniel explains the complex citizenship landscape that will emerge in Northern Ireland in the wake of Brexit.

My job is to talk through that rather complicated graphic that we used in the conference publicity. Let's start therefore with a bit of a simpler one:

	Citizenship status when in NI	Access to work, public services & benefits in NI	Basic freedom of movement in EU	Other related EU rights, opportunities & benefits
1	British / Irish / EU / EEA citizens	✓ Access under EU/domestic law	✓ Yes under EU law	✓ Yes under EU law
2	Non-EEA citizens	✗ Heavily restricted	✗ No unless EU family member	✗ No unless EU family member

This table shows how things are at the moment, pre-Brexit, in terms of citizenship status. You have British, Irish, and indeed other EU and EEA citizens in the same row; with non-EU/EEA citizens in the other. Windrush still happened even with that simple situation, which is part of the backdrop for today. Of course, most rights and entitlements are nothing to do with citizenship status. Your human rights, your right to a fair trial, your right not to be tortured, are rights that are held by all humans. But increasingly - and especially notably during the last few decades - states have started to restrict things that would normally have been within the remit of civil rights, such as access to housing, work and services, on the basis of either citizenship or immigration status. That's what the three columns shown on the table represent.

The first column is around your right to reside in (or enter) Northern Ireland and access services and work. The second one is about the basic freedom of movement within the EU, which is what any EU citizen would have. Brexit will affect that in terms of British citizens no longer being EU citizens and therefore losing their freedom of movement.

It won't change for Irish citizens and other EU citizens in NI who maintain EU citizenship, but that's just the basic freedom of movement – e.g. the right to holiday, work, reside, retire, etc, in a member state. However, many of the subsidiary rights referred to in the third column will disappear for this group too after Brexit, unless there are structures put into place to keep them. A lot of the rights we're referring to here don't automatically come with EU citizenship, they come with residing in a member state, through the coordination of social security systems, participation in EU programmes, etc.

What am I specifically talking about? I'm taking about things that are core citizens' rights, like democratic and political rights, such as the right to stand and vote in MEP elections. I am talking about something like the European Health Insurance Card (EHIC). I'm talking about things like cross-border healthcare, cross-border schooling, and a lot of that type of provision that would currently fall within EU law.

It would be remiss not to talk about how the current, pre-Brexit citizenship paradigm is being enforced – which includes use of the 'hostile environment' measures (now rebranded compliant environment measures), which were introduced by Theresa May under the 2014 and 2016 immigration acts. These measures are brutal, draconian, and they've created widespread problems, as well as a lot of resistance from the human rights community. They've led to the denial of rights, including denial of essential medical care. They've also led to the deportation of people to countries that they barely knew. They've led to widespread racial discrimination. In fact, just last week the High Court in England struck down the provision that essentially turns landlords in England into immigration officers, in the context of the widespread racial discrimination that this was causing. The plan post-Brexit is to try to extend the hostile environment to a lot more people, namely EU citizens.

So after Brexit, what we end up with is shown in the following table:

	Citizenship status when in NI	Access to work, public services & benefits in NI	Basic freedom of movement in EU	Other related EU rights, opportunities & benefits
1	British citizens	✓ Secure under domestic law	✗ No – cease to be EU citizens	✗ No – no arrangement in place
2	Irish citizens who do not apply for EU settled status before Brexit Day	✗ Political promise of some rights under CTA but not currently secured in domestic law	✓ Yes - still EU citizens	✗ No – not provided for by CTA & EU-UK Joint Report commitment not in place
3	Irish citizens in NI for 5+ years who apply for and get full settled status before Brexit Day	✓ Yes, range of equal rights retained, with (qualified) lifetime guarantee	✓ Yes - still EU citizens	✓ Yes – significant retained rights under settlement scheme
4	Irish citizens in NI for less than 5 years who get temp settled status before Brexit Day	✓ Range of equal rights temporarily; permanent with continued residence	✓ Yes - still EU citizens	✓ On temporary basis
5	Irish citizens who apply but are refused EU settled status	✗ Political promise of some rights under CTA but not currently secured in domestic law	✓ Yes - still EU citizens	✗ No – not provided for by CTA & EU-UK Joint Report commitment not in place
6	Irish citizens who arrive in NI (including by birth) after Brexit Day	✗ Political promise of some rights under CTA but not currently secured in domestic law	✓ Yes - still EU citizens	✗ No – not provided for by CTA & EU-UK Joint Report commitment not in place
7	EU26 citizens in NI who get EU settled status before Brexit Day	✓ Yes range of equal rights retained, with (qualified) lifetime guarantee	✓ Yes - still EU citizens	✓ Yes – significant retained rights under settlement scheme
8	EU26 citizens refused EU settled status	✗ Heavily restricted	✓ Yes - still EU citizens	✗ No (not when resident in NI)
9	EU26 citizens who arrive after Brexit Day	✗ Heavily restricted	✓ Yes - still EU citizens	✗ No (not when resident in NI)
10 /11	EEA citizens (except EU26) (Norway/Iceland, Lichtenstein & Swiss citizens)	✓ If covered under EEA-EFTA Separation Agreement & Swiss Separation Agreement respectively	✓ Yes - through EU-EEA agreements	✗ Subject to EU-EEA agreements and settlement scheme
12	Non-EEA citizens	✗ Heavily restricted	✗ No - not EU citizens	✗ No
13	Frontier Workers in NI (non-resident – CTA only likely to cover residents)	✗ Heavily restricted unless EU and covered by settlement scheme	✗ Depends on citizenship	✗ Depending on status in Ireland/other EU or any settled status

There is a lot of uncertainty about this. There's a lot of stuff still up in the air, and I appreciate there are many senior officials in the room who are probably working extremely hard day in and day out on this. However, because of the politics of it, a lot of this work is being done behind closed doors. There has not really been a public phase of engagement to give us details about what we're actually going to get at the end of the day.

So what happens in simple terms? In terms of British citizens in NI, unsurprisingly, access to work and services is pretty secure in domestic law. On the other hand, British citizens cease to be EU citizens and lose EU freedom of movement. They also will lose the rights in the third column too, in the absence of any commitment to maintain them.

In terms of EU 26 (nationals of other EU countries apart from Irish citizens), things get much more complicated post-Brexit. A lot of rights will go, including the rights in the first column, but you can maintain some of those if you obtain ‘settled status’ under the EU Settlement Scheme, which links into part two of the ‘Citizens’ Rights’ section of the draft EU-UK Withdrawal Agreement (if it is enacted - it’s more precarious if it is not).

In terms of Irish citizens, things are far more precarious than you might think. Some Irish citizens will be able to avail of settled status under the settlement scheme. Some it seems, as things stand, will not. The UK government’s line is that Irish citizens can rely on the ‘reciprocal rights’ of the Common Travel Area (CTA). A major problem with this is that it is just a political promise, which is not really reflected in the legal framework.

When we talk about the CTA, what are we actually talking about? Essentially, the CTA from 1922 on is a free movement zone, free from passport controls. It was introduced in 1922 as there was a general consensus that it was impossible to conduct passport controls on the Irish land border – too big, too long, not practical. The CTA’s current status falls under UK immigration law. The 1971 Immigration Act debars immigration control and passport control on all local journeys within the CTA, including over the land border. The same applies to domestic journeys over the Irish Sea.

What is going to happen post-Brexit? Well, a few eyebrows were raised by the UK government’s initial papers that said there would be no “routine” controls within the CTA, which is a bit different to there being no controls. The concern from groups like CAJ, drawn from existing experience, is that this might mean non-routine controls that tend to target black people, or single out people on the basis of other ethnic indicators.

However, Lord Duncan of Springbank, Parliamentary Under Secretary of State for Northern Ireland, gave a very clear commitment to the UK Parliament when pressed on this issue. He said that there will be “no checks whatever” for journeys across the land border between Ireland and Northern Ireland, nor checks for journeys between Northern Ireland and Great Britain – so therefore no border on the Irish sea.

The problem of course is that this already simply isn’t true. There is no power to conduct passport control on journeys on the ferry in the Irish sea, but look at the case of Jules Gnezkora. On the four times he went through ports on one return trip to Scotland, he was the only black man in the queue, the only one to be singled out and the only one asked for a passport. Even when he showed a British passport, he was still questioned. The Home Office response - in a standard line to the media - was that this was a ‘consensual’ request i.e. they know they don’t have the power do this, it’s voluntary. That said, I’ve spoken to people who have declined to do voluntary checks and have been threatened with arrest under the Terrorism Act 2000 for having done so. That’s another issue whereby counter-terrorism legislation that is only supposed to be used for a particular purpose, appears to be being used for purposes of routine immigration control. I think there’s been a handful of detentions now, but for four years there were thousands of checks per year carried out in Northern Ireland under Schedule 7 of the Terrorism Act and yet not a single detention for a terrorism-related offence.

If you look at the UK Immigration White Paper, there are plans to introduce an “ETA” system – the Basque peace process seemingly having freed up that acronym. Electronic Travel Authorisation will be a system whereby EU nationals in the future travelling here would be expected to get preclearance online. I can see that working quite smoothly for someone who wants to do a one-off holiday – from Warsaw to London – not entirely sure how that’s going to work for someone who, on the spur of the moment, in Leitrim or Donegal, decides that they’re going to pop to Fermanagh, or Derry to go shopping. Will they have to fill in a pre-authorisation? Maybe if they don’t they won’t get caught, but the consequences of being caught are very severe and life changing.

Something funny has been happening over the last number of years with the CTA being talked up as something different from what it actually is. There's a lot of discourse around the "associated reciprocal rights" of the CTA. Now I am struggling to find a reference to these that predates the Brexit referendum. Since then, there have been regular suggestions from government that "due to the CTA" there have always been reciprocal rights for British and Irish citizens in each other's jurisdiction since partition. This 'CTA' rights idea seems to have taken on a life of its own. I have even seen on social media the assertion that since 1922 Irish citizens in the UK have been able to access both the NHS and the welfare state "because of the CTA", 30 years before the existence of either of those institutions.

What is the reality? Let's first examine from 1922 to 1948. British citizenship legislation of that time designated citizens of the Irish Free State as British subjects. That's why there was equality of treatment at that point. Notably for pretty much the last 10 years of that period, the CTA was suspended in the context of the second world war and passport controls were introduced – not on the land border - that was deemed impractical, but across the Irish Sea. So, during this latter period reciprocal treatment wasn't down to the CTA, because it was suspended at that time.

From 1948 to 1962, you have another phase whereby Irish citizens in UK law have this curious status of being "not British" but "not foreign" – that is what the legislation says. Not entirely unique as that was the status of Commonwealth citizens too, with the same access to provision as British citizens. What happened then in 1962 when you had the Commonwealth Immigrants Act to try to block migration to the UK from the Commonwealth? I read a historical note on this recently that provided rather an ominous warning for where we are today. Essentially, this explained that even though Irish citizens were in the same situation as Commonwealth citizens, a policy decision was taken to exempt Irish citizens from the controls. Why? Well it was done as the basis of a deal between the UK and Ireland. The UK reckoned that Commonwealth citizens would come to the UK via Dublin using the CTA area. It was agreed that Irish citizens would not be subject to these new rules if Ireland legislated to essentially introduce the same restrictions on Commonwealth nationals coming through Ireland.

The next phase of UK immigration law is the current system from the 1970s, through the Immigration Act 1971. By this stage, Irish and British citizens ended up having a number of growing reciprocal rights, which came into force as both states were joining the EEC (now EU). That has been the basis of reciprocal rights for almost 50 years. Yes, there are some residual statutes dating back many decades, which allow Irish citizens some sort of status here, but for about the last half century most of this has been down to EU free movement law, not the CTA.

It's EU free movement law that's about to be switched off, and that creates a number of problems, not least for compliance with the Good Friday Agreement (GFA). The GFA wasn't the starting point of allowing people born in Northern Ireland to have British or Irish passports, that was the case for a long time. However, it was the point at which the British and Irish governments recognised the birthright of "the people of Northern Ireland" (which is almost all but excludes people whose parents are temporary migrants) to be accepted as either Irish or British (or both) as they may so choose. This is not just about having a passport, as the UK's own Brexit position paper states when read alongside the relevant provisions in the GFA. It is about equality of treatment regardless of your choice of citizenship. That is the current constitutional position. However, all but the softest forms of Brexit will make this continuing impossible.

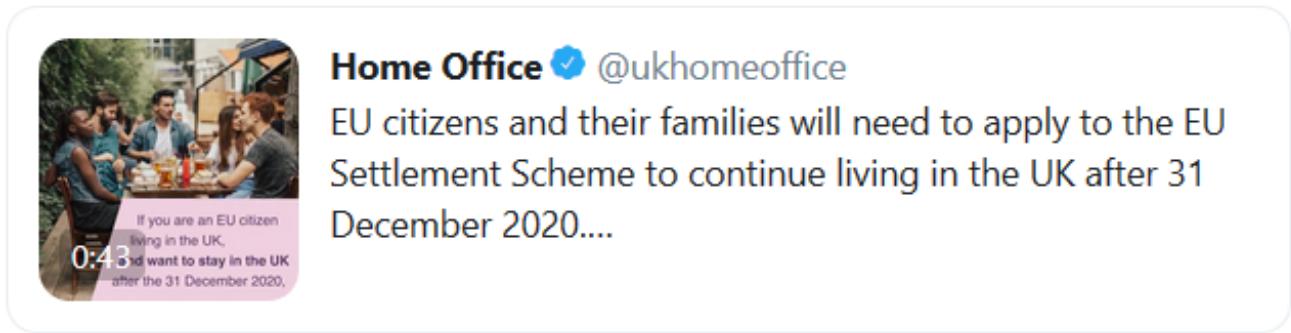
Another contextual factor is that the Home Office has a rather a curious interpretation of the right of people born here to be accepted as either Irish, or British, or both. Their interpretation is that everyone in fact is British, and should be treated as British. Which doesn't really lend itself to what's in the GFA. Yes, there are provisions for dual citizenship in the GFA, as some countries don't allow this, but the UK and Ireland both do. The GFA clearly states that NI born people can be Irish or British or both. Therefore, the conclusion that 'you're all British' doesn't really sit with that. Yet that's precisely what is being pushed by the Home Office when Irish citizens in this jurisdiction have sought to exercise EU rights.

This includes Emma DeSouza, who is here today and will be talking about her own situation later. Some people say “sure, let’s get both passports then”, maximise both rights, enjoy the best of both worlds – well actually no, because there are clear examples where the EU rights attached to Irish citizenship have been declined on the basis of dual British citizenship.

Home Office Minister Caroline Nokes has now stated that Irish citizens who are Northern Ireland born, and who the Home Office therefore considers as British, will not be allowed to apply under the EU Settlement Scheme to retain EU citizens’ rights because of being dual ‘British citizens’.

What is the settlement scheme? Well the point of the settlement scheme is to allow EU citizens that are already in the UK pre-Brexit, including here in the North - and indeed British citizens who are elsewhere in the EU - to stay and continue to have access to services, and all the things that are in the first column of our graphic. How does it do that? Well it’s a legally binding enforceable treaty-based mechanism, whereby the EU national in question would retain a lot of the rights they currently have. Not everything though. A right to vote isn’t retained, but most things are, including the right to be joined by family members, the right to work, professional qualification recognition, access to social security, etc.

This scheme will formally be opened by April Fools’ Day of this year, but has already been advertised, including in the following Christmas time tweet:



**Home Office**  @ukhomeoffice

EU citizens and their families will need to apply to the EU Settlement Scheme to continue living in the UK after 31 December 2020....

If you are an EU citizen living in the UK, and want to stay in the UK after the 31 December 2020, apply to the EU Settlement Scheme.

0:43 27 Dec 2018

6:17 am - 27 Dec 2018

This tweet was given short shrift on social media. The post implied that it is obligatory for all EU citizens and their families to apply to the settlement scheme by the end of next year to continue to live in the UK. Now part of that is actually wrong. Additionally, this was sent at a stage when applications were going to cost £65 per person. So £65 to keep rights that you already have, through having exercised free movement in good faith. The £65 charge has since been dropped, but the scheme remains. The tweet also implies that British citizens here who also happen to have EU family members have to apply to the scheme to be able to stay here, which isn’t actually the case. It also of course implies that every single Irish citizen here, if they do not register, will be put out of the North by the end of next year, which would be around half the population.

When you look at the small print, the actual position of Irish citizens in relation to the settlement scheme is that they need not apply, “but may do so if they wish”. And why would you wish to do so if you don’t have to? Well, it’s possibly the only way of securing a guarantee of retaining some of the EU rights you currently have, which is why some people may wish to do so, particularly if they have a health condition and need cross-border care, or are planning to have a family member come join them.

I want to draw your attention to another of Caroline Nokes' recent statements, which explains why Irish citizens "need not apply". It says:

**"under the reciprocal Common Travel Area arrangements with Ireland, Irish citizens have a status in the UK separate from EU free movement rights that allows them to live, work, study and access benefits and services without being subject to a requirement to obtain leave to enter or remain in the UK."**

I have to say, virtually none of that is true. Even though it's a statement made to Parliament virtually every single word of that is wrong. This is quite a common thing within the Brexit process. There seems to be a lot of wishful thinking. Let's look through what have been termed the associated rights of the CTA:

23. **As a result of these historic arrangements, the reciprocal rights for UK and Irish nationals include:**
  - the right to enter and reside in each others' state without being subject to a requirement to obtain permission;
  - the right to work without being subject to a requirement to obtain permission;
  - the right to study;
  - access to social welfare entitlements and benefits;
  - access to health services; and
  - the right to vote in local and parliamentary elections.<sup>17</sup>
24. **In practice, the operation of the CTA and many of the benefits enjoyed by Irish and UK nationals have also been provided for in instruments setting out EU free movement and associated rights. This intermingling of rights can make it difficult to distinguish what rights accrue under the CTA as opposed to under EU instruments.**

On the UK side, however, there is no further detail beyond this short list. The only exception is a UK-Ireland treaty, which was recently concluded on social security. The Irish government, to be fair, have done a lot more and produced an Omnibus Bill, which has significant detail. There's no UK equivalent of that. The other problem is that none of these things are actually rights. They're referred to as rights, but to be rights they have to be enshrined somewhere, in a bill of rights, or a treaty, or a constitution, or something. They're not. They're mostly just bits of legislation that can be changed at the whim of an incoming government, or even just administrative arrangements.

What we are told is that CTA 'rights' apply to British and Irish citizens and no one else. That creates a number of problems – what about cross-border schooling? Are you going to stop kids who are not British or Irish from attending a school across the border? Do the CTA rights cover cross-border issues like this? There's no assurance that they will. In fact, the usual line is that, no, they don't cover cross-border issues. That means access to cross-border schooling is only available on the basis of EU law. In the event of Brexit, this in turn means that EU nationals will continue to be able to use cross-border schooling, probably including some Irish citizens, but British citizens will not. So, essentially, British citizens won't have the right to use things that their neighbors who have Irish passports can. There's all sorts of issues around this.

**Let's now go through each of the claimed CTA rights, as shown on the graphic:**

- Irish citizens remarkably do NOT currently have a general right to enter and reside in Northern Ireland as Irish citizens. There is no right for any Irish citizen on an international journey to fly into Belfast and enter and reside here. The only place that right is currently found is within EU law. Now, an Irish citizen can do this if they're coming from Donegal or from Dublin – a journey within the CTA - but not if they are undertaking an international journey. So, although the Minister has implied that Irish citizens can freely enter the UK, they cannot in some circumstances. In fact, the same Minister has introduced legislation in Parliament to remedy this problem, since it has a knock-on effect on the right to work;

- At present, Irish citizens do not have to obtain permission to work in Northern Ireland – but this was not always true. CAJ’s Director, Brian Gormally, when he came here in 1971 from Sheffield, was subject to a requirement from the Stormont Parliament to obtain a work permit. So there was a requirement at this point – but why was this the case? Well, largely it was the Stormont Parliament’s way of regulating access to employment for people coming from the South. Why did they get rid of that? Was it because of the magical reciprocal rights of the CTA? No it wasn’t. It was because both of the UK and Irish states at that time were joining the EEC, and you could no longer have a rule like this;
- The right to vote is enshrined in law, separate to EU law. So that right is protected. It doesn’t extend to referendums, you’ll note, but does extend to local and parliamentary elections;
- With regards to study, social welfare, and health services, some of those things are covered in domestic law, but it is mostly in EU law. NHS care, for example, is free to anyone who is ‘ordinarily’ resident in the UK, rather than this being dependent on citizenship status. However, there are many other things – such as entitlement to home help or community care – that are only available to people who are a) British citizens or b) EEA nationals. What about your cross-border childcare? People often use their tax credits to pay for cross-border childcare, which is actually an EU right. Again, in the event of Brexit, it is probably only British citizens in NI who won’t be able to continue to do this. What about the right to study? What does it actually cover? Is it just third level? Is it all education?

A lot of this is consistently promised politically, but it isn’t actually reflected in law, and I suppose the line coming from Ministers constantly is, “Just trust us, we will sort this out”. We’ve seen this pattern before. For example, many of the rights-based parts of the NI peace settlement and related agreements have never been implemented.

There are also reasons why trust might be at a particularly low ebb at the moment. The EU-UK Joint Report, which was the Phase 1 Brexit agreement back in December 2017, made the following commitment in Paragraph 52 about Irish citizens continuing to enjoy rights as EU citizens “where they reside in Northern Ireland”:

**52.** Both Parties acknowledge that the 1998 Agreement recognises the birth right of all the people of Northern Ireland to choose to be Irish or British or both and be accepted as such. 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.

This refers to arrangements for the ongoing exercise of EU rights, opportunities, and benefits. That means your European Health Insurance Card, voting for MEPs, all of those sorts of things. Why trust is at a bit of a low ebb is because this commitment hasn’t been carried through into the more recent Withdrawal Agreement. It seems to have disappeared into the ether along the way. Perhaps it will be taken forward in future UK-EU arrangements, but it isn’t mentioned anywhere in the Political Declaration document. There is a line in the preamble of the Withdrawal Agreement around Irish citizens still being EU citizens, but there is nothing more specific than this.

If this original commitment was implemented, Irish citizens would retain all their EU rights, opportunities and benefits. Despite BrexitLawNI and others advocating for structures to be put in place to allow those who identify as British under the GFA to avail of these rights as well, the UK has not appeared interested. The worst case scenario in all of this would be ‘downward harmonisation’, where you achieve equality of treatment by shafting everyone and stripping everyone’s rights. We want upward harmonisation, where things get better, and leverage is created for everyone.

Finally, I want to turn to the Immigration and Social Security Coordination (EU Withdrawal) Bill introduced into Westminster on the 20 December 2018. This is the first bit of immigration legislation to begin to implement the post-Brexit environment. Clause 1 allows Ministers to simply end EU free movement, yet replaces it with nothing. There are Henry VIII powers that allow Ministers to make up a future immigration system, without any current blueprint. EU free movement can be switched off well before any arrangements for the CTA ‘reciprocal rights’ are legally put in place. The second Clause, alluded to earlier, will allow Irish citizens to come here on international flights, enter as Irish citizens and reside here, etc. There’s a bit of a sting in the tail even in this because the Clause actually also makes it easier to exclude or deport an Irish citizen from the UK, with no exemption for NI born Irish citizens included anywhere in the legislation. At present, there are a list of safeguards around deporting EU nationals. These would be replaced with the ability to exclude an Irish citizen when its “conducive to the public good”. A concept that recently has been interpreted rather flexibly, to put it mildly.

That very complex table at the beginning of my presentation, with its 13 different citizenship categories, is our starting point for today’s conference. As things stand, that will be the new framework for post-Brexit citizenship status – with the UK’s stated intention to police it through the hostile environment. And what for? Well there is clearly no pressing social need for it. The whole reason for all of this is grounded in a Brexit that has to be about ‘taking back control of borders’, essentially a political objective. We will have a new system of complex rules and checks, all to prevent the small fraction of our community who might not be entitled to access services from using them. The outworking of this is what we are here to discuss today, and no doubt in the years to come.



## PANEL 1:

Implications of Brexit for EU26, EEA and non-EU migrants in Northern Ireland



**Chair:** Professor Colin Harvey, QUB  
(centre right)

**Panel:** Una Boyd, CAJ (centre left)  
Nathalie Donnelly, UNISON (right)

(Also pictured is Patricia McKeown,  
UNISON)

### PROFESSOR COLIN HARVEY

BrexitLawNI Principal Investigator & Professor of Human Rights Law, Queen's University Belfast



### SPEAKER BIO:

Colin is Professor of Human Rights Law in the School of Law, Queen's University Belfast; a Fellow of the Senator George J Mitchell Institute for Global Peace, Security and Justice; and an Associate Fellow of the Institute of Irish Studies.

### SYNOPSIS: Colin provides an overview of some of the key issues.

You are all very welcome to the Moot Court Room in the School of Law at Queen's for this event organised by BrexitLawNI and the Equality Coalition. BrexitLawNI is a collaborative project. We have been involved in research over the last few years looking at the consequences of Brexit for Northern Ireland in the areas of human rights, equality, conflict transformation, and constitutionalism. We have produced a significant number of reports – six main project reports. We have a website - [www.brexitlawni.org](http://www.brexitlawni.org) - and we are on twitter as well; so, you can follow us and have a look at what we have produced. But suffice to say that we felt today was significant and necessary precisely because we are at a key moment in this process as we face into leaving the European Union, with it seems as much uncertainty as we had when the process started. So this event is well timed.

In terms of Brexit, we realised early on that there was a real risk that it was going to be an utter mess. Particularly in the areas we are reflecting on today: post-Brexit citizen status. So what we thought we would do is to bring all of you into a room to seek to clarify, to discuss, to think about the ways forward based on the work that we have been doing and the work that you have been doing as well. We hope there will be an opportunity for conversation today and beyond today as well. So thank you all for coming, thank you to the speakers and thank you to the organisers for making this possible.

The aim of this first panel is to think about the impact of Brexit on EU26, EEA and non-EU migrants. We are thinking about that in the context of human rights and equality. However, let me be clear this morning in terms of framing the conversation that we are having: the hostile environment that created around immigration and asylum policy in the UK has been going on for a very, very long time. Successive British governments have been creating an ever more hostile environment for migrants, for refugees and asylum seekers, across the UK. I think the concern and anxiety that we have, which has motivated a lot of the thinking in the room, is that this is going to get a lot worse on the far end of Brexit. We have seen the language that motivated Brexit itself, about ‘taking back control’. Given the language around that, are we really supposed to believe that people are going to be immensely relaxed about migration in the future? If you believe that, you are a fool.

I think it is clear (and I am speaking personally) that the policy coming from Westminster and Whitehall in relation to immigration and asylum simply does not speak for this society. That is increasingly the case. Now, I know that it is an excepted matter, it is a UK-wide matter, but I think there is a desperate need to start a new conversation in this society about how we deal with issues of migration and asylum. It is not only Brexit that does not represent the wishes of this society (remembering again that many in this room will not have got over the fact that this place, this region, has not consented to Brexit, and is being taken out of the European Union against its will). In relation to migration and asylum, and a whole range of areas, I would put it as clearly as this: the policy emerging from Whitehall and Westminster, the hostile environment (which has the fingerprints of the current Prime Minister all over it), is in direct conflict with the sort of human rights and equality culture that we are trying to construct in this society. So, I know that conversation is happening, and part of today is about advancing that discussion, but I really want to frame it in those terms. We want no part of the hostile environment here. We need to start a new dialogue, a new discussion in this society, however it is configured, about how we treat in a welcoming way those who are here and who come here, in a way that is respectful of human rights and equality.

It would not be me if I did not flag up something that is desperately missing in this place – this society needs a bill of rights. This society needs a strong and inclusive bill of rights that protects the human rights of everyone, because what we are going to see at the far end of Brexit is an utter mess of hierarchies, of differential treatment. One way, not the only way, of tackling that, is to begin to revisit the work that was done on a bill of rights, single equality legislation, and the list that we all know of things that are absent, but needed for the sort of human rights and equality culture that we want to build.

Today is part of that discussion. Let us send out a clear message from this event: We want this region to be a welcoming place for everyone. Brexit does not represent a majority of opinion in this society. People are - and will remain - welcome here. We should do all that we can to promote the legal and political reforms that will make that statement a reality.

Another theme that came out of the BrexitLawNI project, which I think has been a bit neglected in the wider debate, is this idea of ‘one big border’. That the border on the island might be invisible, but the implications for the civil liberties of everyone in this region are really quite stark and serious. When you think about some of the pressures and strains that are on, for example, the policing service at the moment here, and you then inject the further criminalisation of migration, you have scope for problems and more tensions. There are big questions there that are being neglected by everyone, which are disguised by the language of the hard border and the invisible border. There is also a constant theme of broken promises – the very clear sense of promises that have been made and have been broken. I think that is something that people around this society feel very strongly about across a range of issues, including in the broader human rights and equality sphere.

One other thing, the Home Office, I am afraid, has a long, long history of not being very good at recognising that we are all human beings. And guess what? Human beings are complicated. And guess what? Human beings live complicated lives, particularly around border areas here. What the experience of the Home Office tells us is that they can be very, very poor at dealing with the complexities of actual, real live human beings. That is not going to go away any time soon. I think that the bureaucratic experiences that people have had should cause grave concern. You will know the stories of masses of paperwork turning up in remote or abandoned offices, of bureaucratic nightmares, of computer failures, of lost documentation. Now I am sure we might imagine that the Home Office will get better soon, but we need to be careful. They have an extensive history of failure.

Finally, obviously a lot of the focus is on the British Government, but what is also increasingly clear is that there are things that the Irish Government could be doing and taking forward. I think there needs to be a broader debate about that as well.



## UNA BOYD

Immigration Project Coordinator, CAJ



### SPEAKER BIO:

Una studied International Human Rights law at the Irish Centre for Human Rights and interned with Amnesty International Ireland.

She began working in the field of asylum and immigration law as a paralegal and went on to qualify as a solicitor at Queen's University Belfast.

Una headed the immigration department of MSM Law from 2016 and has recently taken up the post of Immigration Project Coordinator at CAJ.

### **SYNOPSIS: A trained solicitor, Una explores how the immigration system in Northern Ireland is set to be transformed by Brexit.**

I've been working in immigration law in Northern Ireland for about the last seven years. I began working as a paralegal, went on to work as a solicitor, and in my daily practice I worked solely on immigration law. So everything from refugee and asylum work, family reunions, appeals, spouse visa applications, and of course EEA applications. I'm very happy to say I've just started the role of Immigration Project Coordinator with CAJ. The immigration project aims to look at how Brexit is going to impact the immigration system here in NI. In terms of that topic, there's so many issues surrounding it, a lot of which are going to be discussed today.

When trying to pick something to pick out of this, it is difficult to decide what to panic about first. The one thing that I really wanted to draw attention to today is this idea of the hostile environment. A lot of the talk around Brexit and its impact on the immigration system focuses on how it's going to begin a rollback on rights. However, the simple fact is that this process has already started. So we've a good idea of what we're going to be facing and I think it's really important that we're all aware of that.

Most people here are probably aware of the hostile environment, but for anyone who isn't, put very simply, it's the idea that if you're deemed not to be in the UK legally, the home office is going to make your life as miserable and as difficult as possible in the hopes that that will make you leave. This policy invades all areas of everyday ordinary life. Essentially, it prevents people from accessing basic services in order to make it impossible to live comfortably. It stops people accessing things like housing, healthcare, employment, even things like banking and driving licenses. This is not a secret policy. This is not something that has been happening quietly behind the scenes. This is very much out in the open and is written into legislation, including the 2014 and 2016 immigration acts in particular.

There's very little evidence that this policy works, but there is a lot of evidence that it disproportionately targets the most vulnerable and isolated in society. By its very nature, it is discriminatory and not compliant with human rights law. Something that I really want to pick out, which I learn from my own practice as an immigration solicitor, is that a lot of the time the hostile environment is justified by saying that this applies to people who are not here legally. However, what I found from working with migrants is that this claim is simply not true. This policy affects all migrants, and in turn, affects all of us.

The most common example - and this came up so often I actually had a template letter saved for when it inevitably happened in my cases – would be a person who has come here on a visa. Usually these are time limited, so a person has to apply to renew it or extend it at a certain stage. Now, when you do that, there can be a wait time of anything from three months to over a year, depending on the complexity of the case. So your previous visa has expired, and you're waiting on the decision on the new one. In that gap, you are allowed to be here, you're in the UK legally, you're allowed to access services, but the Home Office doesn't actually issue you a document that says, “Yes this person has made an application, they're allowed to continue accessing all of this”. What you end up with is people who have no way of proving their right to reside and they then become victims of the hostile environment.

It would manifest itself in so many ways. The most common way would be getting a phone call from the GP saying, “Look, the visa that you gave us is expired, if you don't give us a new one in two weeks, you're coming off the register”, which obviously had an impact, particularly on clients who had ongoing health issues, or had children, or were pregnant, etc. A lot of clients had very difficult situations with their employers who, quite simply, would say, “Look, I'm sorry the visa you had has expired, you haven't given us a new one. We're not comfortable, we don't know what's going on, if you don't clarify this, we're not going to be able to let you keep working”. We also had one lady who was refused a tenancy simply because the landlord wasn't comfortable and it doesn't matter how much you explain the situation.

At the end of the day, people are scared because of the hostile environment. They don't want to get on the wrong way of this, they don't want to get the fines. There's potential criminal convictions for some people who, for example, would hire illegal workers. So they want to see a visa and this would cause huge amounts of stress and anxiety to people. It's just astonishing, because these are people who followed the rules, who did everything they were supposed to. They paid the extortionate fees, they met all the requirements and they still fell victim to this policy. I really want to emphasise that and counter the discourse around this that says, “This is justified because it only affects illegal immigrants. It only affects people who aren't supposed to be here”.

Obviously, it's really concerning, and even more so when you realise this isn't being rolled back, this is actually just going to be expanded. There's this new section of our community who are going to come under this because of Brexit - European citizens and their family members. I don't hold out much hope for them being treated differently. Even in my own work, I noticed increasing hostility to Europeans and their family members.

On a day to day basis, the obvious example, was how many applications would be refused, often for really flimsy reasons. There seemed to be a policy of refusing things and letting people appeal. I can't tell you how many times we went to the appeals tribunal, which has a cost attached to it. Sometimes it can take up to six months to even get before the tribunal. The Home Office would always wait until the day before at about 3 o'clock, or the day of, to say “we can't stand over that decision, we'll withdraw”. That is happening all the time, on a weekly basis, in our tribunals.

The other thing that started to become more common was the use of removal notices against European nationals. Essentially this is a letter that says, “We don't think you're here legally, prove you are or you're going to be removed from the UK”. Those used to be so unusual that when one of the first people rang me after receiving one, I thought he might be mistaken about the type of letter he had, because he was German. I was thinking, no, that doesn't make any sense, European nationals don't really get issued with those. Yet that is exactly what had happened, and that rapidly became a lot more common.

The Detail recently released some statistics, which reflect what I found in my own personal experience. What they found was, between 2012 and 2016, the number of EU nationals detained in Larne house, which is the immigration detention centre here in NI, rose from 15 to 161. By 2018, 1 in 4 people detained in Larne house were EU migrants. It's not looking good. For any of you who might be holding out hope that the government has plans to change this with the new immigration system, I want to read out a section of the white paper published by the Home Office last December. Under the section dealing with compliance, it says, "It is right that we, for example, require right to work and rent checks and can deny access to or opening of current accounts to tackle illegal immigration and prevent abuse of benefits and services, but it is essential that we improve our ability to differentiate between the lawful and unlawful populations."

That part's not that bad, but it then goes on to say, "This includes ensuring that those who are not legitimately in the UK and those only here as visitors aren't accessing public benefits and services or competing for jobs and housing with British citizens and migrants who have played by the rules." It's really interesting wording. Unfortunately, I think it's pretty clear the hostile environment isn't going away, and what we know is, it doesn't matter if you play by the rules, this will still affect so many people that it shouldn't.

With regards to the EU Settlement Scheme that is being introduced, we've been promised it's going to be really fair, very easy to use – and I really hope it is, that would be great. However, what we know is that even if you have a good system in place, there will always be people who fall through the cracks. There will be people who don't have standard cases. There will be people who simply can't access this scheme. We saw this happen already with Windrush and it just seems likely that it's going to happen again. The government simply has not learned the lessons that it should have.

This is a huge issue and one that isn't being talked about enough when people are discussing how Brexit is going to affect our human rights, how Brexit is going to affect equality. It is particularly relevant here in NI because we're going to have the only land border with the EU. We have been told that there will be no physical checks on that border – so it follows there has to be some kind of immigration enforcement. What we suspect is that this is going to take the form of these kinds of policies. Essentially, we fear these are going to be implemented on a huge scale here in NI in order to make this place as hostile and unfriendly as possible to migrants.

As we know, this won't just affect people who are here illegally – this will affect all migrants who want to live here in our society. So I'll try to end on a slightly positive note: as Daniel mentioned earlier, last week the High Court in England found that the 'right to rent' scheme, which requires the landlord to do an immigration check before they rent out a house to someone, is inherently discriminatory. Interestingly, it also found that there's simply no proof the scheme works. That is a great victory, and there is a lot of excellent work happening to push back against the hostile environment. Cases like this show we don't have to accept this. We don't have to let this become part of our society. We are heading for a big mess. However, we can at least try to ensure that human rights and equality are respected here, and that we don't become 'one big border', where migrants are treated with open hostility.



## NATHALIE DONNELLY

Local Organiser, UNISON



### SPEAKER BIO:

Nathalie's role with UNISON includes a specific focus on organising black and migrant workers within the union.

Prior to joining UNISON, she worked with migrants, refugees and asylum seekers through the Multi-Cultural Resource Centre.

Nathalie is originally from France and has been living and working in Belfast for over 25 years.

### **SYNOPSIS: Drawing on her own personal experiences, Nathalie discusses the impact of the UK's decision to leave the EU on migrants living in Northern Ireland.**

I am originally from France, and last Saturday I applied for settled status. As Daniel has said, the scheme opens officially at the end of March but if you have a biometric passport and an android phone, you can already apply. So I did, and it took me literally 10 minutes. It was that straightforward. Three days later I got my letter from the Home Office to say that I was granted settled status. I attended meetings with Home Office officials a few months ago where they explained how they had to retrain their staff to bring them from a culture of 'refuse', to a culture of 'accept'. So that's how 'privileged' a category of migrants we are, and how straightforward this is all supposed to be for European migrants.

### **But – and obviously this is what I want to expand on - there are three big issues:**

- 1.** First of all, we didn't sign up for this. When we came here there was no question of immigration restriction.
- 2.** Secondly, the process is only straightforward if you fit neatly into the boxes that are ready for you.
- 3.** And lastly - and this is the big one - you are entering into this world of 'real migrants' with immigration restrictions and all that it implies.

### **WE DIDN'T SIGN UP FOR THIS**

So, I'll start with the fact that we didn't sign up for this. When I first arrived here 25 years ago, with all my possessions in the boot of my car, to come and live here because it was 'the most wonderful place in the world'. I didn't have to go to any office and say: "hello I'm a migrant and I want to live here". There was no registration process whatsoever. There were no papers I had to complete. I registered with my GP and got a medical number just like any other local person. I was entitled to everything just like a local person. The thing is, I would not have come here to settle if that had not been the case. I am an only child and for me it was fundamental that my parents would be able to come and join me at any stage, with no question, whether I needed them to, or they needed to come, or if, at the end of their lives, I needed to look after them.

So when I woke up on that June morning in 2016, this is what ‘Brexit’ meant to me. It was the end of that certainty. There were a lot of tears, and a lot of anger, and if I had been able to, I would have been across that border like a shot. But, here I am. Although this is my own example, it is not an isolated case. There are thousands and thousands of migrants in similar situations. Brexit had a huge emotional impact on long-term migrants. I am part of a group called The3million – I think most of you will have heard of them – they are basically European people who got together to campaign for ‘as good a settlement as possible’, and UNISON has been campaigning quite closely with them. They have a Facebook page, and if you visit that page, you find campaign updates and bits of information, but it actually reads like a therapy blog! – with all long-term migrants saying just how devastated they are, how racism has gone up all around them, how they feel that this isn’t their home anymore. One woman said that she felt that she was forced to settle in a country that she used to love, but now despised. I am afraid that this is quite a common experience.

And the last thing on this: I never voted in local elections in France because I’ve spent all my adult life here. In Northern Ireland, I’ve been involved in my local community; I’ve been involved in electing my local politicians. After Brexit, that’s it ... I am no longer entitled to vote in local NI elections. I don’t have any political involvement in my local community. And, again, that is something that’s telling you, this is not really your home any more.

## **STRAIGHTFORWARD FOR THE ‘RIGHT’ MIGRANTS ONLY**

The second big thing is that, yes, it is very straight forward for EU migrants, and we are a very privileged category (and if you work with migrants in general you know that a ten-minute application where you get accepted three days later is definitely not the norm). However, it only works if you fit into the right boxes.

In UNISON, recently we’ve been getting examples of people who don’t fit into these boxes for practical reasons. The main group affected is frontier workers. So we’ve got for example, a Polish man working in Altnagelvin in Derry, but who lives across the border. What’s going to happen to people like him? There may be more information about them later today, but so far there’s supposed to be a separate scheme for frontier workers, but it is not available yet. They cannot apply for settlement because they’re not residents in NI. So there’s a whole group of people there who are just left in limbo.

For the first couple of years, I thought we would be inundated with queries, but we weren’t. The people who came to use our immigration advice clinics were: Romanians; Black Europeans; people like me who work with migrants and know what’s coming; couples; non-EEA partners of an EU worker; and also people with African names who had EU passports (i.e. people from North Africa with a French passport, or Angola with a Portuguese passport and so on). Basically, they are people who know about racist discrimination, who know that they are going to be the ones targeted, that they are going to be the ones who have to prove their status every step of the way, and people who know what it means to have immigration restrictions and what the UK immigration system is like.

## **ENTERING THE WORLD OF ‘REAL MIGRANTS’**

That brings me to the third big issue and that is that European migrants are now entering this world of ‘real migrants’. In UNISON we do training for our new activists. When doing an awareness session, I always ask, “what do you think are the issues facing migrant workers?”. People will generally mention learning the English language, isolation, racist discrimination, not knowing your rights, etc. – which are all completely true. They never mention immigration, and yet, for anyone who is not on a permanently settled status, that is by far the biggest issue.

If you arrive on a work permit, it is a gateway to exploitation - you are completely tied to your employer. If anything goes wrong, that’s you out. There is very little if any safety net. The other thing for you is the money aspect – when you first arrive, a visa application, work permit, everything costs a fortune. More recently they have introduced a ‘health surcharge’. It was introduced as £200 a year and has just gone up to £400 in December. So you have to pay £400 per year of your visa, per person, in advance in case you ever need to use the NHS. Okay, I appreciate that European migrant workers like me who are already here, are bypassing all this. It is not going to affect us directly. But this is the world we’re entering into. This is what’s coming.

In terms of cost, the life of a migrant is just like being a big cash machine for the Home Office, you feel like it goes “Kerching!” every step of the way. The one aspect we are going to be hit with (there may be others along the way) is if you try to apply for citizenship. When I say to people I need to apply for a British or Irish passport, people think I’m talking about £30-£40. Try £1,300-£1,400 instead! To apply for a British passport, you also have to pass the ‘Life in the UK Test’, which is £50, pass the English test, which is £145; and attend a citizenship ceremony, which costs £80. You come across this type of thing again and again and again.

There is also the whole administrative nightmare if you lose documents; if you need something else; if you’ve got somebody coming over to visit, etc., etc. Another aspect is racial profiling. With the colour of your skin or now just your accent, you will be asked to prove your immigration status. This used to be done mainly around accessing work, but it is now permeating into every sphere of life e.g. housing, benefits, healthcare. With healthcare, it can have disastrous consequences for people who are asked to prove their status before they can access medical help.

The last thing - and I suppose this is the biggest thing - is that when you’re a migrant there’s no guarantee anymore, that’s it. They don’t need a new referendum to change your status. They don’t need a new referendum to say, “oh no sorry, family members can’t come and join you anymore”. It’s the next immigration bill, the next minister that you have to rely on, or sometimes even secondary legislation that you don’t really even pay attention to, but changes everything.

When I started in UNISON, there was a campaign on because there was a new threshold for the salary one had to be paid by their employer to be able to renew their visa. You had people coming on a five-year work permit, but their visa was only for three years. So at the end of the three years, “kerching!”, you pay again for a new visa. But the minimum salary per hour that people had to be paid changed. They needed to be paid £7.02 an hour to be able to renew and none of the people we worked with were being paid £7.02 an hour. One minute you are working here legally and, out of the blue, something is changed and you can’t renew your visa.

Of course the biggest example of that at the moment is Windrush: something changes in the background, you don’t even pay attention to it, next thing you have to prove your status, and even though you have been here all your life, you haven’t got the right papers and off you go back to Jamaica!

I want to conclude on this, once you are in that world, really, your only guarantee is to apply for citizenship – but that, again, comes with a range of issues. First of all, the cost is very prohibitive. Secondly, some EU countries don’t allow dual citizenship – so for example, if you’re from Austria, you would have to renounce your Austrian citizenship before you take a British passport. Finally, and I find this really shocking, as a migrant living here you only have access to British citizenship. Under the Good Friday Agreement, you can be British or Irish or both if you are a local, but not if you are a migrant. An Irish passport based on residency is on the basis of residency in the Irish state – not on the island. Even if like me you have lived here for 25 years, unless you’ve married a local, that’s it – you’ve no access to that.

Now I understand that an Irish passport also comes with all the other complications explored elsewhere today, but at least you’re in the same pool as everybody else. The Northern Ireland Council for Racial Equality (NICRE) has a current campaign supporting access to Irish citizenship for BME people working and living in NI for at least five years. However, this is not something that I’ve heard being talked about by politicians or in the news. One thing I’d like to come out of today is for more to be done on this issue.

(A question and answer session followed on from the presentations)

## PANEL 2:

Political representatives on post-Brexit citizenship status



**Chair:** Professor Kieran McEvoy, QUB  
(not pictured)

**Panel (from left to right):**

Mike Nesbitt, UUP  
Stephen Farry, Alliance  
Peter Weir, DUP  
Niall Ó Donnghaile, Sinn Féin  
Steven Agnew, Green Party NI  
Claire Hanna, SDLP

### PETER WEIR

MLA for Strangford, Democratic Unionist Party (DUP)



### SPEAKER BIO:

Originally a barrister by profession, Peter has been an MLA since 1998.

He joined the DUP in 2002 and has remained with the party since then.

In the months directly preceding the collapse of power sharing, Peter held the role of Minister for the Department of Education.

### SYNOPSIS: Peter discusses perceptions of Brexit, including misconceptions and areas of common ground.

When we look at the wider context of Brexit, when we look at migration rights and citizens' rights, there has been an at times worrying level of misunderstanding and miscommunication. I therefore think, in terms of the use of the language [today], there does need to be care. We need to realise that there will be people, beyond today as an academic exercise, who will be affected at an individual level by this subject.

Can I say whenever I talk about misunderstanding, I think at times there have been some who naturally fear those who originally come from the EU26, who would think that their position is heavily under threat – particularly in Northern Ireland – and it is important that we give reassurance to people. But also I think that even within government, particularly around migration issues, there has been high levels of misunderstanding there. Funnily enough, I think particularly coming from those within government who are trying to, if you like, bring about Brexit, but come from a Remainer background, because they see the main driver of those who voted leave was around freedom of movement. I think that is a misconception. As with any election and any vote, you'll find that there's a wide range of reasons as to why people voted.

If an approach had been taken, particularly by the EU, but to some extent by the government as well, to try and find an overall solution across the board, rather than the compartmentalising of Brexit and to simply withdraw, then a future relationship could have provided that level of reassurance.

Broadly speaking, the guarantee that has been there from a very early stage - and indeed the government was keen to commit to - that those [from the EU26] who are resident in the country pre-Brexit would continue with the full range of rights, I think is the right approach. That's not simply out of self-interest because it impacts upon British citizens living in the other parts of the EU as well. Not just economically is that the right thing to do, but I think morally it's right that we give that level of reassurance to those that are there prior to Brexit.

Specifically, I think the movement by government is to then, in terms of future examination, to see EEA citizens and non-EEA citizens as effectively one block. I know there's been concerns raised about the issue of profiling. I think actually to be treating people equally, and then to look at how we deal with citizens' rights and how we deal with migration on the basis of, effectively, a colour-blind approach is actually the right approach. And I think that reduces the risk of profiling.

Obviously, one area where there has been differentiation is around the issue of Irish citizenship, and I know the others will have their views on this. It has been very clear from the start that the government has a very strong commitment to the Common Travel Area (CTA) and the rights arising out of that. Again, that has been something which has been germane to the British government, the Irish government, and I think has been accepted by Europe. From the position that the government centrally has set out, the current entitlements under CTA are what will be there post-Brexit. Whether that is on the issue of residency and entering the UK; whether that on the basis of work, study, social welfare, social housing, health, and voting rights; I believe it's right that those rights are rolled over and guaranteed into the future.

It has been abundantly clear, I think, that the position taken by the government is that this is not simply what would be the case in the event of an overall Withdrawal Agreement, however modified, but would also be the case even if we have a no deal scenario. It's noticeable that the disagreements that myself and others would have with the Withdrawal Agreement are not really around CTA rights.

While there is plenty of detail to be added to what is already there, the [CTA] is an area where we can hopefully try to take a little bit of heat out of some of the problems and actually ensure we have a smooth and indeed neighbourly relationship as we move ahead.

## STEVEN AGNEW

MLA for North Down, Green Party Northern Ireland



### SPEAKER BIO:

Steven worked with the homeless before beginning his career in politics by becoming a research officer for the Green Party NI.

He was first elected as an MLA in 2011. Between 2011 and 2018, he was also leader of his party.

### **SYNOPSIS: Steven argues for a multi-option referendum to be held on the final Brexit deal.**

The referendum in June 2016, there's no doubt about it, it was divisive. Immediately we saw that the country was either divided going into it or certainly was divided after it. Increasingly we've seen a divided parliament, and even more so now we are seeing the divisions within political parties. If we're going to learn the lessons of the past, I think the first thing we have to learn is, when we have yes/no, in/out referenda, they are divisive by nature. I've had colleagues who have argued for many years that we need multi-option referendums and I think that that should be one of the lessons we learn from this whole process, regardless of how you voted or campaigned.

Obviously, I voted to remain. My party campaigned to remain, and there has been a lot of this conversation around whether or not people who voted to leave somehow didn't know what they were voting for. I've maintained consistently that this isn't some sort of condescending argument – "Oh well the smart people voted to remain, and the silly people voted to leave". The simple fact is that we all voted in ignorance. Because I may have voted for remain knowing what the EU is, knowing what staying in the EU meant. I knew what I was voting for, but I didn't know what I was voting against.

Similarly, those who voted to leave knew what the EU was, knew they didn't want to be part of it, but they can't have known what Brexit meant, because we still don't know what Brexit means. "Brexit means Brexit" was a nice holding line, but we're yet to discover, two years on, what Brexit is. So I suppose I want to say from the outset that this isn't about right and wrong, informed and uninformed. We all voted in the same context, in which there was a lack of information.

I've likened this in the past to when you sell your house. You sit down with the person who you're living with and say, "I think we need to sell the house. We want to leave, we want to go to live somewhere else, let's sell the house."

Well, if that agreement is made and one partner goes off and says: "Good news, I've sold the house, I got £10,000 for it."

The other person looks at them and goes, "It's worth £150,000."

"I know but we agreed we'd sell it, we agreed to leave."

That's not how you do an agreement. That's not how you progress that sort of negotiation. You first make the decision, which arguably we've made as a country to leave the EU, and then next, you look at what is in the proposal. Once we see the final proposal, then we can make a final decision of whether or not we still want to leave under these terms, under these conditions. Is this still the choice we want to make, now that we have all the information? That's where I feel we're getting to with Brexit. It's why I feel that we must have a second vote because we took a vote, as I say, in ignorance, all of us, as to what the consequences would be if we left. Certainly there's [now] a deal there that could be put to the public. I think that that's what should happen. I think it is the right thing from a democratic point of view and it's the logical thing.

Will it heal the divisions? The truth is, I don't think it will. But I think having a multi-option referendum will help us on that journey to heal the divisions. Unfortunately, I haven't been seen as an optimist throughout my political career and I find it very difficult in this context to be an optimist. But [I support] having a referendum on the final proposals, at the very least [with the options]: no deal, the negotiated deal, and remaining. You could have a number of others in between the no deal and the remain options. I think that's the very least that we should be looking for.

Do I think it's likely? It's looking less likely. You know, it's funny, I've less anger for the first time in my life towards the Tories than I do towards Labour because the Tories I expected nothing from. From Labour I expected better and I think they have been a disappointment. They have finally come on board with the position to support a referendum, possibly – although I hope I'm wrong – when it's too late to achieve one. Had Labour been on board six months ago, the momentum of the campaign might have ratcheted up and we might have got there. But we are where we are. Thankfully Jeremy Corbyn has been dragged on board. And [the referendum] to me is what needs to happen.



## NIALL Ó DONNNGHAILE

Senator, Sinn Féin



### SPEAKER BIO:

Since 2016, Niall has been a Senator in the upper house of the Oireachtas, Seanad Éireann.

Formerly, he was a Councillor on Belfast City Council between 2011 and 2016. During this time, he spent a year as Lord Mayor of the city.

### **SYNOPSIS: As a Senator in the Seanad Éireann, Niall comments on the role the Southern government could play in protecting citizens' rights during the Brexit process.**

I think it's always bad form to come into a room of practitioners and academics and tell them they're misunderstanding the subject, so I won't start by doing that. I think that if we are to go by the contributions this morning so far, we're understanding this very well because we're living it. What I can't quite understand is the rationale or the motivation that has perpetuated a Brexit agenda. Or maybe I can actually.

I want to preface my remarks by saying that I am actually a cross-border worker, so I now more than ever have a vested interest as someone who travels back and forward to Dublin to go to their work. [There is an] issue that for me runs right to the core of what we've heard this morning already and what we've been debating over past number of years in relation to Brexit - and sometimes people will recoil from it or and some will see it as a dirty word. [It] is the issue of identity, the issue of our sense of place, which runs as a central component of the Good Friday Agreement.

[Other speakers today] have been advocating for a long time that we need to have these rights and these protections and these entitlements codified – I think we can all agree with that, regardless of what identity you choose. I reluctantly use it in such binary terms because it's much more complex and diverse than that. What we all need is to get to the point of having these rights and these protections down in law, on statute. Certainly, from the perspective of the Southern government, we have been making those cases. We had a very impressive [rights] delegation travel to the Committee on Justice and Equality a number of weeks ago, and I would commend the transcript of that meeting to you. You can watch it back on video, or read it, but it's certainly stark in terms of outlaying the worrying consequences of Brexit and the lack of protections that are there in real tangible terms.

[Note: The transcript referred to above is available here: [www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_justice\\_and\\_equality/2019-01-23/](http://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice_and_equality/2019-01-23/)]

So we're certainly looking and I'm certainly looking at how the Irish government can, in a unilateral way, in a responsible and obligatory way, legislate to protect Irish citizens in the North. We all know we're in a contested space around jurisdiction, and diplomacy has to be maintained, but if we are to live up to the fullest aspirations of the Good Friday Agreement this tells us we have the right to be Irish or British or both.

It's that notion of citizenship rights versus residency rights that's particularly different within our own context. I think it was Brian Feeney, maybe last year, who wrote that essentially Irish citizens in the North, they'll still be Irish citizens, but they'll have the same rights and entitlements as Irish citizens in Honolulu. That's the major fear for people out there and that's not a fear that people are [expressing] to unnerve or unsettle or destabilise anyone else. They're merely saying that 21 years after the Good Friday Agreement, this most basic component of it should be adhered to and be given the space to be lived and expressed fully.

My understanding of Brexit, and Brexit meaning Brexit, is that you have Irish citizens in Belfast being taken to court for exercising their citizenship rights. That is where, I suppose, the controversial outrage should be directed. The other aspect of this is, because it's not to let them get off the hook, is that there are measures that the Irish government can take, like [giving Northern Ireland] the two additional European seats for example. One of the basic entitlements of any citizen is the right to vote. The right to have democratic franchise. The right to elect representatives.

I remember in a really dramatic way, producing my Irish passport when Guy Verhofstadt was addressing the joint sitting of the Seanad and Dáil, and saying that not only am I an Irish citizen, but I'm an EU citizen: what are you going to do to protect my rights? And he was absolutely clear and certain that our fullest rights as EU citizens would be protected. On Wednesday night, legislation goes through the Seanad [that will grant the additional seats to the South] so if there are EU citizens among you, who want to retain an opportunity to vote, I would encourage you to get in contact with members. Just email [members@oireachtas.ie](mailto:members@oireachtas.ie) and they'll all get it. They'll all pick it up in the one go. Tell them that the legal advice is clear that those two additional seats can be given to the North.

So, I'll finish on this - Brexit is permeating in everyone's lives in every aspect of our lives. I was trying to think, as I said earlier, about being a cross-border worker. I was trying to think how this will impact me potentially. So say for argument's sake there is a manifestation of checks along the border in the next few months as a result of Brexit. There's a constitutional provision in the South that says Oireachtas members can't be hindered or prevented from going to fulfil their obligations as Oireachtas members. So if I'm stopped by customs officials on one side of the border, the Irish government is going to take them to court for preventing me from carrying out my obligations as an Oireachtas member. That's only one example. It's a very bespoke one, I appreciate. But the point I'm trying to make is, regardless of whether you're a member of Seanad Éireann, regardless of whether you're a migrant worker in the Moy, or regardless of wherever you are, this impacts right across every fabric of our being, and of our lives, and of our politics, and of our society. And I think that's something we all very much understand acutely.



## CLAIRE HANNA

MLA for South Belfast, Social Democratic and Labour Party (SDLP)



### SPEAKER BIO:

Following on from being elected as a Councillor for Balmoral, Claire was made MLA for South Belfast in June 2015, successfully defending the seat in the May 2016 election.

Her political interests include sustainability, the economy and promoting a genuinely shared future.

### **SYNOPSIS: Claire explains why she opposes the UK's withdrawal from the EU and advocates for a further referendum.**

There was such a high level of detail [this morning], I'm not sure how much any of us can really add to the in depth and technical knowledge, but I'll probably just pick up just on a few points. For me, the baseline for all of Brexit, but particularly this aspect about diminishing and differentiating rights, is just tragic. It's so sad that at a time when people were more comfortable feeling British or Irish or both, they are now being forced to choose. Of course, before [Brexit] people could choose, but it was based on their identity, their feelings, their own aspirations and not on necessity. I just think it is tragic that we've got to this point.

Look at a case like Emma DeSouza's. [She] is putting forward in such a balanced and articulate way why she shouldn't be forced to choose an identity that isn't hers. There will also be people with an inverse identity, and set of aspirations, who may be forced to take a citizenship that doesn't feel inherently comfortable for them. That's the challenge that we have to try and manage in the most practical way that we can.

While there are issues for those of us who are Irish or British, there is going to be attention paid to that and I do feel it's more likely that a lot of those will be picked up. Obviously [another issue] is the limbo facing EU nationals, some of whom I'm very proud to represent in South Belfast. [I particularly appreciated] Nathalie [Donnelly's] personal sharing of the issues that she's faced, and we know already, that the concept of devolving the management of immigration to landlords or employers, or even schools, is terrifying.

I know from a working group that Stephen [Farry] and Steven [Agnew] and I have on EU nationals about the chill factor that people are already feeling - maybe being passed over for promotion or maybe not getting employed, with employers going, "You know what I'm going to have to be dealing with in a few months".

Already it's having a very disturbing effect on people, and that's before we get into the fact that human beings aren't necessarily going to fit into a flow chart. It's the same with all the stuff that's happening in Westminster on this. If you have to put things into such a complex chart, somebody is doing something wrong. You know it shouldn't be that difficult to understand.

Even if [citizenship] is nailed down and correct, the phrase that jumped out at me from this morning was the Home Office being encouraged to move from a culture of refusal to a culture of approval. We know that it has been a culture of refusal [up until now]. I think that if we had the best will in the world, it would be challenging to change this – but we don't have the best will in the world, and we do have a history – and a recent history – of decisions that are made in ignorance, and are made with a pre-disposed outcome in many cases. I suppose that's what's worrying, the potential for people to slip through those complexities.

In terms of the fixes, like Steven [Agnew], I'm a true believer until the end in the hope of a further referendum, as I think that is the neatest way out. I, based on no science whatsoever, am quite confident that a second referendum would [be in favour of remaining in the EU]. [I believe this] based on polling, conversations and a lot of media I try to consume from areas that have voted leave. I agree that the chances of a referendum are receding and I feel very let down by Labour particularly on that. But it's not beyond the realms of possibility, though for what it's worth, I think May's deal with the backstop is what's ultimately going to go through.

I'll always be thinking, no matter how 'Pollyanna' it seems with all that's happened, of the fixes in terms of the Good Friday Agreement strands. I think [the GFA] is still the best toolkit to try and deal with this. Not a relic, but something that we can actually use and beef-up in a way that we haven't used it in the ten years before Brexit.

I suspect the Dublin government doesn't want to put their hands up for absolutely everything because it gets the British government off the hook for a lot of things that have to be worked out – particularly things like the rights of people who have been resident here for many years to access Irish citizenship just as they would if they were elsewhere on the island. That is something that I know we have raised directly with the Taoiseach in the past and will pick up again. Because that is something that wouldn't affect the negotiation and isn't pre-empting.

Scotland are making the best of a bad situation and it's tragic also that we don't have any government here to do that. I suppose what people in this room and in this body of academia are doing is to try as far as possible to lead on information. There is going to be exploitation of this chaos and of the justifiable anger. Some people are going to say Brexit is too hard or it's too soft. There will be exploitation as we already know with people seeking payment for advice and exploiting the confusion that's out there. A big part of the [Brexit process] will be trying to play with a straight bat over the next months and years.



## MIKE NESBITT

MLA for Strangford, Ulster Unionist Party (UUP)



### SPEAKER BIO:

Mike is a former broadcast journalist and CEO who has represented Strangford as an MLA since 2011.

For a five-year period (2012 to 2017), he was leader of the UUP. He currently chairs the All Party Group on Sport and Physical Recreation.

### **SYNOPSIS: Mike argues for a more principled approach to Brexit.**

I'm not going to pretend I'm an expert, but I've seen the graphs that show the issues, and I think as with anything regarding Brexit, there's just too much uncertainty. If we're going to fix the uncertainty, we've got to do so by applying some sort of principle to what we're trying to achieve. I think of course for the 17+ million who voted Brexit a couple of years ago, the main principle is "take back control". For me that's kind of shorthand for take back ownership, ownership of the land and of the laws. And I just think that that goes in entirely the opposite direction to the one we've been travelling on in both jurisdictions over the last number of years and decades.

If we think back to Partition, the famous boast by De Valera that Éire was a Catholic state, provoking of course James Craig, Northern Ireland's first prime minister, to respond by saying Stormont was a Protestant parliament for a Protestant state. All well and good, but not very inclusive, which is where we are, or are trying to be today. Think back to last year, the Pope arrives in Dublin, the Taoiseach stands up in Dublin Castle and to my mind says, "Your holiness I'm glad you're here, you're very welcome, but don't be touching anything, it's not yours anymore". And of course the direction of travel since 1998 here in Northern Ireland has been for a sense of inclusion. I think we have a lot to fix.

I met Emma [DeSouza] last year and I undertook to ask my colleague Lord Empey to contact the Home Office on her behalf. The Minister for Immigration, Caroline Nokes, came back in December and basically said that the 1981 British Nationality Act, trumped the Belfast / Good Friday Agreement. In fact, she said that in her view, an international agreement like the Belfast Agreement, could not supersede domestic law. Well how do you like those apples for taking back control and ownership?

It leaves us in, what I consider as a Unionist, the entirely perverse situation where when someone like Emma goes to the Home Office, and tries to assert her rights - they suggest a workaround. And the workaround is that they say, "Why don't you renounce your British citizenship?". Her majesty's Home Office, suggesting to somebody they consider to be a citizen of the UK should renounce their British citizenship. Perverse or what? So it needs fixed.

## STEPHEN FARRY

MLA for North Down, Alliance Party



### SPEAKER BIO:

Stephen has represented North Down as an MLA since 2007.

From 2011 onwards, he was Minister for Employment and Learning in the NI Executive until the post was abolished during 2016.

### **SYNOPSIS: Stephen discusses the potential consequences of Brexit for those who identify as British and those who identify as Irish in Northern Ireland.**

Apologies for missing the start. In my defence, I was out with Border Communities Against Brexit who were launching their new billboard and campaign in the final few weeks leading up to Brexit day. One of [their campaign issues] was the protection of rights for people in both parts of the island.

In Alliance, we talk a lot about Northern Ireland only working based upon sharing an interdependence. There's a whole host of complexities, ambiguities, beneath the surface. We are a very diverse, complex society. But we've been held together in a large part through things like the Common Travel Area (CTA), and much more recently through the UK and Ireland both being members of the EU. This has, in a sense, avoided and overcome a lot of those difficulties.

Now the problem that arises with Brexit is that it creates new divisions, new barriers, new friction. When it comes to rights, we don't entirely know how all of that is going to work out. Whenever we peel away the layer of the European Union, there are questions around how robust the CTA is going to be to facilitate a lot of what went before. That's before we even get to the issue of what others have alluded to around the European Economic Area (EEA). [European] nationals who live here in NI and have made such a contribution to our society and our economy over what are now several decades. All of that is potentially at risk in terms of where we go from here.

In essence, there are probably two main dilemmas, which throw up massive questions and implications. The starting point has to be the Good Friday Agreement, which, as you all well know, gives people the right to be British or Irish or indeed both. That should be a free choice, and there should be no adverse consequences [whatever your decision].

Obviously, those people who assert an Irish identity are EU citizens, but to what extent does that EU citizenship only really become operational if you are living inside the EU? To what extent do rights come from the sheer nationality that a person chooses to have? And, again, that is a mixed bag, and the balance of what we're being told so far is that it is largely residency driven.

The second dilemma comes for those people who choose to be British and only British, which is very much their entitlement and their right. We have then the potential difficulties that two neighbours in the same street, or even people in the same household, may take different decisions. One person living here, born in this part of the world, having a different set of rights than their neighbour or the person that they live in the house with. That equally seems to be very unjust.

The British government has the opportunity to ensure that there is full equivalency. That's the line from the European Commission – it's up to the UK government to sort out this dilemma. So if they go, well, okay, we will grant any British citizens living in NI de facto the same rights as their Irish colleague that then begs the question: how do you justify British citizens living in NI having a different set of rights from people living in GB? Therefore, maybe you should extend these rights to the entire UK, [which in turn] raises issues about those rights being reciprocal with the rest of the EU27. [So why] should we leave in leave in the first place? Indeed! So hence we're back to that point that we left.

I want to stress as well that there are two particular challenges that face those people who choose, again which is their free choice, to only be Irish or to be only British. Those who choose to be only British run the risk of having a lower set of rights than their colleagues, as already outlined. [What about] those who choose to be Irish? I'm talking here about people who are born in NI in one of the six counties, whatever way you want to frame it. You can read the current situation based around the British Nationality Act and the failure to bring the basic law in line with the Good Friday Agreement. In effect, people who are solely of Irish identity are essentially here today exercising their rights based on the Common Travel Area and EU [law].

If the EU level is stripped away, how robust is the CTA in that regard? The CTA still treats people essentially as guests in the UK as opposed to people who are naturally born here. The Home Office is saying people should rely on the CTA, that they have nothing to worry about whatsoever and don't need to apply for the EU Settlement Scheme. But based on Windrush and different changes in policy, solely relying on the CTA does give people a little bit of concern because it isn't institutionalised. It isn't a treaty – it's a mish-mash of different instruments, which could be changed by the UK parliament at any time. So where is the long-term guarantee in that regard?

Equally, the notion of applying to the EU Settlement Scheme to absolutely make sure that your rights are protected would, I think, to many people be offensive, especially if you've been born here and your family has [lived] here for many, many generations. So this has thrown up a whole raft of difficulties. Now a number of us, as pro-remain parties, certainly have raised this individually with the Irish government and also with the European Commission. It's still a work in progress.

One thing to report, which may be a small chink of light: we had the Taoiseach at our conference at the weekend and in his remarks on Friday evening, he [commented] that he wants to see a situation emerging where all citizens in NI, whether Irish or British, will have those rights. He referenced in particular the European Health Insurance Cards and Erasmus. They haven't fully explained how they are going to achieve this, but it does give an indication that there's a conversation still to be had, which is worth pursuing.

(A question and answer session followed on from the presentations)



## AFTERNOON OVERVIEW

### BRIAN GORMALLY

CAJ Director



### **SYNOPSIS: To protect rights and equality in Northern Ireland during these changing times, Brian calls for a renaissance of the peace process.**

I am pleased to see that everybody is looking alert for the afternoon session. Let's take that as a tribute to the stimulation you got from this morning's session. I want to just say a few words to contextualise this afternoon's discussion and I want to start from the perspective of the peace process because that's fundamental, I think, to everything we're talking about today and fundamental to the nature of the society that we're trying to create in Northern Ireland.

If you look forensically at the peace process and what it was trying to do, it obviously had a number of purposes. Certainly, one of those was to create a situation in which people who were deeply divided – with different and conflicting national allegiances and identities – could actually share the same geographical and political space. Now that was a very complicated project and it's therefore of no doubt that the peace agreement itself and the peace process has been complex, difficult and not always properly implemented. The peace settlement itself had a political dimension – the creation of political institutions designed to ensure that no one community could oppress the other. It was also really important that the Good Friday Agreement (GFA) was shot through with guarantees on human rights and equality. Because if you're trying to create a polity, a society to which people can give allegiance, even if it's conditional allegiance awaiting a different constitutional arrangement, then it's got to be seen as fair. That means it's got to be a rights based society. It is in those areas, of course, that, in our view, the major shortcomings of the implementation of the peace process lie.

### SPEAKER BIO:

Brian has been Director of CAJ from 2011 onwards. For over a decade before that, he was an independent consultant working mainly in the voluntary and community sector and specialising in justice, human rights and equality issues.

He was Deputy Director of NIACRO for 25 years until 2000 working with communities, alienated young people, ex-offenders and prisoners' families. He has published and presented extensively on justice, community policing and conflict resolution issues, particularly on politically motivated prisoner release, victims of terrorism, dealing with the past and restorative justice.

He has been involved in international peace-related work in South Africa, Israel/Palestine, the Basque Country, Italy and, more recently, Colombia.

He has also worked on a number of projects on equality and human rights with the trade union movement and on the bill of rights with the NI Human Rights Commission.

There is also the question of equality of identity – equality between the distinguishing features of the two main communities here. That's why the GFA declared it the birthright of everybody born in Northern Ireland to have Irish or British citizenship (or both). Now it's in that area that we do have problems. Within a week after the referendum, CAJ had recognised the possibility of citizenship becoming a major issue. At that stage, we argued for a reciprocal agreement between the UK and the EU that would give existing rights of freedom of movement and so on to EU citizens in Northern Ireland. The reciprocal part of that would be to give EU citizenship rights to those who were EU citizens by virtue of claiming an Irish identity or who were entitled to be such by being born in Northern Ireland. That's still an idea that should perhaps be on the table.

In this morning's discussion, we've been looking at the dimensions of citizenship largely as it applies both to EU26 citizens and also to so called 'third country' citizens. We've also looked at the question of 'one big border', of immigration enforcement, and the problems with EU citizens being made to feel unwelcome in a place they have made their home. But what we've also been seeing, as we look in more detail at what Brexit is doing, is that some of the layers that were previously hiding problems with the peace agreement are being peeled away. One of these emerging problems relates to the relationship between Irish and British identity and citizenship.

In the first place, as we know, Brexit will create a division between the rights accruing to British citizenship and to Irish citizenship in the sense that British citizens will be disadvantaged by no longer being EU citizens. But what we've also come to realise, or come to understand better, from Emma DeSouza's case and other indications from the Home Office, is that they actually regard everybody born in Northern Ireland as British. We've come to realise that there is no actual legal link between Irish citizenship and the ability to live, work and participate fully in the society in which you were born. That is a fundamental undermining of the equality of identity. It should not be for Irish citizens to have to claim their so-called British identity in order to access rights; Irish citizenship in itself should be a sufficient basis for full participation in society.

Well, we're going to discuss that particular point in more detail, but where are we now in a more general sense? It seems to me that the peace process is under threat. First of all from the unfulfilled pledges that have been referenced today – no bill of rights, no single equality act, no Irish language act, no proper use of the petition of concern at Stormont. We've seen the breakdown of the institutions and so we do not have a devolved government at the present time in Stormont – which is very largely because we don't have that detailed guiding framework of rights and equality. We have the certainty that Brexit will reduce rights and we need to go no further than the discussion we had this morning on immigration enforcement to demonstrate that.

We also are in a situation where there will be another referendum within the next two, five or ten years, and that will be on the constitutional status of Northern Ireland. There's no question that that is going to happen at some point. So one way or another, with the outworkings of Brexit – whether or not it finally occurs, whatever happens in the next three weeks – we are definitely moving forward into a period of political turmoil, of political debate and discussion if we're lucky, or a violent political conflict if we're not. But actually, in our view, it's not a question of luck, it's a question of fulfilling the rights and equality pledges made in the course of the peace process.

In fact, what we really need is a renaissance of the peace process – a going back to basics if you like. I use that term renaissance advisedly. It's not a question of a new dispensation, it's a question of going back to the classic peace settlement that the Good Friday Agreement was and re-establishing it and renewing it for the new conditions that we're moving into. We do need a bill of rights. We need a charter of rights to be signed by political parties across the whole island. A guarantee of good behaviour, if you like. We need other unfulfilled aspects, like an Irish language act, like a single equality act. Prior perhaps to all that we also need a rights and equality-based return to devolution.

I know the Equality Coalition is working on a manifesto to set out the various detailed aspects that should go into a rights-based return to devolution. But, certainly, if we're going to move forward and avoid the prospect of violent political conflict, we do need a renaissance of the peace process and we need it on the basis of a renewed commitment to the most fundamental guarantees of human rights and equality, enshrined in binding law and in binding treaty where necessary.

## PANEL 3:

### Implications of Brexit for British and Irish citizens in Northern Ireland



**Chair:** John Patrick Clayton, UNISON  
(not pictured)

**Panel (from left to right):**

Niall Murphy, KRW Law  
Emma DeSouza, Immigration and Citizen Rights Campaigner  
Jane Morrice, European Economic and Social Committee  
Terence Wright, Community Unionist

**JOHN PATRICK CLAYTON**  
Policy Officer, UNISON



#### SPEAKER BIO:

In his role as Policy Officer with UNISON, John Patrick leads on policy development for the trade union across a range of areas.

He graduated in LLB Law from Queen's University Belfast in 2007, before qualifying as a Barrister in 2008. In addition to holding previous policy roles with CAJ and the Children's Law Centre, John Patrick has practised law on both sides of the Irish border.

Currently, he sits on the Public Health Agency Board of Directors as their Trade Union Representative Member.

#### SYNOPSIS: John Patrick introduces the final panel discussion.

I'm the Policy Officer with UNISON and, for my sins, I've been working with CAJ and others through the Equality Coalition on Brexit for the last several years. Obviously, we've had great discussions this morning and we're going to carry on in that vein this afternoon. I think we were all struck by Brian Gormally's earlier presentation and the comments he made about us needing to return to basics. Certainly, for UNISON the last couple of years have highlighted to us how much need there is, especially in Britain, to go back to basics in terms of how the peace process and the Good Friday Agreement are understood.

An awful lot of the discussion around Brexit has been centred on the Irish border and, in particular, on the border as a physical barrier to trade, rather than recognising that this place has always been distinctive in terms of identity and has gone through quite significant change over the years. I think that's what this third panel is now going to reflect upon in some detail.

I also think we should praise the work that's been done by the likes of CAJ, by Brian and Daniel [Holder], and by others on this issue. As mentioned earlier, Patricia McKeown, UNISON's Regional Secretary, is travelling to Brussels shortly to meet with the European Commission. She told me before departing from this conference that one of the key messages she is going to bring to them is that we are not going quietly.

I think Patricia means that very much in the sense that these issues are not going to go away. They're going to be here after 29 March 2019, regardless of whether the UK officially exits the EU on that day or not. They're going to be here for many, many years to come. That's why it's vital we have organisations like CAJ highlighting the problems associated with Brexit and also highlighting the solutions that are out there.



## JANE MORRICE

UK Member of the Brussels-based European Economic and Social Committee & Honorary President of European Movement NI



### **SYNOPSIS: Jane presents her ideas on how rights, equality and the peace process can be protected in Northern Ireland going forwards.**

I wonder if, like you, I've got the Brexit blues, but I have to say that Brexit has actually brought the fire back to my belly like the times I was in the Women's Coalition and fighting to get elected and get involved in the peace negotiations. I'm back to that position now - I'm still fighting Brexit and I'm not going to succumb to resignation by any stretch of the imagination. I get angrier by the day so I'm grateful to have this platform.

In advance of the EU referendum, I was on the streets campaigning in Bangor - you can imagine the sort of reception I got. When Brexit happened, I wrote a two-page document advocating for Northern Ireland to receive honorary membership of the EU as a place of global peacebuilding. This secured the interest of the SDLP, Sinn Fein and others, losing by just one vote when it went to the floor of the Assembly. Immediately afterwards, I put out a petition in support of the idea, which has received thousands of signatures.

I have given evidence to a Dáil Committee and a Westminster Committee. The questions I got were things like: "Well, where would you put the border?". My answer to that is very, very simple – anywhere but Ireland. It can be London, it can be Liverpool, it can be, you know, anywhere but Ireland. Another point put to me was how Scotland will demand the same if Northern Ireland gets special treatment. My answer to that always was and always is that this isn't actually about Brexit, it's about the peace process. An honorary association with the EU would protect our peace process, promote peacebuilding worldwide and recognise Northern Ireland as a leading light in peacebuilding. We are already commonly cited as a positive example of what can be achieved through peacebuilding - with Obama, Juncker, Barnier all quoting our peace process.

### **SPEAKER BIO:**

Born in Belfast, Jane spent an ERASMUS year in France and won a scholarship to intern at the European Commission (EC) in 1980.

In 1992, she was appointed Head of the EC Office in NI and was involved in setting up the first EU PEACE Programme. A founder member of the NI Women's Coalition, she was elected to the NI Assembly in 1998 and became Deputy Speaker in 2000.

Jane was appointed to the European Economic and Social Committee (EESC), representing NI, in 2006 and was elected EESC Vice President from 2013-2015. Specialising in peacebuilding, she has authored EESC 'opinions' on the role of the EU in the NI Peace process.

Since the UK EU referendum, she has been dedicated to reducing the negative impact of Brexit on NI. She launched a petition to keep NI in the EU as part of the UK and is 'rapporteur' on a proposal for a path of peace from Northern Ireland to Nicosia (the White Dove Way), following in the initial footsteps of the Irish pilgrim Columbanus, said to be the patron saint of European unity.

In 2018, Jane became Honorary President of the European Movement Northern Ireland.

What I've done now is proposed an EU led global peacebuilding initiative modelled on the peace programme in Northern Ireland. One interesting part of this is the White Dove Way - a path of peace from Northern Ireland to Nicosia, linking the two divided islands on either side of the European Union. I envision this as a sort of pilgrimage, but not in the Christian sense, which would follow in the footsteps of Saint Columbanus. Columbanus left from Bangor, my hometown, and travelled to Saint-Malo, to Austria, to Italy, where he died. He is known as the patron saint of the European Union and he's from Ireland. Why not have something like that? A way of promoting peace. Another key part of the proposed peacebuilding initiative are plans for a European peace and reconciliation centre in Northern Ireland. There was money available for this in the peace programme - it could be still be made available and it is definitely something we should consider again.

To return to the rights issues we are discussing today, I would like to ask you all: Do you have to be an Irish citizen to be a European in Northern Ireland? Do you have to get an Irish passport? What about people who don't want an Irish passport? I have posed these questions to you all because I don't myself have any easy answers to them.

Indeed, the situation we are facing now is not just about these rights. It is also about the right of citizens to access information. I don't feel this right is being granted in relation to the Brexit process and that disturbs me greatly. People don't know enough about what is happening and aren't shouting loud enough about Brexit. Perhaps if we had known more we wouldn't be in the state we are in now. Now, I can't say I personally know exactly how to start fixing this. I was telling someone recently that I sit in the kitchen on the phone every time William Crawley or Stephen Nolan comes on and try to get on air. About every one in 10 phone calls, they let me on and I have a battle with Jim Allister or David McNarry or somebody, but this remains a big, big problem.

We are not shouting loud enough. We are not making our anger well enough known. How many in this room are angry about what is about to happen to us? [Several people raise their hands]. Are we scared to admit we're angry or are we not angry? I can't believe people are not angry about what's happening. Maybe I am in a mixed room and people are backing Brexit, but, as you can see, I don't. The peace process is under threat. Think about that. Other people are talking of Brexit as if it is this phenomenal thing and we're just sitting there on our hands allowing it to happen.

I blame three things on the lack of information here. One is successive UK governments that always said they were responsible for the good things that came out of the EU, while blaming the bad stuff on Brussels. That is what we've had all along from British governments. I'm seeing people nodding in agreement with me on this. That's one huge thing. The government never took responsibility and said, actually, the EU is quite good. The UK has always been sitting at the back of the bus, kicking its heels in the European Union. It should have been moving into the driving seat, it hasn't.

The second factor is the European institutions themselves because they don't blow their trumpet loud enough. Where was the European Parliament, the European Commission and the Council of Ministers during all of this? The mechanisms of the EU should be much more transparent. We should have cameras in those ministerial sessions. When people say the EU is not democratic or complain about paying MEPs because they don't understand the work that is being done, they should be challenged more. European institutions are sitting on their hands and not doing enough to shout about the good things Europe does, especially in Northern Ireland.

Finally, the press is also not doing enough to counter anti-EU narratives. I was a journalist myself and worked for the BBC so I've got some experience. I even suggested a European programme back in the 1980s for BBC Radio Ulster. I think that our public service broadcasters have had 40 years of failing to inform us about what the European Union is and what it does. The tabloids have their usual sensationalist headlines, but even the 'serious' papers have not been defending the EU or promoting it. I don't want press coverage of the EU to be propaganda, but I want to it to be honest, challenging, and tell the truth.

## EMMA DESOUZA

Immigration and Citizens' Rights Campaigner



### SPEAKER BIO:

Emma is an activist and advocate for citizens affected by immigration and rights based issues, especially in the field of family reunification.

She recently founded the Rights and Justice Collective Northern Ireland.

Her campaign work revolves around the identity and citizenship provisions of the Good Friday Agreement after herself being subject to a lengthy legal battle with the UK Home Office on the right to be accepted as Irish - a case which is still before the courts.

**SYNOPSIS: Emma has been embroiled in a lengthy legal battle since applying for a residency document to allow her American husband to live permanently in Northern Ireland. Here, she draws on these experiences to illustrate how Irish citizens in NI are routinely being denied their rights and their choice of national identity, even in these pre-Brexit times.**

I'm going to speak a little about my own experience and what I and my husband, Jake, have gone through in trying to actually access my EU rights here in Northern Ireland, which has been quite difficult. I'm going to cram four years into 10 minutes so bear with me. I feel that there is a price on Irish identity in Northern Ireland. I'm not just talking about the fee to renounce British citizenship, which is helpfully put forward to anyone who wants to be Irish. I'm talking about a personal price that is being felt across our community. I know it's being felt because I hear about it every day. For me and my husband, it has cost us four years - the first four years of our marriage. I mean, what would we even be doing right now if this had been as easy as we originally anticipated? In 2015, we applied for an EEA residence card to stabilise Jake's status here in Northern Ireland and we expected the process to be relatively simple.

His application was refused, as some may know, and his residency refused with it on the grounds that I am automatically a British citizen by birth in Northern Ireland. That was quite a shocking letter to get because in 2015 my understanding of the Good Friday Agreement (GFA) was very basic. All I really knew was that I was an Irish citizen. I held an Irish passport and it was my understanding that because of the GFA everyone born in Northern Ireland had the right to be Irish or British or both, as we so choose. Therefore, it was quite surreal to have this statement from a government department saying that I was actually British. Now, the department did also state that I was welcome to renounce British citizenship in order to rely on my Irish citizenship, but until I did that it was a matter of law that I am British.

We decided to go ahead and appeal this thinking maybe it was a clerical error or some kind of mistake by the department. We all know Northern Ireland is quite unique so maybe someone at the UK Home Office just didn't quite understand what the Good Friday Agreement entailed. A year in, we made our story public out of frustration. At this point Jake had no freedom of movement, they held his passport for that entire time. His great uncle passed away and we couldn't go to the funeral. It was beginning to feel a lot like our basic human rights were being infringed upon because we could not even go and be with our family.

Now, in coming out to the press we did not get to that funeral and we missed so many more funerals before we finally got his passport back a year after that. However, we did discover that a mistake had not been made because many more people came forward and shared their experiences and their stories. Instead, it emerged that there was a systemic disregard for the Good Friday Agreement from within the Home Office. I discovered that my story is not unique, but one of many that is happening in Northern Ireland.

Jake and I had our first court hearing in 2016. In preparing for it, I had to go through the process of combing through my entire life and figuring out if I had enough evidence to prove that I really am Irish. Do I really have an Irish identity? I had to take into account things like having GCSE Irish (thank God I did that and not French!) and doing Irish dancing when I was in school. I know those Irish fairy tales from my Grandmother - is that going to prove that I really identify as Irish? I never thought that I would have to go through a process like this in my lifetime. It was very difficult for me to go to that hearing and to build up all this evidence. It felt like, although we're talking about citizenship and nationality laws here, it really is about identity.

Identity is personal and identity is complex, in Northern Ireland even more so than in other places. This entire case and that hearing has felt like a questioning of my identity. Like somehow it is lesser or in some way wrong that I am Irish instead of British in Northern Ireland. I didn't choose to be Irish. I can't say there was any point where I said to myself, "You know what, I'm going to be Irish". I grew up Irish. It is not a choice. It is who I am and being told otherwise has been very difficult.

Jake and I were successful at that first hearing. It was a great moment for us. The Judge ruled that I'm an Irish national under the Good Friday Agreement and delivered one of my favourite statements: "Choosing their nationality is the birth right of the people of Northern Ireland therefore nationality cannot be imposed upon them at birth". I don't know about anyone else here, but that makes a lot of sense to me.

That moment of pure joy and relief did not last long, however, because the Home Office have been relentless in their appeals against us. It has been four long years and the department is completely unwavering in their position that the people of Northern Ireland are all automatically British irrespective of their choices under the GFA. Because of that we cannot access our EU right to family life.

So it seems the process now is that Irish citizens who are born in Northern Ireland and who want to fully access their EU rights, or even apply to the EU Settlement Scheme, must first declare that they're British, accept they're British, and then formally renounce being British. Only then will you be accepted as Irish.

This has led me to start campaigning for the full realisation of our rights under the Good Friday Agreement. In doing so, I've uncovered some really interesting things, particularly as someone who didn't know much about this area before. I've discovered that the position of the Home Secretary is that the GFA, the treaty her Majesty's government is a part of, has no bearing on UK law. Does that mean they just don't have to adhere to the Good Friday Agreement? I've discovered that they do not believe the courts have the power to force them to uphold their commitments under the agreement. There's definitely no political will there and no attempt from the department to try and take the GFA into account.

That personal cost I've been talking about is very high. It's been very high for me and for Jake, and has also been very high for the families I speak with, who are going through serious hardship in trying to realise their rights under the Good Friday Agreement. My own story is still ongoing. We have a court date that will just appear through the post at any point, who knows when? So four years have gone by already with no resolution and god knows how many more will follow after that.

In closing, I want to make one final point: We hear people talking about people becoming second class citizens in Northern Ireland after Brexit. I would argue we already are second class citizens. The reason that I am in this position, along with others in Northern Ireland, is because of a lack of legislation. It is because the Good Friday Agreement has not been fully implemented. I didn't know that before all of this happened. Now that I do, I don't understand why this hasn't been remedied. Why do we not have a bill of rights? As a citizen, I'm dumbfounded by the current situation. With Brexit looming, it is more important than ever that these legislative gaps are filled.

## NIALL MURPHY

Solicitor, KRW Law



### SPEAKER BIO:

Niall is a solicitor who works on human rights issues. Niall was educated at St Mary's CBGS in West Belfast, later graduating from Queen's University Belfast with a law degree in 1998. From there Niall commenced an apprenticeship at Madden and Finucane Solicitors.

He was the first solicitor to be employed by Kevin Winters and Co (in 2001), becoming a partner in 2003 at the age of 26. Niall was an organiser and keynote speaker at the major conference 'Beyond Brexit: The Future of Ireland' held in the Belfast Waterfront hall on the 26 January 2019, attended by around 1,500 persons.

He had previously been involved in open letters from Civic Nationalism to the Taoiseach on Brexit impacts, the most recent of which was signed by over 1,000 prominent Irish citizens from academia, law, the arts, sport and other fields.

**SYNOPSIS:** Harnessing his expert legal knowledge, Niall examines the threat posed by Brexit to the rights of Irish citizens in this jurisdiction. He also looks at how this fresh attack on rights has motivated members of the Nationalist community to come together in defence of human rights and equality.

On 23 June 2016, the people of this jurisdiction voted to remain in the EU. They did so because it is in our best interests politically and economically. The reckless and irresponsible rhetoric that has conditioned the British government's approach to effecting the party political intention of the British Conservative Party has thrust the entire viability of the United Kingdom into terminal constitutional decline, heralding the inevitability of a second Independence referendum in Scotland and also paralysing our own society with a constitutional convulsion, which in the early part of 2016 was not on the immediate envision of anyone, Protestant, Catholic or dissenter.

- The vast majority of people in Ireland, do not want Brexit.
- No one in Ireland sought a Brexit referendum.
- The overwhelming decision of the referendum was that we want to remain in the European Union.
- Brexit is being forced upon us against our will.

Notwithstanding this clear democratic mandate, we as a society and a people are being dragged out of the European Union, against our will. We are expected to silently comply as the British government plays Russian roulette with our economic and constitutional futures and our rights as citizens. Our EU rights are being ripped from us.

Brexit is one part of a sustained attack on the concept and the practice of human rights, and one further contribution to the attempted erosion of the core constitutional values of our peace/political process. It was therefore in the spirit of a legal, policy and political challenge and constitutional confrontation that a group of pro-EU Nationalist people from disparate sectors of society - including education, health, business, law, the arts, academia, the community and voluntary sector and sports – came together in 2017 to articulate our serious concerns.

We collectively invested our future hopes and aspirations in the Good Friday Agreement and it being implemented, thereby opening up a new chapter in the history of Ireland. The conviction of wider Nationalist, democratic and progressive opinion in 1998 was that the GFA would ensure a break with the past and guarantee us and future generations peace, rights, equality and respect in an Ireland which continued to democratically transform itself.

Nearly 21 years on, the GFA has still not been fully implemented. Some sections of political Unionism still oppose its very existence. Many of the political fault lines within our politics and society remain unresolved. Our hard-won peace process and its political architecture have too often been taken for granted. We may have peace, but we have not seen enough progress, and Brexit does not occur in a vacuum.

When over 200 Irish citizens from the North signed an open letter to An Taoiseach Leo Varadkar in December 2017, it came at the end of a tumultuous and politically defining year. That January the GFA political institutions collapsed amidst the political and financial scandal of the Renewable Heat Incentive (RHI). This served to confirm the growing view of northern Nationalists that political Unionism was not committed to proper power sharing through the denial and refusal of equality, rights and respect towards the section of the community to which we belong. Rights such as:

### **1. Access to Justice:**

- All victims of the conflict have the right to avail of mechanisms in accordance with European defined laws, to have access to justice.
- Compliance with Article 2 of the ECHR is not an issue for Stormont, as Stormont is not a sovereign entity, Westminster is, and it is Westminster that signed the ECHR.
- That Westminster seek to then derogate from its ECHR duties, by somehow alleging that their compliance with the ECHR is a matter for political consensus at Stormont, is a deft sleight of hand of Machiavellian proportions

### **2. Marriage Equality:**

- Leo Varadkar and indeed the Irish government, rightly speak with pride in respect of the referendum vote in 2016 that brought Marriage Equality to the South.
- Marriage equality was promoted by the Irish government as a fundamental rights issue in the referendum yet it is relegated to a matter of political consensus here. Rights are not negotiable or a matter of consensus.
- Many Americans voted for slavery but, thankfully, it was considered to be an abomination and was ended.
- Why is it that citizens of England, Scotland, Wales and the South all benefit from marriage equality but it is a right denied to citizens of our micro jurisdiction?

### **3. Language rights:**

- A clear example of the DUP's sneering contempt for parity of esteem, is their sneering contempt for Acht na Gaeilge. Our language is an intrinsic part of all of our identity as citizens, yet we endure contemptuous taunts, such as "Curry My Yoghurt" and "Crocodiles", and the cancellation of microscopic bursaries for the Donegal Gaeltacht.
- The fact is that this jurisdiction is the only region in Britain or Ireland that makes no statutory provision for the protection of a minority language in accordance with the European Charter for Regional or Minority Languages.

- Irish is an official language in the Republic of Ireland, with Welsh given statutory protection under the Welsh Language Act 1993, with Scots Gaelic protected under the Achd na Gàidhlig (Alba) 2005.
- Why is it that citizens of Scotland, Wales and the South all benefit from statutory protection for an indigenous language but it is a right denied to citizens of our micro jurisdiction?

It would seem that there can be no regulatory alignment on this island, and Bangor must be as British as Finchley, unless you are gay and want to be married or seek to live a life through the medium of Irish with statutory protection. Rights aren't British or Irish. Rights are for everyone. Everyone benefits with a strong framework for protection and everyone loses when rights are deprived.

This contempt mobilised the Nationalist and Republican electorate: in turn the Unionist political majority in the Assembly was ended. Increased Unionist belligerence continued and then the Nationalist constituency sent a stark message during the subsequent Westminster election that it was turning its back on Westminster.

It has been confirmed in a parliamentary response by President Juncker to a question posed by Martina Anderson MEP that the North will no longer be in an EU member state after Brexit, and that whilst Irish citizens will remain EU citizens, benefits from UK participation in EU programmes would end with Brexit. This position would leave Irish citizens here with access to almost none of the following EU rights, rendering us, in effect, second class citizens, in our own country.

1. Political rights to stand as and vote for MEPs; the right to vote for an MEP is normally tied into the member state of residency.
2. Continued use of the European Health Insurance Card; access to EHIC normally involves billing the health authorities in the EU member state of residence – e.g. the NHS.
3. Studying elsewhere and being able to avail of EU student fee rates. Access to EU student fees rates normally requires residency in an EU member state for three of the previous five years.

So without special arrangements, access in practice to these EU rights would be lost to Irish citizens resident here - unless of course they left and went to live somewhere else in the EU.

## **Practical Scenarios**

In reality this means:

1. We will be disenfranchised. The democratic rights of us Irish and EU citizens in the North includes the right to direct representation in the European Parliament, which needs to be protected. We must continue to lobby the Irish government to ensure this right is protected by creating a mechanism for people in the North to continue to elect an MEP, i.e. by means of a single constituency
2. If you are on holiday in France and fall, you will not be able to access their health service without paying or having medical insurance. An elderly person requiring medical assistance, such as dialysis, will in effect be grounded, as they will not be able to obtain insurance.
3. If you have a child wanting to study in Trinity or UCD, you will have to pay. For example QUB undergraduate annual tuition fees for NI domiciled students are £3,925; the same figure is applied for EU students – whereas the figure for international students is between £13k (classroom based courses) and up to £34k for clinical medical courses. If you have a child aged under 16 today, who has ideas of studying in the South, as things stand they will be treated as a non-EU national and will be charged accordingly as you must be resident in an EU state for three of the preceding five years. This means if Brexit happens in March 2019, a child now aged 16 won't have the requisite number of years to attend Trinity or UCD.

4. Other rights denied include the fact that the ability to take up work is dependent on mutual qualification recognition, which will leave with Brexit. The right to be joined by family members (who are not EU/EEA nationals) are an inherent part of EU treaty rights to work and study, which also leave with Brexit.

This is why, on Friday 2 November 2018, over 1000 citizens endorsed another direct appeal to An Taoiseach and his government to act in defence of the Good Friday Agreement and citizens' rights. Individuals with political affiliations and none made a direct public appeal to the Taoiseach to stand by his government's stated commitment that no Irish citizen living in the North would ever be left behind by an Irish government.

The letter was signed by 323 business people, the employers of tens of thousands of people; 115 senior educationalists, including over 30 school principals, along with prominent figures from third-level institutions and teachers from all parts of the North; 82 lawyers; 75 healthcare professionals, including over 20 doctors and consultants; holders of dozens of international caps, 30 senior All Ireland medallists and three Olympic medallists; doyens of our arts sector; the leaders of our communities; dozens of senior journalists and trade unionists; seven University Professors; three Oscar winners; two men who lifted Sam Maguire; and one man who climbed Everest.

In total, the letter was signed by over a thousand leaders from the Nationalist community. This bears testament to an evolving earthquake in terms of an awakening of Nationalist confidence. The 1012 names are symbolic – the letter was not a petition, but a representative sample of the views of hundreds of thousands of people across the North and indeed across the entire island.

That correspondence was then followed up with a truly unique conference on the last Saturday in January 2019, when over 1500 people filled the Waterfront Hall in Belfast to attend what the Irish News described as the most significant constitutional event in a century. The leaders of the SDLP and Sinn Féin and senior figures from the Irish government and Fianna Fáil attended to give their respective views on Brexit. Constitutional law experts, legacy and language activists, environmentalists, economic experts, and political commentators all spoke to the topic of the viability of a new constitutional arrangement.

Conversations about the future, and future constitutional change, are happening in unexpected places. In recent weeks the trade union movement and senior figures from the Gaeilic Athletic Association (GAA) have spoken publicly about new constitutional arrangements. Ireland has changed dramatically over the course of the past twenty years.

## Conclusion

The roadmap for the journey from Brexit Britain to Little England is being led by the blind, the ignorant and the reckless. Mark Twain once said that you should never argue with stupid people, as they would drag you down to their level and beat you with their experience. Michael Gove, Boris Johnson, Jacob Rees Mogg, and their ERG colleagues are indeed experienced. However, we cannot stand idly by. We must avoid a hard border at all costs and, as reported in the Irish Times last week, preparations are being made as we speak. Motorists from the South who plan to drive across the border from the end of next month will have to start applying for a so-called Green Card this week or risk penalties for driving without insurance. The Motor Insurers' Bureau of Ireland (MIBI) has issued about one million Green Card forms, as well as electronic application templates, to insurance companies and insurance brokers in case there is a no-deal Brexit. As the realities of Brexit press home in the coming weeks, the tolerance for it will radically diminish.

On a visit to Ireland the EU president Donald Tusk ruled out a hard border, saying: "Ní neart go cur le chéile" - there is no strength without unity. Our initiatives at the Waterfront, our correspondence to the Taoiseach, and our ongoing lobbying in Europe and America, has demonstrated a unity of confidence and purpose and may become a catalyst for a unity not envisaged by the proponents and architects of Brexit...

## TERENCE WRIGHT

Community Unionist



### SPEAKER BIO:

Terence, a former Vice-Principal, retired in 2011 after 36 years in education.

He was elected Chairperson of the Waterside Young Unionist Association in 1968. Following a number of years out of politics, he was elected Chairperson of the UUP's Foyle Constituency Association, a Party Officer and Deputy Chairman of the party.

He left the UUP in 2013. Since then, Terry has worked as an independent strategic and policy consultant with the Londonderry Bands Forum and other cross-community peacebuilding organisations. He is currently a participant in Civic Unionism and Civic Space.

### **SYNOPSIS: Terry looks at the future of Unionism in Northern Ireland and considers how it should respond to the challenges presented by Brexit.**

As someone who values the fluidity - practical and otherwise - of being British-Irish-European, who voted remain and is culturally hybrid, I am inclined to say to those of a less messy identity - and you think you have problems! My only comfort is that I am not alone.

In the 2015 publication 'The Contested Identities of Ulster Protestants', the various contributors evidence the diversity within Ulster Protestantism. I do not equate Britishness solely with Protestantism. To do so would be to deny the inclusivity and pluralism of British identity and is patently inaccurate. I make the point to contextualise the comments that I offer today. The implications of Brexit for British people in Northern Ireland will reflect the similarly diverse and ragged edges of the complexities within Protestantism itself (and indeed other religious affiliations) in terms of values, preferences and priorities; Unionist and other party allegiances, including Alliance; socio-economic background; education; political aspirations; and religious denomination (or none); to cite just a few.

These are what define Britishness and civic and community Unionism - voting and non-voting - to varying degrees. Not unlike the tangled speech we all use in this part of the world, Britishness is a dynamic social construct expressed as a cultural, political and identity choice. It is shaped by the elements referred to above and the self-segregating circumstances wherein we are born trapped and choose to nurture our children.

To attempt to identify a common denominator on the spectrum is to risk stereotyping. I contend the sash-wearing, bowler-hatted, Rangers supporting 'Our Wee Country' caricature that has survived from Jimmy Young to 'Give My Head Peace' is by now largely discredited and a bit tired. Enda Longley's view – and I paraphrase – that the pro-Union British are more often stereotyped than understood is entirely accurate.

The politically inclined British-pro-Union constituency in Northern Ireland may be described lazily as a broad church, but when in full voice, they tend to produce a sometimes-competing cacophony of sound rather than deep harmony. Such is evident over Brexit and so the the implications and effects of Brexit will be read differently, negatively or positively, soft or hard, with a shared measure of uncertainty, but not necessarily misgiving, in all cases.

The pro-Union groupings to which I have referred would all use the descriptors ‘British’, ‘Northern Irish’ and ‘Irish’ with varying emphasis. They have played a significant role, not least Loyalists, in building the peace process. It has not just been down to Nationalists and Republicans. Some of them are learning Gaelic and, in terms of heritage, come mainly from an Anglo-Ulster Anglican, Ulster-Scots Presbyterian or, in some instances, Scots-Anglican background, with a mixture of different influences, including Gaelic via Scotland, in their DNA. Passion is rarely cooled by borders, frictionless or otherwise. They reflect different indicators of socio-economic, rural-urban and cultural interest groups.

Regardless of their views on Brexit - or anything else - a significant proportion is committed to reconciliation and a shared future for NI. They do not wish to see NI and the Republic of Ireland united politically, but, even having taken different views of the Good Friday Agreement, there is an acknowledgement that all three strands of the GFA need to work to the benefit of all the signatories – economically, educationally and socially. Not least in terms of rights, including language and cultural rights, LGBT rights, disability rights (the sometimes poor relation in this debate), and women’s rights.

Reluctant to conform to labels of left or right or centrist, there is a growing desire to see principle-centred politicians address issues with a problem-solving and consensual mentality to produce value-for money outcomes and carry accountability for their delivery in terms of fairness, integrity and equality. It is not an unreasonable expectation and should be frustrated no longer. There is a view worth exploring that if the devolved institutions at Stormont had been operating in the spirit of the GFA, with a positive pragmatism and constructive will, the different strands of the GFA could have been used to deliver trade agreements to protect the economic interests of all the parties on the islands, which are now under considerable strain, whilst avoiding the constitutionally-rutted ‘blood-red’ positions that have contributed to the current impasse.

Other choices were taken. But what of the implications? If we measure Britishness in terms of predominantly pro-Union constituencies - there may be a few Ulster Home Rulers in there - the majority voted for Brexit. In speaking to some, they look forward to getting it ‘over the line’. They view the country as breaking free from the regulatory control of Brussels and the European Court of Justice (ECJ) to aid fisheries and other sectors. They also see Brexit as a way of taking back money, restoring British sovereignty and trading under WTO rules. They would accept no deal and see only bright days ahead for the UK, the British economy and immigration controls. The border is seen as a non-issue, used by Brussels and Dublin as a tactical bargaining chip to make the negotiations difficult for Westminster and protect the European project. They hear the economic warnings as scaremongering doom and gloom. Better a poorer Union than no Union.

Some business people see the issue of border checks as exaggerated. If they could have their way, they would like to see the UK and NI operate like Hong Kong or Singapore, with as little regulation as possible placed on markets and working conditions, low taxation, reduced corporation tax, and reduced public spending on state-funded welfare. For them, Brexit is an opportunity to be grasped.

There are other views, albeit a minority within Britishness and Unionism in NI, at variance with this more predominant viewpoint. The EU is seen as imperfect, but the preference is to advocate reform rather than depart. Political shifts occurring in Austria, Poland, Italy and Hungary are noted and viewed as a wake-up call for the EU. British individuals who voted to remain view Brexit as diminishing a way of life they have come to value and enjoy. This might be because they have family members living and working in Europe or benefitting from Erasmus schemes; are married or in civil partnerships with partners from continental Europe; enjoy the easy travel to Europe; have ex-pat relatives living in Spain, France and elsewhere; or simply appreciate the benefits of the European Health card, the protection of rights under the ECJ and the many benefits which accrue in terms of skilled workers who make their home here and contribute to the cultural mosaic of NI. The case against Brexit is compelling.

The anticipated demands of disentangling 40 years of joint decision-making and EU directives are judged unnecessary and unwelcome. Food standards and climate control measures are valued and are seen as less vulnerable within the EU to political and cynical horse-trading in Westminster. Economically, a future out of the EU presents as challenging and uncertain during what is projected to become a financially turbulent period for the EU and the UK, especially given the need for the retention of markets and an affordable way of life, favourable trading arrangements, employment, third-level educational linkage, vital supply chains, and tourism. There is concern pertaining to the current British economic model - with its heavy emphasis on financial services - around whether or not it remains fit for purpose in a climate where public debt is high and employment insecure. Interestingly within this 'preferring to remain' group there is a growing impatience with the EU in regard to its handling of negotiations and the heated words of Donald Tusk and Guy Verhofstadt, but this has not served to change minds.

Whilst some of the pro-Union British voted against Brexit, and there has been a move towards acquiring Irish passports in NI, they did not vote to end the Union. It is apparent that this could, however, be a potential result of Brexit so an understanding of the implications of possible fundamental constitutional change grows apace. Former DUP leader and First Minister Peter Robinson, as well as Sir Jeffrey Donaldson, the maybe soon to be DUP leader and First Minister, have alluded to this. It is stating the obvious to say Brexit has created an opportunity for those who wish to unite NI and the ROI so key questions emerge. Is there now a situation developing where the constitutional status of NI will alter in the light of demographic change and political choices arising from Brexit? Could Brexit break the Union and how do the British in NI respond? How will Scottish issues or English regions impact on the future? If there is a rise in English Nationalism, how will this impact on the Union and the Barnett formula?

Just a few days ago Mary Lou MacDonald, Uachtarán Shinn Féin, emphasised to an audience of civic and mostly unaligned Unionists that they need to prepare for unity and start to negotiate the future of the island. Apart from the fact that Sinn Féin has no role in government in Dublin, many Unionist leaders have found that Unionism is easier to lead than command and should be allowed to shape its own solutions. It needs to do so on two levels.

Demographic shifts, as evidenced within voting patterns in recent elections allied to pro-Union non-voters of all ages, but especially the younger population, should serve to focus minds. It is an imperative for political Unionism to widen its appeal and lead its constituency to where it needs to be. The implication flowing from Brexit is that current policies and decision making are counter-productive. The skewed notion that any progress on social justice is a Trojan horse reveals a deficit in progressive and strategic thinking. If you do not build and live behind fortress walls, you do not have to worry about Trojan horses. Pro-Union politics should become less risk-averse.

The language and public utterances of some pro-Union representatives offends pro-Union voters so it is safe to assume it causes offence to political opponents. It serves only to demonstrate the paucity of rage and anxiety politics. It feeds the binary sectarianism and prejudices that this community must shed, and evidences the intellectual reductionism of lazy politics. It maroons pro-Union politics in a less than perfect past. Politicians have an obligation to weigh the impact of their rhetoric and pro-Union voters should settle for no less.

Many pro-Union voters are discontent with the effects of austerity, including Universal Credit, and with the enfeebling of Northern politics by corruption and scandal. There is something rotten in the state. If voters are to be persuaded to maintain the current status quo, it will be sustained through prosperity, respect, reliable public services, and - in the light of the RHI debacle - accountability, transparency and integrity, as we work towards reconciliation and transformation across and within the community. Fabric loyalism and negative voting may maintain the Union in the short term, but it cannot sustain it in the longer. Voting negatively reduces the accountability of those in power. It is a negative mandate, which facilitates the obstructionism that in turn produces the frozen stalemate that is Stormont.

We would perhaps be in a better place had political Unionism embraced with greater commitment the three strands of the GFA to build and shape the activities of the all-Ireland bodies for mutually beneficial economic, energy, health and educational purposes as intended. That a significant percentage within Unionism still do not support the GFA fully is a situation pro-Union leaders need to address.

In the deal which is eventually reached over Brexit, ensuring any trade agreement between the UK and the ROI sits in tandem with the CTA will be crucial, as will be finding solutions that address the rights of those in Northern Ireland who designate as Irish citizens, in addition to those who have come here from other European countries. Equally important will be how a Conservative government leads in the future. Will Brexit be an opportunity to deliver the promise that Theresa May made when becoming PM? Or will her words prove as empty as those of Margaret Thatcher's Prayer of St Francis? Decision makers and negotiators in the EU, if they remain steadfast to their stated positions on Ireland and the Border, should be able to assist in producing a solution to concerns around the rights of Irish citizens. If their stance on a backstop is valid, this is surely a priority.

In the midst of the uncertainty, other possible implications of Brexit, including a change in the constitutional status of NI, remain on the table. If this happens, it will be determined through democratic means and the pro-Union British in NI should accept the result. However, the unification of territory will not guarantee a contentious-free coming together of people. Indeed, there is no unanimity within Nationalism as to how the issue should be approached and one would assume, that apart from economic reasons, this is why most of the Nationalist parties do not favour a Border Poll at this time. Where does this place pro-Union British in Northern Ireland if Nationalism is divided over the next step? Of course, it must put contingency plans in place without necessarily engaging in any unity project. Insurance policies have their purpose, although you always hope not to use them.

Questions go far beyond a flag and a national anthem that wants to drive the Anglo-Saxon out of Ireland. The treatment of the pro-Union minority within the confessional state post-partition cannot be repeated. There can be no more instances similar to Fethard on Sea or a need for pro-Union individuals to keep their head down. Sectarian killings carried out in the name of Republicanism and the flight and de-population of sizeable proportions of city-side Unionists in Derry from the late 1960s cannot be masked. The heated cauldron of latent anti-English passion in sporting arenas or the more high-minded Perfidious Albion commentary of a Fintan O'Toole column should not be allowed to skew constructive discussions towards reconciliation. There will be rights to be protected and the respect, integrity, accountability and equality which I advocate for in NI will be paramount.

The economic repercussions of unity speak for themselves and here I stray into the possible implications of Brexit for the government in Dublin and perhaps the EU. The Republic of Ireland is not without its economic uncertainties in terms of high personal debt, delayed health reforms, housing shortages, and imbalanced regional investment. Corporation tax is reliant on foreign companies to a level that could prove problematic. Brexit may impose strains as anyone who has attended the All-Ireland Dialogues will have learned. A possible challenge from within the EU to corporation tax and VAT rates looms large. Inheriting the economic problems of the North must seem a less than inviting prospect at the present time.

Speculation mounts that pro-remain, pro-Union individuals are considering the possibility of a unified Ireland. Certainly, conversations are taking place, but these are speculative and economically driven. I detect no robust political conviction or rigorously researched strategic vision at this time. It may come as Brexit unfolds and unfavourable economic measures or the erosion of rights emerge from Westminster. What is more apparent is the firm conviction that a Union of imperfect compromise will be unsatisfactory and a harbinger of future contention wherein problems may exceed the capacity to deal with them.

The greater imperative now is for political leaders in NI to move beyond political squabble and redlines to comply with the mandate of 1998. The current arguments emerging over dealing with the legacy of the past, where it seems that there will be unequal treatment of legacy cases, presents new difficulties to resolve. At present, it seems likely to produce a chaos of rival interests as the unjustifiable actions of the state are to be investigated, whilst other actors in the war remain silent and omit distressing truths from their comments. Out of chaos can come opportunities, but this requires a willingness to build a better future. If these opportunities are not seized, meaningful unity based on pluralism, equality, justice and reconciliation is pushed back. Is it then possible to reimagine a unified Ireland without re-imagining NI first? It depends on priorities.

Economics, culture and identity issues, health and rights; all have their place, but they need to come together as part of a shared and reconciled future. When you visit a place after a tsunami or an earthquake, it is an error to believe that it was always like this. Unionism was not always wrong. Whilst Northern Ireland and the Republic of Ireland had their problems, people did get on, shared neighbourhoods and pastimes, and we are finding ways to do so again.

There is a way to go, but a good place to start is to ask of ourselves: what have we done to each other and how do we ensure there is no repetition? It is a challenge and there are major issues to resolve, but it is what the present and the future deserves. It will require sharing priorities, brokering between interest groups, and providing sufficient coherence to implement what comes out of the mix. We will need at every level of civic and community life to concentrate not just on what we are, but on what we could become. Not what we have destroyed, but what we can build with civility, reconciliation, a problem-solving mentality, and healing at the core. We do not have to remain rooted in the past, where the only politics are dominated by a constitutional tug of war. To settle for this is to set limits on what we can achieve.

Brexit, added to our own flawed history, and what may flow from it, compels us to look beyond such limits.

(A question and answer session followed on from the presentations)



## CLOSING PLENARY



**Chair:** Dr Anna Bryson, QUB (left)

**Panel:** Professor Rory O'Connell, Ulster University (centre left)  
Una Boyd, CAJ (centre right)  
Professor Colin Harvey, BrexitLawNI & QUB (right)  
Daniel Holder, CAJ (not pictured)

**SYNOPSIS:** Final thoughts from various members of the BrexitLawNI and Equality Coalition teams after a day of discussion and debate. The session was chaired by Dr Anna Bryson.

### RORY O'CONNELL

Research Director – Law, Ulster University



### SPEAKER BIO:

Rory joined the Transitional Justice Institute (TJI) and School of Law in 2013 as Professor of Human Rights and Constitutional Law.

He was appointed TJI Director in 2014. Rory's research and teaching interests are in the areas of Human Rights and Equality, Constitutional Law and Legal Theory.

After a long and detailed day, I'm sitting here and wondering what is left to say because we've heard from so many different perspectives, but just a few thoughts do occur to me in terms of, first of all, the human rights and equality agenda. I suppose we can imagine different scenarios. We can imagine a scenario where we wake up and discover it doesn't actually happen, a no Brexit scenario. We can imagine a Brexit scenario with the Withdrawal Agreement, more or less Theresa May's current version of the agreement. We can imagine a 'no deal' Brexit. However, it seems to me that even if we take the existing position, which is due to end on 29 March, that is still a rather daunting prospect for human rights and equality.

Even before the 23 June 2016 [the day of the EU Referendum], we were in a situation that many of the rights and equality guarantees in the Good Friday / Belfast Agreement were not being delivered. Even without Brexit, we would still likely not have a functioning Executive and that's quite a bad position to be in. But it gets worse, of course, if these other things transpire.

If we look at the Theresa May Withdrawal Agreement, even with the backstop, this is in some ways a bad deal. There are provisions on rights and equality throughout the Withdrawal Agreement, particularly on the Protocol on Northern Ireland, but I don't think any equality and human rights advocate would say they're the most robust guarantees of human rights and equality that we can imagine. We have a reference to the rights of individuals in Article 4 of the Northern Ireland Protocol for instance, but we don't have any published guidance on how that will be implemented and protected. We know that within government circles there are drafts being considered, but those haven't, as far as I'm aware, been opened up for public consultation. In earlier documents, there was a reference to ensuring those people of Northern Ireland who are Irish citizens continue to enjoy the rights and opportunities that go with EU citizenship, including where they reside in Northern Ireland, but this has quietly disappeared. What is left of it is a non-binding reference in a preamble to the protocol. There is a lot wrong from a human rights and equality perspective even with the draft Withdrawal Agreement. Of course, if we get to no deal Brexit even the minimal protections for rights that are found within it will disappear. That's my slightly pessimistic take.

My other big take away from all of this is that if you had asked me on the 22 June 2016 what work needed to be done for a border poll I would have said that it did not strike me as being the most urgent consideration in terms of a research agenda or practice agenda. However, it's very clear from what many speakers have said today that this has now become vitally important because the mistakes that happened with the EU referendum cannot be allowed to taint any possible border poll in Northern Ireland. If anything, that would require even more sensitivity than was required with the Brexit referendum.

I will end on an optimistic note. We did hear tales of resilience today, especially from Emma DeSouza, which filled me with some hope. We also heard about the High Court judgment last week that found part of the hostile environment policies breached the European Convention on Human Rights (ECHR). Brexit does not automatically mean we lose the ECHR and that is something we must continue to fight for, especially since it is part of the Belfast / Good Friday Agreement.



## UNA BOYD

Immigration Project Coordinator, CAJ

**Speaker bio previously given on page 18**



I'll keep it quite brief. I just want to take a positive view on this because what I've taken from today is that we have a room full of people who are talking about these issues, who are having these conversations that really need to happen. Personally, I take a lot of comfort from that because things like the hostile environment rely on complacency and silence to function. I've actually come away from today quite positive despite the fact that a lot of what we're talking about sounds very, very negative on the surface.

I do just want to take the opportunity to refer to the immigration project that CAJ are starting. We are going to be focusing on a lot of the issues that were discussed today, through research, through working with other groups, many of whom are in the room today. It's such a timely project and I'm really, really delighted to get to work on it.

## DANIEL HOLDER

CAJ Deputy Director & Equality Coalition Co-Convener

**Speaker bio previously given on page 7**



First of all, just to say to everyone here you are all very lucky because there were well over fifty people on a waiting list to get into this conference! I think we have touched upon a subject on which there needs to be a lot more discussion. It has taken a lot to put this event together and, in particular, in CAJ, we have had Robyn Scott, Liz McAleer and Lars Mensch who have done a lot of work that has made this event possible.

I do think it is routine to criticise politicians, but I actually think a lot of our elected representatives are very hard working and quite flat out on some of these issues. A lot of the detail has gone under the radar and I have just spoken to one person who said that, having heard more of what is actually happening, they are angrier now than they were this morning. I think when you do get into the detail of what is coming along the line this is how people react.

I just want to hit on a couple of things. I think it was said this morning (and you could not have a more politically sensitive issue here than voting) that EU26 nationals will keep their voting rights under the Withdrawal Agreement – my understanding is that that is not correct. It is an area that is not covered by Part II of the Withdrawal Agreement. EU26 nationals, no matter how long they have lived here, will be stripped of their voting rights and their civil rights in that sense, which I think is scandalous, except in so far as they may well be able to vote in EU elections back in their home countries. No accommodation has been made to allow Irish citizens in NI to vote in these EU elections once the UK leaves, despite them still being EU citizens. The suggestion that it would encroach on sovereignty to have an extraterritorial election in NI to the European Parliament is out of sync with EU practice where many countries allow extra territorial voting. For example, I have seen Portuguese Presidential elections run here in district councils so it is not uncommon and merits a broader conversation.

Final thing, we had a question on the right to information and the dearth of information on issues like citizens' rights. There are a lot of human rights around access to information. Additionally, when your rights are engaged, there are also rights to legal certainty i.e. being able to know what you are and are not entitled. We certainly do not have those rights at the moment in terms of things being very, very uncertain around Brexit.

CAJ has tried to drill down on what happened to that famous 'Paragraph 52' commitment on citizens in NI being able to exercise EU rights, benefits and opportunities. We used the right to information laws to do that. The department for exiting the European Union responded to our Freedom of Information request on this key issue by saying that they held no documents on the matter. Which gave the impression it had not been on their radar. The Northern Ireland Office responded by claiming it would take more than three and a half days to find all the documents on this issue and therefore the request exceeded the cost limits.

A lot of work is going on behind closed doors due to a lack of political direction and decision-making and there is a dearth of accurate information on all of these issues. We are all going to have to carry on drilling down on it.



## PROFESSOR COLIN HARVEY

BrexitLawNI Principal Investigator & Professor of Human Rights Law, Queen's University Belfast

**Speaker bio previously given on page 15**



Let us take a last look at the Withdrawal Agreement and the Backstop Protocol. We all know the portrayal of the backstop in mainstream British politics, the portrayal here has been radically different: The majority of people here do in fact want it.

But this is only the first step. This is just stage one, even if the agreement goes through with all the flaws we have mentioned. This is just the start of years and years of struggle over these issues.

At the moment, the one area that is up for discussion and amendment is the Political Declaration, which is a bridge into the future relationship between the UK and EU.

I think one of the things that we need to underline is that more could be said in the Declaration about the issues we are talking about today. We need to find language in it that goes beyond simply reaffirming the Good Friday Agreement in all its parts and perhaps fleshes out the themes covered today. Obviously, that is (literally) a conversation that is happening today, this week, and I know people are already going to Brussels and are going to get involved in those conversations.

Secondly, I want to make a point in a personal capacity. Look, I think another issue is that Brexit has broken something very fundamental about this region. I think many people have not got past the initial sense of being taken out of the European Union without consent. I know the legal technicalities are a lot narrower than the way consent is often deployed. However, the situation seems to me to be quite remarkable. Having drilled down a bit deeper on the technicalities of this, and considered future trading relationships and other things, unless the UK secures the softest of soft Brexit, or unless it changes its mind entirely, the process builds in permanent instability to the architecture of the GFA. Even if we get our Executive up and running, this has the capacity over the longer term to build permanent instability and contention into our institutions.

None of this is going away any time soon and so that is why I think people are quite rightly raising larger constitutional questions. We have a way back to the EU in this region. A region that voted to remain. We have a way back. And guess what? It is in that document that everybody loves. All around Europe, everybody loves the Good Friday Agreement.

So it seems to me, in the context that I am working, that it is reasonable to begin to think about these constitutional questions. There is a mechanism in the Good Friday Agreement for returning to the EU. A way back that does not eradicate all the problems of society, does not eradicate all the problems of these islands, but helps to address some of the permanent instability that I think is embedded in the Brexit process. We would be silly not to talk about that. It would be odd not to discuss it. There is something quite offensive about being told you cannot talk about it. I think we should have the conversation. People are talking about planning and preparing for it. But like everything else it often sounds like deferring your homework.

How many events have we all been to where people have said: "You know what? We need to plan and prepare for this". And everybody goes home and does nothing. So, I think an inclusive conversation needs to start and the planning needs to start, and it seems to me to be perfectly reasonable to say that.

Look, the problems do not go away in any context. The thing about believing in human rights and equality is that whatever the constitutional configuration of this island, of these islands, rights need to be at the heart of that constitutional configuration. If people are burning down hotels because they think asylum seekers are going to be living there, I have got a problem with that. If somebody is dying on the streets because they have not got a home or accommodation in Cork, Dublin or Belfast, wherever, I have got a problem with that. Human rights and equality will apply whatever constitutional configurations emerge. Nobody wants to live in a United Ireland that is going to be shameful in terms of its record in relation to human rights and equality. That has got to be part of the conversation. In many ways, I think that is where to begin to have a conversation with Unionism as well, by placing a focus on the rights and equality protections, and the identity protections, that need to be there to make everyone in this region feel comfortable in a reunified Ireland.

We get a hard time, we are often caricatured and mocked all over the world, but you know what is remarkable? When faced with this mess, people in this room and beyond have been consistently coming up with credible legal solutions to some of these problems, problems which have very often been created elsewhere. So I think it is about implementing some of those solutions.

Politicians are important for making change happen. Human rights lawyers are important. Law is important. Judges are important. Politics changes lives in the longer term and politicians change lives. Legal change can happen through political courage and the work of politicians. We desperately need effective politicians in this society who can sell the deals that they make. We also need people to participate fully in public life and, in this society.

Ultimately, it is participation in public life and it is politics that will create the dynamic for legal change and transform the future of this region forever, whatever constitutional configuration we end up in.

(A ten minute question and answer session followed on from these closing statements)





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