

Oireachtas Joint Committee on Justice and Equality on the recent Upper Tribunal ruling

I'd like to begin by thanking the joint committee on Justice and Equality for the opportunity to speak today. I am an Irish citizen; it's not a choice, it's not a decision – it is simply who I am. I haven't held a British passport or claimed British citizenship and yet I've found myself in an unprecedented situation. In 2015 when I married my American husband Jake, I discovered that through the UK Government's failure to give domestic legal effect to the birthright provisions of the Good Friday Agreement, my lifelong Irish identity is evidently considered secondary to an unclaimed British identity. This additional and entirely imposed citizenship deprives me of my rights as an Irish citizen and an EU citizen.

I'm here to discuss the October 14th ruling by the Upper Tribunal which overturned a previous ruling that I am an Irish citizen only who has only ever been such. I will be covering three themes; the implications of this ruling for citizenship rights in Northern Ireland, the incompatibility of this ruling with the Belfast Good Friday Agreement and lastly what actions the British and Irish Governments could be taking.

The implications of this ruling for citizenship rights in Northern Ireland

1. On October 14th the Upper Tribunal ruled that the people of Northern Ireland remain British citizens even if they identify as Irish.
2. The Home Office, after years of appeals, has now successfully argued that Northern Ireland citizens have no right to choose their nationality, regardless of the birthright provisions outlined in the Good Friday Agreement. Rather, they are permitted to identify on a personal level as Irish, yet are in fact British at birth.
3. This sets a dangerous precedent, reducing an integral right to choose one's own national identity – in this case, to identify as and be accepted as Irish – into a right to merely “feel” Irish.
4. The October 14th ruling was primarily based on three grounds. Firstly, that the birthright provisions of the Good Friday Agreement do not include the ability to choose one's citizenship. Secondly that the absence of Article 1 (vi) from the Northern Ireland Act 1998 was “entirely deliberate”, and thirdly that even if the provision was to amount to a right to choose one's own citizenship this right is not present in domestic UK law.
5. The Tribunal stated that under the UKs dualist system the Good Friday Agreement and annexed British-Irish Agreement are not binding in domestic law save insofar as its provisions have been incorporated into domestic law through the Northern Ireland Act 1998.
6. The Tribunal agreed with the Secretary of State for the Home Department that the British Nationality Act 1981 is compatible with the Good Friday Agreement. Both the Secretary of State and tribunal interpret the agreement as a right to identify as Irish or British or both, not a right to choose citizenship.
7. Further the tribunal took no issue with the process of renunciation of British citizenship. Which requires a declaration that an individual is in fact a British citizen. It also requires

an individual to prove that they are British, pay £372 to do so, give up their freedom of movement for 6 months and afterwards they may be exposed to further immigration controls.

8. As a result of this ruling only one of the three categories of citizenship that are provided for under the Good Friday Agreement is respected. Ireland amended its nationality laws after the 1998 referendum, moving Irish citizenship away from an automatic conferral to that of an entitlement. As a result of Ireland taking the appropriate legislative steps, whilst the UK has resisted legislation in this area only; those who identify solely as British have their birthright under the Good Friday Agreement upheld. There is no conferral of Irish citizenship on those who do not want it. However, those who identify solely as Irish must first accept that they are British and go through a lengthy, costly and often traumatic process in order to be accepted as solely British. Dual nationals who opt to hold both British and Irish citizenship also face rights restrictions.
9. This undoubtedly breaches the principles of parity of esteem and equality. There cannot nor should not be preferential treatment for one community but an equal opportunity to make a free choice without differential or detrimental treatment.
10. The ruling also raises an important question over citizenship in the event of reunification of this island. The tribunal and Secretary of State rely on Northern Ireland's constitutional position within the United Kingdom to assert British citizenship. If this decision is allowed to stand it will set a precedent that may affect those seeking British citizenship in a United Ireland, as the region would no longer be a part of the United Kingdom. The Tribunal claims citizenship flows from the British Nationality Act 1981 not from the Good Friday Agreement.
11. A further ramification on citizenship from this ruling is that it cements a British first, Irish second policy in the United Kingdom. Those of us who identify solely as Irish are considered British whilst in the UK. This creates two tiers of Irish citizens, those who were born in the South who can access and retain their full EU rights and entitlements and those of us born in the North who cannot.

Compatibility with the Belfast Good Friday Agreement

1. I do not believe that the October 14th ruling is compatible with the Good Friday Agreement.
2. Not only does this ruling create a distinction between identity and citizenship under the agreement but it also negatively impacts a number of convention rights such as Article 8, the right to private life and Article 14, freedom from discrimination.
3. Article 1 (vi) of the Good Friday Agreement "recognises the birthright of all the people of Northern Ireland to identify themselves and be accepted as British or Irish or both, as they so choose and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments."

4. This can be read from the text constituting a duty on both States to accept the people of Northern Ireland as British or Irish or both, as they so choose. The choice of identity is limited to the same categories as citizenship and rights to hold both British and Irish citizenship is in light of many states not permitting dual citizenship.
5. The view that the Belfast Agreement is in fact a constitutional document is now widely accepted. In determining whether and to what extent the UK requires a codified constitution, the fact that NI is regarded as already having one is seen as a matter for consideration.
6. It is recognised that there exists a hierarchy of rights wherein constitutional rights should be and are afforded greater respect than “ordinary statute”. They form part of a “higher law”.
7. Regardless of British citizenship law the Home Office ‘accepted’ NI-born persons who chose to be solely Irish citizens until 2012.
8. Imposing citizenship in this way is a relatively new policy and represents in my view a departure from the spirit and the letter of the Good Friday Agreement.
9. Through this process I’ve had to outline every moment in my life that my Irish identity has been evident, in order to prove that I am Irish. I’ve had to face the repeated exertions from the Home Office that I am in fact British and that until such times as I accept that I am British, I cannot be accepted as exclusively Irish.
10. A key objective of the peace talks was to establish equality between the two main communities and to establish a shared society based on the principles of parity of esteem and mutual respect. Yet I’ve witnessed first-hand the negative impact and emotional trauma caused by expecting Irish citizens to declare themselves as British in order to access their rights.
11. We’ve met families that have lost years in court fighting against this conferral, families that cried whilst renouncing British citizenship, and families that simply moved away from their homes, families and livelihoods. No one should be forced to adopt or renounce a citizenship they’ve never held in order to access rights which were meant to be granted at birth but that is what’s happening.

What actions, if any, the British and/or Irish Governments should take by way of response to the ruling

1. It has been encouraging to many that the Irish Government has become more vocal on this issue and I’m sure many will take solace from this committee hearing today. However, the denial of rights continues and has a real time effect on people across Northern Ireland. Last week I met with another family renouncing British citizenship the week previous another leaving the country to access their rights. An urgent and effective response is required.
2. Theresa May pledged a review into these issues in February, unfortunately this review was not released before Theresa May’s departure. There is speculation that a review does exist but we have no timeline, no terms of reference and no indication that it will ever be released. There appears to be a reliance on the outcome of this review in spite of the clear intention of the current British government to pursue the case against us.
3. We have been informed that counsel on behalf of the Home Office is taking direct orders from the Secretary of State for the Home Department. This contradicts the British Government’s claim that it is seeking a resolution.
4. I have seen no indication of any political will or appetite to find a solution that is in line with the spirit and the letter of the Good Friday Agreement in all of my correspondence with British

officials. I've seen statements made that, "The British Government cannot be held to the spirit of a treaty", that it is the British Government's view that an "international agreement such as the Belfast Good Friday Agreement cannot supersede domestic legislation." That "There is nothing in the Belfast Agreement to prevent the automatic conferral of British citizenship." the day of the October 14th ruling the Home Office released a statement that it was "pleased". All of these statements combined with the resources and time invested into pursuing this case against us demonstrates that the British Government is not committed to the Good Friday Agreement or to finding a resolution.

5. It is noted that there is no official dispute mechanism within the Good Friday Agreement, nevertheless there remains a responsibility on the Irish Government as a co-guarantor to uphold and protect the Agreement in all it's parts.
6. It is clear that an amendment to the British Nationality Act 1981 is necessary.
7. There is also in light of Brexit a restriction on NI born Irish citizens accessing the EU settlement scheme which the Irish Government could pursue.
8. Increasingly those of us in the North, in the face of a British government that is abdicating it's responsibilities, are looking towards Dublin to safeguard our rights.

If the British Government can arbitrarily disregard rights guaranteed to the people of Northern Ireland under an internationally binding peace treaty, what safeguards are in place to prevent further diminution of rights?

Statement from Emma DeSouza