

We are very grateful to the Joint Committee on Justice and Equality for the invitation to attend today. As you may know, the Committee on the Administration of Justice, CAJ, is a Belfast based independent human rights organisation. We co-convene the Equality Coalition with UNISON, and were the NGO partner in BrexitLawNI, a joint project with the law schools of Queens and Ulster Universities. I run the Immigration Project at CAJ which focuses on the impact of Brexit on the immigration regime and through this, rights and equality in Northern Ireland.

I am sure we are all familiar with the background of the DeSouza case, in refusing an immigration application the Home Office relied on their policy of treating all persons born in Northern Ireland as automatically British, stating that they can become solely Irish only through the process of renouncing their British citizenship-at a price of £372.00. The reason for this policy is that most dual British and EU nationals are excluded from EEA family reunion rights; so this excludes Northern Ireland born Irish citizens from exercising these rights; this policy all comes down to preventing people from bringing family to the UK. This policy is not compliant with the Good Friday Agreement which recognises the birth right of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both; this is a treaty-based duty on both States.

When this issue was raised, instead of taking action to ensure compliance with the Good Friday Agreement, the UK government instead pursued litigation in which they defended their choice to ignore their obligations under the agreement. A review into the matter promised by former Prime Minister Theresa May had no terms of reference or time frame and has never come to light and the UK government continues to implement this policy.

This will have a wide impact, particularly in the face of Brexit. The policy means that Northern Ireland born Irish citizens, will be among the only EU citizens in UK jurisdiction that are excluded from the EU Settlement Scheme which is the domestic mechanism allowing EU citizens to retain legally enforceable EU rights under the Citizens Rights provisions of the Withdrawal Agreement. This also creates tiers of Irish citizenship, where an Irish citizen that is born in the Republic or even elsewhere, can apply to the scheme but an Irish person born in Northern Ireland cannot. Take the example of neighbours born in Donegal and Derry respectively living in the UK, both are Irish citizens but both will have totally different rights protections post Brexit. The policy makes a mockery of the citizenship provisions of the Good Friday Agreement, undermining trust in the peace agreement and causing tension among communities.

Emma and Jake were successful in challenging the Home Office decision by appeal to the First Tier Tribunal, the UK Home Office then appealed this to the Upper Tier Tribunal, this appeal was successful and the Upper Tier Tribunal overturned the decision of the First Tier Tribunal and upheld the original Home Office decision.

In their appeal the UK government advocated a reinterpretation of the citizenship provisions of Good Friday Agreement which is not in good faith in accordance with the ordinary meaning of the terms in the Good Friday Agreement as a treaty. The UK, downplaying the duty on both states to 'accept' Northern Ireland born persons as British or

Irish or both, sought instead to re-invent the provision as being one separating the concept of 'identity' from the legal bond of citizenship. The UK government argued that the provision of dual nationality and the option of renouncing British citizenship equates to compliance with the Good Friday Agreement.

The doctrine of parliamentary sovereignty and duality approach means that on signing the British-Irish Agreement the UK should have then legislated to bring its nationality law in line with its citizenship provisions. The UK failed to do this resulting in the citizenship provisions not being directly enforceable in the domestic courts.

Emma and Jake face an uphill battle overcoming this through UK courts. The process of litigation also carries huge personal and financial burdens for them both.

The need for action beyond the courts is becoming increasingly clear. DeSouza has highlighted the need for urgent legislative reform of the British Nationality Act to give effect to the Good Friday Agreement. The NI Human Rights Commission has recommended that the British Nationality Act is amended to reflect the birth right provisions and they have commissioned a report on this which I believe will be published in the New Year. In the interim, Home Office policy could be amended to allow for Northern Ireland born Irish citizens to be recognised as solely Irish if they assert same, in compliance with the Good Friday Agreement. This was the policy approach of the Home Office after all until 2012. The NI Human Rights Commission have also long recommended that a right to British or Irish citizenship or both, is enshrined as a right in the Good Friday Agreement-mandated NI Bill of Rights, which the UK is yet to discharge its duties and legislate for.