

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

### JOINT COMMITTEE ON JUSTICE AND EQUALITY

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*Dé Céadaoin, 4 Nollaig 2019*

*Wednesday, 4 December 2019*

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The Joint Committee met at 9 a.m.

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Comhaltaí a bhí i láthair/Members present:

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| Jack Chambers,      | Frances Black,      |
| Catherine Connolly, | Martin Conway,      |
| Jim O'Callaghan.    | Niall Ó Donnghaile. |

I láthair/In attendance: Deputies Gerry Adams, Declan Breathnach and Martin Kenny and Senator Máire Devine.

Teachta/Deputy Caoimhghín Ó Caoláin sa Chathaoir/in the Chair.

## **Business of Joint Committee**

**Chairman:** We will commence in public session. I remind members to switch off mobile phones as they interfere with recording equipment. No apologies have been advised. We will go into private session to deal with housekeeping matters.

*The joint committee went into private session at 9.08 a.m., suspended at 9.16 a.m. and resumed in public session at 9.20 a.m.*

## **Citizenship Rights and DeSouza Judgment: Discussion**

**Chairman:** We will resume in public session. The purpose of this morning's engagement is to discuss the issue of citizenship rights in the North of Ireland in light of the recent ruling of an upper immigration tribunal in the case of Ms Emma DeSouza. We are joined by Emma DeSouza and I want to extend a very warm welcome to her on behalf of the Joint Committee on Justice and Equality of the Houses of the Oireachtas. She is accompanied this morning by Professor Colin Harvey, who is very welcome back before the committee, and by Ms Una Boyd of the Committee on the Administration of Justice, CAJ. The witnesses are all very welcome here. I will shortly invite you to make your opening statements in the order in which I have introduced you. Before I give the privilege reminder, I wish to encourage our witnesses and anyone in the Visitor's Gallery to please switch off their mobile phones as they interfere with the recording equipment.

I must draw the attention of our witnesses to the situation in relation to privilege. Please note that they are protected by absolute privilege in respect of the evidence they give to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Members of the Joint Committee on Justice and Equality and of the Houses should be aware that under the salient rulings of the Chair, members should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I would now like to invite Ms DeSouza to make her opening statement.

**Ms Emma DeSouza:** I would like to begin by thanking the Joint Committee on Justice and Equality for having me here today and for the opportunity to speak about our case. I am an Irish citizen. It is not a choice or a decision I made; it is simply who I am. I have not held a British passport or claimed British citizenship and yet I have 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 am here to discuss the 14 October 2019 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 today, namely, the implications of this ruling for citizenship rights in Northern Ireland; the incompatibility of this ruling with the Good Friday Agreement; and what actions the British and Irish Governments could be taking.

The implications of this ruling for citizenship rights in Northern Ireland are as follows. On 14 October the Upper Tribunal ruled that the people of Northern Ireland remain British citizens even if they identify as Irish. 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. 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.

The 14 October ruling was primarily based on three grounds, namely, that the birthright provisions of the Good Friday Agreement do not include the ability to choose one's citizenship; that the absence of Article 1(iv) from the Northern Ireland Act 1998 was entirely deliberate; and that even if this provision was to amount to a right to choose one's own citizenship, this right is not present in domestic UK law, therefore we cannot rely on it.

The tribunal stated that under the UK's 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. 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. The tribunal took no issue with the process of renunciation of British citizenship, a process that the Home Office requested that I undertake, which requires a declaration that an individual is in fact a British citizen. It also requires that a person proves that he or she is British, pay £372 to do so, gives up his or her freedom of movement for six months and afterwards he or she can be exposed to further immigration controls.

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, and while 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 wish to hold it. However, those of us who identify solely as Irish must first accept that they we are British, renounce being British, and go through a lengthy, costly and often traumatic process in order to be accepted solely as Irish. Dual nationals in Northern Ireland also have rights restrictions in this way. This undoubtedly breaches the principles of parity of esteem and equality under the Good Friday Agreement. 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.

The ruling also raises an important question over citizenship in the event of reunification of this island. The tribunal and the Secretary of State rely entirely 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 wishing to hold British citizenship in

a united Ireland, as this region would no longer be a part of the United Kingdom. The tribunal claims citizenship flows from the British Nationality Act 1981 and not from the Belfast Good Friday Agreement.

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 while in the UK. This creates two tiers of Irish citizens, those who were born in the South, who are resident in the United Kingdom, who can access and retain their full EU rights and entitlements, and those of us born in the North, who cannot.

The second theme is compatibility with the Good Friday Agreement. I do not believe that the 14 October ruling is compatible with the Good Friday Agreement. 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. Article 1 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. 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.

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 Northern Ireland is regarded as already having one is seen as a matter for consideration.

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. Regardless of British citizenship law the Home Office accepted Northern Ireland-born persons as solely Irish until 2012. Imposing citizenship in this way is a relatively new policy and represents a departure from the spirit and the letter of the Good Friday Agreement.

Through this process I have had to outline every moment in my life that my Irish identity has been evident in order to prove to the courts that I am Irish, including things as mundane as the fact that I did Irish dancing when I was a child. I have had to put that into a written court statement as proof that I am Irish.

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 have witnessed at first hand the negative impact and emotional trauma caused by expecting Irish citizens to declare themselves as British in order to access their rights. We have met families that have lost years in courts, fighting against this conferral; families that cried whilst renouncing British citizenship; and families that simply moved away from their homes, families and livelihood. No one should be forced to adopt or renounce a citizenship he or she has never held in order to access rights which were meant to be granted at birth, but that is what is happening today in Northern Ireland.

I would like to move on to what actions, if any, the British and Irish Governments could or should take in response to this ruling. It has been encouraging to many that the Irish Government has become more vocal on this issue since the ruling on 14 October, and I am sure there will be those who will take solace in 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 before that, I met another family simply leaving the country to access their rights. An urgent and effective response is required to deal with this.

Mrs. Theresa May pledged a review into these issues in February of this year, but unfortunately this review was not released before she departed. There is speculation that a review exists, but we have no timeline, no terms of reference, and no indication that it will ever be released. I believe there is a little bit of a reliance on the outcome of this review, and I do not think it will ever see the light of day, to be honest.

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 in our case, and I believe this contradicts the British Government's claim that it is seeking a resolution here. 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 have 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 and that there is nothing in the Belfast Agreement to prevent the automatic conferral of British citizenship. On 14 October, when the ruling came in, the Home Office released a statement that it was pleased with the outcome of that ruling. All these statements, combined with the resources and time invested into pursuing this case against us over the past four years, demonstrates that the British Government is not committed to the Good Friday Agreement, or to finding a resolution in line with the birthright provisions.

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 its parts. It is clear that an amendment to the British Nationality Act 1981 is necessary, and a number of parties in Northern Ireland support this, including Alliance, Sinn Féin, and the SDLP.

There is also, in light of Brexit, a restriction on Northern Ireland born Irish citizens accessing the EU settlement scheme, which the Irish Government could pursue. Increasingly, those of us in the North, in the face of a British Government abdicating its 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? I thank the committee for its time.

**Chairman:** I thank Ms DeSouza very much. Her detailed contribution is very much appreciated and very helpful to the committee in its deliberations. I would now like to invite Professor Colin Harvey please to address us.

**Professor Colin Harvey:** I thank the Chairman and members for the invitation to address the committee this morning. I would like to make clear that I am speaking today in a personal capacity only. I am participating in the University and College Union, UCU, strike action in my university, so I am speaking as an Irish citizen living and working in the North. I would like to commend Emma and Jake on their courage and the stand that they have made on this issue. They speak for many people, and as so often is the case in relation to matters of human rights and equality, all of us depend on courageous civic leadership, and I would like to commend Emma and Jake on the work they have undertaken on this issue.

What we are talking about today is very simple. It is an implementation gap in relation to the Good Friday Agreement, and there are a number of implementation gaps. Let us be clear. The implementation gaps that we are talking about harm everyone in Northern Ireland. I want to concentrate today on two themes. First, I want to say something about the wider context in terms of the agreement, and second, I want to say something about the birthright guarantee under the Good Friday Agreement.

First, in terms of context, it is important to frame the conversation today in relation to a wider implementation gap that is the cause of instability in the North at the moment. Keep in mind that a number of reasonable expectations from the Good Friday Agreement have not yet as yet been delivered. There is no Bill of rights for the North, and as I note in my written opening statement, the Human Rights Commission in its advice in 2008 addressed this question in its proposals. There is no charter of rights for the island of Ireland. The Good Friday Agreement contains a right to self-determination, linked to the principle of consent, and many people on this island are increasingly worried about the lack of adequate preparation and planning when the day arrives for those referendums to take place. There is no Irish language Act in the North. People await the referendum to be held on voting rights in presidential elections which will have huge significance for Irish citizens everywhere.

In relation to Brexit, there are a multitude of issue and problems, but we have the withdrawal agreement and the protocol. Will the guarantees that are there be effectively implemented in British domestic law, policy and practice? What we are hearing this morning, and what we know is, that 21 years after the Good Friday Agreement, many of the guarantees there are still not reflected in domestic law, policy and practice in the UK. Also in relation to Brexit, a rather neglected issue is whether Northern Ireland will have a voice in the European Parliament in a post-Brexit scenario.

I list these as simply illustrative of a number of examples of ongoing problems in relation to lack of implementation, and in relation to the human rights and equality crisis in the North. As the committee is aware, there is a lot of focus at the moment on the restoration of power sharing and on the Northern Ireland Executive and the Northern Ireland Assembly and getting that up and running. I would like to underline and make something clear to the committee all this morning. Think back on all the issues that I have just listed. Many of those, if not all of them, are within the gift of both Governments to deliver, so it is vital that both the British state and Irish State work to advance these issues as a matter of urgency. Speaking personally, one of the most troubling and one of the dangerous narratives that has taken hold across these islands at the moment is that the restoration of the Northern Ireland Executive and Assembly will solve all the problems of the North. That is just not true.

The second theme is the right to be identified as British or Irish, or both, as we have already heard so eloquently from Emma. We are talking about a foundational constitutional commitment flowing from the Good Friday Agreement. We know, as a matter of fact, that it is not properly implemented in British domestic law, policy and practice but it is even more disturbing than that, as we have already heard. There is no genuine grasp evident in the British system of the significance of this birthright guarantee. In fact, I would press that a bit further with the committee today. There does not seem to be any genuine grasp of the significance of the Good Friday Agreement itself for all the people of this island, and there does not seem to be any genuine grasp of the impact of the failure to comply with the birthright guarantee on respect for human rights and human dignity of all those affected. Very troubling indeed, I think, is the British Government's rationale for the approach that it is adopting. The British Government appears

not to be saying that this is an implementation failure. The British Government is saying that its interpretation is right, and I think what is worrying about the Upper Tribunal decision is that it appears to go along with that rationale. If one adopts that approach, there is not a problem to remedy. That is why I think the Irish Government has been absolutely right to point out that this is a misreading of the Good Friday Agreement - in other words, the British Government is simply wrong in its approach to the agreement. That is not the first time that has happened, and I suspect it will not be the last time. There is an implementation failure. It is an implementation failure that needs to be addressed as a matter of urgency, and for reasons that we have heard.

We are facing, I think, an implementation crisis, and while much of the narrative often falls on the absence of power sharing and the Northern Ireland Executive and Assembly, we should keep in mind this morning that many of these issues we are talking about, and the issue we are talking about specifically today, rests with both Governments to take forward as co-guarantors of the Good Friday Agreement. The British Government must move to resolve this implementation failure, and bring law, policy, and practice into line with the agreement. What it is raising is something that has been troubling constitutional lawyers and those with an interest in the agreement for some time, and that is the question that within the UK system, there is inadequate political and judicial acknowledgement of the constitutional significance of the Good Friday Agreement for this island and for these islands. Something constitutionally significant happened in 1998, and that needs to be more fully recognised in the British legal and political systems.

I am increasingly worried about the status accorded to the agreement in the UK system by politicians and judges, and keep in mind the context that we are thinking about today. The context is Brexit, and conversations about another agreement - a withdrawal agreement and protocol and in a number of years' time many people do not want to watch yet another agreement not properly implemented, so it is absolutely vital that this is faced by both Governments as a matter of urgency, as a matter of demonstrating respect for the Good Friday Agreement.

This is not about creating winners and losers. It is really rather simple. More than 21 years on from the Good Friday Agreement, many of us are seeking to ensure that agreement is implemented in law, policy, and practice. There are no winners and losers here. The winners will be everyone who lives in Northern Ireland. This is about the British and the Irish Governments working to create a level playing field in the North, so that the institutions and the values of the Good Friday Agreement might flourish in the future.

**Chairman:** Thank you very much Professor Harvey. The committee very much appreciates your supportive commentary to the opening statement you provided. Ms Boyd, it is over to you on behalf of the Committee on the Administration of Justice.

**Ms Una Boyd:** We are very grateful to the Joint Committee on Justice and Equality for the invitation to attend today. As the committee 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 we are 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.

We are all familiar with the background of the DeSouza case. In refusing an immigration application the Home Office revealed its 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 that British citizenship for the price of £372. The reason for this policy is that most dual British and EU nationals are excluded from exercising European Economic Area, EEA, family reunion rights, so this policy comes down to preventing people from bringing family to the UK. This policy is not compliant with the Good Friday Agreement, which recognises the birthright of all the people of Northern Ireland to identify themselves and be recognised as British, or Irish, or both, and 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 it defended its choice to ignore its obligations under the agreement. A review into the matter, promised by former Prime Minister, Mrs. Theresa May, had no terms of reference or timeframe, 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 who 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 who 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 at the First-tier Tribunal. The Home Office chose to appeal this to the Upper Tribunal, and in the recent decision the Upper Tribunal overturned the First-tier Tribunal decision upholding the original Home Office decision.

In its appeal, the UK Government advocated a reinterpretation of the citizenship provisions of the Good Friday Agreement, which is not in good faith in accordance with the ordinary meaning of the terms of the Good Friday Agreement as a treaty. The UK, downplaying the duty on both states to accept Northern Ireland born persons as Irish, or British, or both, instead sought to reinvent the provision as 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 equate 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 the Good Friday Agreement's 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, and the process of litigation also carries huge personal and financial burdens for both of them.

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 Northern Ireland Human Rights Commission, NIHRC, has recommended that the British Nationality Act is amended to reflect the birthright provisions, and I believe it has commissioned a report on this which should be published soon.

In the meantime, the Home Office could amend its policy to allow for Northern Irish-born Irish citizens to assert their right to Irish citizenship only, in line with the Good Friday Agreement. We know it can do this because this was its policy prior to 2012. The Northern Irish Human Rights Commission has also recommended that a right to be British or Irish, or both,

is enshrined as a right in the Good Friday Agreement-mandated Northern Irish Bill of rights, which the UK is yet to discharge its duties and legislate for. I thank the committee.

**Chairman:** Thank you very much Ms Boyd. I thank the Committee for the Administration of Justice for the provision of its detailed submission for our consideration. Having heard the three opening statements, I would like to again record my thanks to the Joint Committee Justice and Equality for unanimously taking the decision to host this address here this morning. I think quite clearly from what we have just heard it is most appropriate.

Members' have indicated that they who like to speak. The first to indicate was Senator Frances Black.

**Senator Frances Black:** I would like to put on record my full support for Emma DeSouza and her husband Jake. What they have been through is totally unacceptable and the position of the UK Government is totally contrary to the Good Friday Agreement and they are 100% right to oppose it and I am glad to see the Taoiseach and the Tánaiste offering the Government's support, and I am very hopeful that this committee will do the same. I am also glad to see that our Taoiseach has correctly indicated that the British Government's approach is a misreading of the agreement.

It seems that the heart of this case is about preventing the automatic conferral of British citizenship. One of the suggestions made was to amend the British Nationality Act to enable this. Could the witnesses describe how that would work in practice? Should it be that in order to avoid statelessness a child born in Belfast is automatically given British and Irish citizenship, and would simply be able to say later on that he or she is solely Irish without needing to pay and formally renounce British citizenship? What are the witnesses' thoughts on that? If the issue is having citizenship at any point, how would citizenship be dealt with at birth? Should the parents choose?

If we say one needs to have some citizenship at birth, how would one be enabled to choose between them or indeed choose both? If the default is not both citizenships at birth, what should the default be? I want to get the witnesses' ideas on that, because we need a system that respects the right to be Irish, or British, or both, under the Good Friday Agreement. There is no doubt about that. I want to get an idea of how it would work in practice.

**Chairman:** Who do you wish to direct your question to, Senator Black?

**Senator Frances Black:** Everybody. I want to get the witnesses' ideas on it.

**Chairman:** We will start with Ms DeSouza.

**Ms Emma DeSouza:** Ireland's legislation is a good example here. Under Ireland's nationality laws, if another entitlement to citizenship exists, then Irish citizenship is an entitlement - it is not automatically conferred. In terms of statelessness in Northern Ireland, there would be entitlement to Irish and British citizenship, therefore one cannot be rendered stateless if one has an entitlement to both of those. In terms of how that would be enacted through legislation, I am awaiting the outcome of the Northern Ireland Human Rights Commission's report, which I believe addresses a lot of these issues and how one could amend the legislation. There are legal solutions there, and one can look at Ireland's legislation as an example of that, and at international law and how it operates with statelessness. My understanding is that under international law if an entitlement to citizenship exists, then one cannot be rendered stateless. It has to be a personal choice for each individual to make as to whether they want to be Irish or British or

both. I do not think that both being automatically conferred at birth would necessarily be the right solution.

**Chairman:** Professor Harvey, would you like to add to that?

**Professor Colin Harvey:** I wish to echo what Ms DeSouza said. However, this raises another issue that may need to be considered. That is the question of equality of citizenship in the North in the longer term. In addition to the issue of choice, British or Irish or both, the question of a detriment arising around that choice will need to be addressed. Work is being done on the notion that we may need to move into a system that recognises the unique circumstances of the North, whereby we move to a system which looks very like equality of citizenship in relation to British and Irish citizens. That is why, in the earlier intervention, I tried to underline that the agreement is not only quite good at talking very specifically about issues of nationality and identity, but also about wrapping those around a broader framework about the human rights of everyone in the North. That is why the implementation gap on issues such as the Bill of rights, the charter for the island, leaves us devoid of a comprehensive rights and equality-based framework in the North. That is why we are feeling that loss, and that absence.

**Chairman:** Thank you Professor Harvey. Would Ms Boyd like to add anything?

**Ms Una Boyd:** I wish to echo what Ms DeSouza and Professor Harvey have said. I think the Irish legislation provides a really strong example of an entitlement to citizenship, not an automatic conferral, which is also drafted in a very careful way to prevent statelessness. The Home Office has made quite a lot of the statelessness argument itself and the tribunal picked up on it. The UN convention on statelessness states that one can only be rendered stateless if one does not have citizenship by operation of the law. If, like Ms DeSouza said, there is an entitlement to two different citizenships, then one would not be stateless and we are waiting to see a significant body of work on this that the Northern Ireland Human Rights Commission has done which will hopefully be published quite soon. It will really be interesting to see.

**Chairman:** Senator Black, do you have anything further to add? No. Deputy Martin Kenny was next to indicate, followed by Deputy Jim O'Callaghan.

**Deputy Martin Kenny:** I wish to welcome the witnesses and thank them for coming in this morning. I wish to assure them of my support, and the support of practically everybody in the Oireachtas for the position they have taken and the courageous efforts they have made to set out a basis for equality. That is really what this is about. It is not about one being better than the other, although sometimes it is presented in that way.

In Ms DeSouza's submission one point stuck out. She said that the absence of Article 1(iv) of the Good Friday Agreement from the Northern Ireland Act 1998 was entirely deliberate. I would like to tease that out a little. It would appear that the view taken by the British authorities is that their position on citizenship for people living in the North is the historic position, and that they are refusing to change that due to the implications of the Good Friday Agreement.

I think all contributors spoke to the issue of what this means in the context of a position which is going to come about where we are looking at a poll on Irish unity, where that brings us and how that works out. One of the issues that comes up is people who identify themselves as British citizens, or as having a British identity. That is not entirely exclusive to people living in the Six Counties, and I am sure there are some of them who live in this jurisdiction as well. What needs to be done, in terms of preparations, to reassure people that they will not be treated

in the way that Ms DeSouza has been treated in those circumstances? I would like to hear what considerations Professor Harvey may have in respect of that.

**Chairman:** We will go to Professor Harvey and then to Ms DeSouza and Ms Boyd.

**Professor Colin Harvey:** Across a range of areas, there has been a failure to implement the agreement in British domestic law, policy, and practice. I have tried to frame my contribution today around an implementation gap that rests with the British and the Irish Governments as co-guarantors of that agreement. There is a bigger problem that the constitutional significance of the Good Friday Agreement for this island has not made its way fully and effectively into the British constitutional legal system, be it politically, or legally as well. That is something we need to think about remedying in the time ahead.

We are in a context where we are talking about a Brexit conversation as well and where we do not want to be in a situation in a number of years time where we cannot do anything if some of the guarantees that are being given at the moment are not being realised in practice. That needs urgent work and legal reform within the British system, but it is an endemic problem. The reason for framing it in relation to the agreement is that we are on a pathway towards referendums on constitutional change on the island, and I mentioned this at the start. I refer to the right to self-determination. When people talk about human rights in the agreement they tend to skip over this one, but it is an important one. It is in the agreement and it is linked to the principle consent, and there is a conversation on the island about planning and preparing, in a prudential way, for those referendums that are coming. Nobody wants the Brexit mess on this island. It is about planning and preparing, and central to the planning and preparing is the framework of the Good Friday Agreement, and the values that are there, and the birthright guarantee is crystal clear on this. Those guarantees are intended to persist into the future, and those are guarantees for British citizens in the future. Those are guarantees in relation to unionists and loyalists in the future, that rights will be respected, and it is absolutely vital that we have that Good Friday Agreement framework. That is why when one sees the Good Friday Agreement undermined in the way it is in the here and now, that should give us all pause for thought about the future, and it has been why there is bit of frustration around these debates.

I tried to underline at the start that this is not about winners and losers. Emma's and Jake's courageous stand around the birthright guarantee will benefit everyone who is protected by that guarantee, now and into the future, wherever the future may take us, and so many arguments about the Good Friday Agreement are on that basis. The implementation gap harms everyone in the North, and that is why it needs to be addressed.

Just to repeat myself, which I am prone to do, it is about both Governments creating a level playing field so that the Good Friday Agreement, and its institutions and values, might find the space to breathe.

**Chairman:** I thank Professor Harvey. Ms DeSouza, would you like to add to that?

**Ms Emma DeSouza:** One is right to highlight that part under the entirely deliberate absence of the birthright provisions from the Northern Ireland Act. For me, that argument being made by the Home Office and the British Government signifies an almost rewriting of that provision. There is no evidence to support that submission either. There are no statements from 1998. There is no evidence supporting the current view that it was deliberate, that this was to be left out in 1998. If anything, we have seen people like Jonathan Powell state that this has been overlooked and it is a mistake that it has not made it into legislation.

First, it is quite concerning that it is taking that path. It is a minimising of the right. It is watering it down from a right to choose ones nationality and hold Irish or British citizenship, or both, to a right to feel Irish or British, or both, and I do not think this is what was intended in 1998.

With regard to British citizens in the event of a unification, there is a real issue here because only Britain can decide who is or is not a British citizen, and if the Home Office is successful in watering down the birthright provisions to a right to just feel Irish or British, or both - that we do not have citizenship stemming through that - then it raises the question of what would happen to British citizens in the event of a united Ireland, and what could Ireland do because it cannot grant British citizenship to British citizens. One has a situation where potentially in one to two generations British citizenship could become at risk for those in Northern Ireland who want to hold it.

A point I would like to highlight is that this situation that I am in does not just affect people who only identify as Irish. I have met many families who are unionist and who have renounced British citizenship in order to access their rights, and that is very difficult for them to do because they are having to give up their identity in order to access rights. There are plenty of people in the North who are very happy and content to hold British and Irish citizenship, and they are in a situation where they have to choose one or the other to access their rights, and it basically puts everyone in a very difficult position where their identity is being questioned by the Government. It is not a good place to be.

**Chairman:** Ms Boyd, do you have anything to add?

**Ms Una Boyd:** Yes, the Home Office argument is fairly stark in that it essentially said that the failure to enact the citizenship provisions was entirely deliberate, because that clearly shows that there are no issues with the British Nationality Act and that it was compliant with the Good Friday Agreement. I think it described it as clearly being fully aligned with the provisions of the Good Friday Agreement, so it comes back to this idea that there is no will here. There is no acceptance from the British Government that there may have been something that was overlooked, that there may have been something that was not properly enacted. It is firmly standing behind the argument that its position is right, that the British Nationality Act is compliant with the Good Friday Agreement. As Ms DeSouza touched on, to do this it has essentially reread the citizenship provisions. What it is doing is separating the identity and the citizenship into two separate parts, which we do not have a lot of information on. We do not have preparatory documents that tell us exactly what was intended when this was drafted, so what one has to go to is the ordinary meaning of the terms of the treaty. A person has the right to identify and be accepted as Irish or British, or both, and accordingly, Irish and British citizenship are protected. There is a very deliberate link there, and the British Government has very intentionally reread that in a way that allows it to downplay the right to this - the idea that a person has every right to identify, but that does not mean there has to be any legal right to citizenship.

**Chairman:** I thank Ms Boyd. Deputy Kenny, had you something further to add?

**Deputy Martin Kenny:** It is clear that both Governments, as co-sponsors, have equal responsibility in respect of this, and the British Government is failing in its responsibility. In that context, would the witnesses concur that the Irish Government has a responsibility - if not to put pressure on - to create a situation where the British Government has to come up with a responsible situation with regard to Irish citizens? How can that be done, because as long as both states are part of the European Union, we have that overarching body which we can look

to as a means of trying to progress things? However, with Brexit approaching, that creates more difficulties, and I would be interested to hear how the witnesses believe that can be done in the context, particularly of Brexit, but more so in the context of the responsibility that both Governments have in regard to the Good Friday Agreement.

**Chairman:** I will start with Ms DeSouza and then bring in the other speakers.

**Ms Emma DeSouza:** I would say to rush quickly before the UK leaves the European Union, if that is an option, but in terms of what can be done here, pressure needs to be put on the British Government because it clearly believes that it can continue on this path. I know there has been political pressure on it over the last year or two years with our case, but clearly it remains undeterred, so I do not necessarily know how a person might pursue that in a stronger way. Certainly there needs to be urgency because of the real-time effect it is having on people in Northern Ireland, and the fact people are going through this right now. It needs to be addressed as quickly as possible and as strongly as possible, and I hope that it is something the committee might be able to look to doing.

**Chairman:** Do Professor Harvey and Ms Boyd have anything to add to what Ms DeSouza said?

**Professor Colin Harvey:** I echo the comments. If one thinks about it very simply, we are now 21 years on from the Good Friday Agreement and we are having this conversation, so there is a particular responsibility on the Irish Government to press this. We are in a multiplicity of negotiations at the moment, in a variety of contexts. Ms DeSouza has an enormous amount of support. The Good Friday Agreement, as we have seen this week in relation to the US and the European Union, is gaining ever more support around the world, so the Irish Government has to work very hard to make sure that is implemented. Ultimately, governmentally lessons have to be learned, so if there are negotiations - This was very much to the fore in the negotiations around the withdrawal agreement and the protocol - people cannot be put in the position that Ms DeSouza is in in the future, where rights guarantees end up becoming meaningless in the British system. This is a problem, and it has been going on for a while. The British legal and political systems have not fully recognised the constitutional importance and significance of the Good Friday Agreement for this island, and that needs to change.

**Ms Una Boyd:** I wish to echo what both Ms DeSouza and Professor Harvey have said. The DeSouza case has done us all a very strange favour in that it has really drawn the UK Government out on exactly how it will treat the Good Friday Agreement when it is held up to it, when it is asked to respect its obligations under it. The amount of time, resources and effort that have gone into it fighting against being asked to respect its obligations under the Good Friday Agreement is extremely telling. From the perspective of the Irish Government, it is a co-guarantor of this agreement and there has to be action from it to protect the agreement. For a lot of people in Northern Ireland as well, these are Irish citizens who are seeing their rights being refused, and they look to the Irish Government to protect them, as Irish citizens.

**Chairman:** I thank the witnesses. I call Deputy Jim O'Callaghan.

**Deputy Jim O'Callaghan:** I thank the witnesses for coming in. It is a very significant legal and political issue, but for Ms DeSouza it is also a very personal issue and I know it is not easy to go to court to deal with a personal issue, so I want to commend Ms DeSouza in respect of that. Can I take Ms DeSouza through the procedure of what happened, because I am conscious that a lot of people may not be aware of it? Ms DeSouza's husband Jake is an American. Is

that correct?

**Ms Emma DeSouza:** Yes.

**Deputy Jim O'Callaghan:** In December 2015 he applied for a residency card under the immigration EEA regulations of 2006. Is that so?

**Ms Emma DeSouza:** That is correct.

**Deputy Jim O'Callaghan:** The reason he said he was entitled to do that was because a family member, Ms DeSouza, was an EEA citizen, namely, an Irish citizen?

**Ms Emma DeSouza:** Correct.

**Deputy Jim O'Callaghan:** Then when the application was made to the Secretary of State, the Secretary of State refused it, because under the definition of EEA citizen in the regulations, it states one cannot be an EEA citizen if one is also a British citizen-----

**Ms Emma DeSouza:** Yes.

**Deputy Jim O'Callaghan:** That decision was made some time in early 2016. Is that correct?

**Ms Emma DeSouza:** That is correct.

**Deputy Jim O'Callaghan:** Had that been a change of the way the British Secretary of State had operated those applications prior to that? Does Ms DeSouza know?

**Ms Emma DeSouza:** The change came in in 2012, through a case called McCarthy. This was a case that had nothing to do with the Good Friday Agreement. It was a British citizen, born in Britain who had got an Irish passport through descent and had attempted to stabilise their spouse's status through the EEA system, and had taken this up to the ECJ. It went against them, and the Home Office then clung on to that ruling and used that in Northern Ireland in a way that is not in line with the Good Friday Agreement.

**Deputy Jim O'Callaghan:** Okay. Subsequently Ms DeSouza's husband went to the First-tier Tribunal where he won, and then went to the Upper Tribunal where the Secretary of State won. Is that not correct?

**Ms Emma DeSouza:** That is correct.

**Deputy Jim O'Callaghan:** It is going to go to the Supreme Court. Is that so?

**Ms Emma DeSouza:** The Court of Appeal would be the next stage.

**Deputy Jim O'Callaghan:** The Court of Appeal. I had a look at the decision of the Upper Tribunal and parts of it are curious, other parts indicate, as Professor Harvey said, that there has not been full implementation. If one looks at the Good Friday Agreement, there are two agreements to it - there is the multi-party agreement, and there is the agreement between the two Governments. It is expressly provided in it, that persons are entitled to identify themselves, and be accepted as Irish or British, or both, as they may so choose. Clearly the two Governments agreed to that and the parties endorsed that agreement. I wish to ask Professor Harvey, in terms of the breach of an international treaty - I know the argument is it has not been implemented into British domestic law - if that provision has not been implemented into British law, what is

the remedy there for Ms DeSouza in the first instance? Is it an obligation that rests on the other party to the agreement, the Irish Government, to try to invoke it, and if so, where does it go?

**Professor Colin Harvey:** That is a great question. It is one of the challenges as we know with the Good Friday Agreement, the multi-party agreement and the bilateral international treaty. To cut a very long story short, as a matter of international law there is very little that the Irish Government can do to remedy this situation. Dispute resolution is one of the weaknesses in the British-Irish Agreement, and it is one of the things I mentioned earlier. The lesson has been learned in relation to the discussions around the withdrawal agreement and the protocol, that there are things that can be done, so it is a big problem. As the Deputy will know, the British constitutional legal system is still very much anchored around this concept of parliamentary supremacy. It is a dualist legal system, which means that unless and until an international legal text is translated into the domestic legal system - it is more complicated than that but that is a summary - then effectively for individuals there is very little they can do to enforce those rights.

What we have here is a concrete example of where a binding international bilateral treaty has not been effectively implemented in domestic law, policy, and practice in the UK. It is one of the big problems with the UK system, that one can reach what one thinks is a political agreement. One can even agree an international treaty with the UK, and there are obligations around good faith interpretation, but if that international agreement does not have an effective system for resolving disputes, then individuals are very reliant on what happens in domestic law, policy and practice.

For me and for many people, as we said today, the problem here is an implementation gap. It has not been reflected, but it is not the only concept from the agreement that is not reflected in British domestic law, policy and practice. One problem that I have, among many, at the moment is that on issues such as parity of esteem, mutual respect, equality of treatment between British and Irish citizens, as well as some of the human rights and equality issues I have mentioned, there is a yawning implementation gap. Until that is addressed effectively one is not going to get any form of sustainable power-sharing operating in the North, because that level playing field will not be there. One cannot have a situation where one has a bits and pieces approach to implementing the agreement. I am giving the Deputy a very long answer to the question-----

**Deputy Jim O'Callaghan:** It is interesting. Being concise about it as well, the non-implementation is a political issue as opposed to a legal issue. Is it not?

**Professor Colin Harvey:** It is a political issue that needs to be resolved legally. In other words, amendments need to be made, however that is done, to British domestic law-----

**Deputy Jim O'Callaghan:** Not that Professor Harvey is but people are asking whether Ms DeSouza will be able to succeed in getting the full implementation of the agreement. That is a political issue. The law needs to be changed in the United Kingdom to give effect to the provisions that are in both the multi-party agreement and the international agreement.

**Professor Colin Harvey:** The British Government needs to respect its international legal obligations. There are weaknesses in relation to enforcing those, and the Irish Government is limited in what it can do. That does not undermine the fact that there is an international legal obligation on the UK Government to implement in good faith, by amending its domestic law, in order to reflect this crystal-clear birthright guarantee. That we are sitting here 21 years later talking about this is frankly remarkable, and should give pause for concern to everybody who is currently in negotiations with any British Government about any political agreement now or

in the future.

**Deputy Jim O’Callaghan:** The manner in which the agreement was implemented in UK law was primarily through the Northern Ireland Act 1998, and the judgment states that the Northern Ireland Act 1998 does not contain any express statutory provision providing for the terms of the agreement about identification. That is probably correct. Is it not?

**Professor Colin Harvey:** It is a great question. There are significant gaps in the Northern Ireland Act, across a whole host of areas. As many people who were around in the late 1990s will recall, there was a bit of a tussle even getting the bits of the Northern Ireland Act that are there now. It is a major problem that needs to be addressed legally. It can be done, and there are solutions there.

**Deputy Jim O’Callaghan:** I would have thought one of the solutions - I think it was argued in the case - would be that section 1 of the British Nationality Act 1981, which has not been amended, needs to be amended. If one looks at the argument made in the court case, Ms DeSouza’s lawyers argued that the section should be read as reading that a person born in the UK after commencement shall, if he or she consents to identify as such, be a British citizen. If that amendment was made to the British Nationality Act, it would deal with Ms DeSouza’s concerns. Is that not correct?

**Professor Colin Harvey:** Yes, and this is why we have tried to underline something today. The problem is that the British Government is saying that it is not doing anything wrong. The British Government is saying its interpretation-----

**Deputy Jim O’Callaghan:** Of the agreement.

**Professor Colin Harvey:** -----of the agreement is the correct one. The worrying aspect of the Upper Tribunal decision is, I think, that the Upper Tribunal appears to go along with that rationale-----

**Deputy Jim O’Callaghan:** I agree with Professor Harvey. I thought the Upper Tribunal decision was coherent until I got to paragraph 39, which I thought made very strange reading, because it says that the agreements do not, in fact, involve giving the concept of self-identification the meaning for which Ms DeSouza had argued. It goes on to say that if the parties to the multi-party agreement and the Governments of Ireland and the UK had intended the concept of self-identification necessarily to include a person’s ability to reject his or her Irish or British citizenship, it is inconceivable that the provisions would not have dealt with this expressly. I would have thought that they dealt with it expressly.

**Professor Colin Harvey:** Absolutely, and as the Irish Government has made clear, the British Government is misreading the Good Friday Agreement. In that context, entirely understandably, people have tried to point out quite rightly the impact on Emma’s and Jake’s human rights in relation to the approach that has been adopted, and the human rights and human dignity of people affected by this, that is, of having a nationality conferred on them against their wishes, given this international legal right to choose.

**Deputy Jim O’Callaghan:** In terms of where Ms DeSouza is left now in accordance with the law, Ms DeSouza has been told that she has to renounce her British citizenship, which in effect means accepting it in the first instance in order to avail of the provision.

**Ms Emma DeSouza:** It requires that a person proves that he or she is British as well, so

being born in Northern Ireland does not constitute as evidence of being a British citizen in that context. A person has to provide his or her parents' birth certificates, and their marriage certificates, and the knock-on effect of that system is that the trauma is often passed on then to the whole family - an Irish family then has to accept that they are all British in order for their son or daughter to renounce being British. That is the path the Home Office would really prefer that I take.

**Deputy Jim O'Callaghan:** I just want to commend Ms DeSouza on the reference she made to people of a unionist persuasion who are now forced, in effect, to give up their British citizenship in order to avail of other citizenship to effect rights. Everything in Northern Ireland is unfortunately contested, and there is contested identity, and it is contested territory. It is very important - this is not an obligation on Ms DeSouza, but on all of us - to try to communicate to the unionist population as well that this is of benefit to everyone living in Northern Ireland, because if there is going to be referendum change in years to come, we all must recognise that the unionist population in Northern Ireland is entitled to remain identifying as British. That is a big issue that is going to have to be dealt with, and we need to communicate that more. One of the problems we have sometimes on the nationalist side of this island is that we spend a lot of time talking to ourselves, and that is no criticism of Ms DeSouza. She is fighting for her rights as an individual, but as politicians we sometimes converse too much with ourselves, and we need to communicate the benefits of Ms DeSouza's interpretation of the agreement to the unionist population so that it knows there is protection for its British identity in the long run. I would like to thank Ms DeSouza for coming in, and I commend her on the case she is taking.

**Chairman:** Thank you, Deputy O'Callaghan. The usual procedure is different, but I am going to invite Deputy Breathnach to speak if the members are okay with that. I know it is not normal procedure.

**Deputy Declan Breathnach:** Go raibh maith agat, a Chathaoirligh. As the Chairman said, I am not a member of this committee, but I am attending it as a members of the Joint Committee on the Implementation of the Good Friday Agreement and indeed the British-Irish Parliamentary Assembly. This issue has been raised on numerous occasions. I have two important questions that need to be asked, and that is in the context of hearing people like Robin Walker, and our Taoiseach and Tánaiste, who have been pressed on this issue and say that they are negotiating and that they are trying to find a solution to it. Ultimately, what Professor Harvey has said about having an implementation crisis, and the fact that there is no dispute mechanism there, is key to part of the resolution of Ms DeSouza's issue.

We are supposed to be here to help, and hopefully we are. I would like to ask what Ms DeSouza's view would be on an all-party motion in the Oireachtas calling on the British Government to honour its commitments to the Good Friday Agreement, and indeed to possibly seek a dispute mechanism within the Good Friday Agreement in order to avoid what Professor Harvey has described as an implementation crisis.

To what degree is Ms DeSouza aware that the issues and obligations to the international treaty have been raised within the context of the British withdrawal agreement?

**Chairman:** I thank Deputy Breathnach. There are two elements to that. I will take Ms DeSouza first and then Professor Harvey and Ms Boyd.

**Ms Emma DeSouza:** An all-party motion would be very welcome. We are at a point now where it would really be almost necessary. This has been going on for a long time. Our case

has been going on four years, and it is now going to be five years when we go into 2020. However, there have been other cases before ours. Other people have spent years in court doing the same thing and trying to fight for their rights. People are in a really desperate position now in the North where they saw this ruling in October and they feel like they are being left behind, that their rights are not being respected and that they are not being upheld. Who do we have to turn to? Who is going to take a stand for us in the North? A motion in support of finding a resolution and in support of those of us in the North would be very much welcomed, and I would hope to see that.

**Chairman:** Thank you. Professor Harvey, would you like to take up that issue and the second one?

**Professor Colin Harvey:** On the issue of governance around the withdrawal agreement and the protocol, considerable thought has gone into creating an architecture around the withdrawal agreement protocol that allows for dispute resolution and adjudication in relation to problems that arise there, and it is quite an elaborate architecture that is there. In relation to the Good Friday Agreement, recall that the protocol includes Article 2. It includes a reference to no diminution in relation to rights and equality, and specifically references a part of the Good Friday Agreement in the protocol, so it is very likely in the future that the Good Friday Agreement will find itself being discussed within that architecture. A second aspect to keep in mind is that we need to be mindful that, with any agreement that involves the UK Government, whatever guarantees are there need to find their way fully and effectively into British law, policy, and practice. Bear in mind the majority of people in Northern Ireland do not want to leave the EU, but if Brexit happens, it is vital to ensure that the guarantees that are in the withdrawal agreement, for example, in relation to rights and equality, are fully reflected in that Bill as it goes through Parliament. To repeat myself, we do not want to end up in a situation here where the committee is hearing evidence in the years ahead from individuals affected, whose rights have been infringed, but there is no way for them to do anything about it. To be fair, some of the lessons that have emerged from the agreement have been learned in the context of those negotiations between the EU and UK in relation to the enforceability dispute resolution and adjudication of the guarantees that are given there. They are not ideal, but it is clear that there are lessons that have been learned, but it will need to be watched carefully in the time ahead.

**Chairman:** Thank you Professor Harvey. I call Ms Boyd.

**Ms Una Boyd:** With regard to the withdrawal agreement, as Professor Harvey said, we are going to see how the Good Friday Agreement applies to elements of the withdrawal agreement. What this is going to draw attention to is that paragraph 52 of the joint report committed to protecting EU rights of persons, including where they reside in Northern Ireland. That vanished. We did not see that reflected in the withdrawal agreement, and what we have in the withdrawal agreement is part two which outlined citizens rights, so it is things like workers' rights, residents' rights, and the rights to family reunion. There is a commitment that those rights will be protected for life, but already Northern Irish born Irish citizens are excluded from those because the only way of accessing them is the EU settlement scheme, and the only way of applying to the EU settlement scheme is to not be considered a dual national, so we have come full circle in terms of protections under the withdrawal agreement. Northern Irish born Irish citizens are not going to be able to access them in a legally enforceable way because of the policy that we are dealing with, which comes right down to respect for the obligations under the Good Friday Agreement, as has already been said, they are going to come head to head.

**Chairman:** Thank you, Ms Boyd. I call Deputy Catherine Connolly.

**Deputy Catherine Connolly:** Thank you, Chairman.

**Chairman:** I thank Ms Boyd. I call Deputy Connolly.

**Deputy Catherine Connolly:** I will start with parity of esteem. Somebody in Northern Ireland who identifies as English has the right not to have Irish nationality imposed on them, and somebody who identifies as Irish has British nationality imposed on them by default. Is that it?

**Ms Emma DeSouza:** That is correct.

**Deputy Catherine Connolly:** Okay. That is as England is interpreting the law, totally against the Good Friday Agreement, totally out of line with the Good Friday Agreement, except that is interpreting it to suit itself, to justify that approach. The difficulty lies then with the Good Friday Agreement does it not, in the way that it was drafted? My colleague here asked a question on a dispute mechanism, and I have that highlighted here as well. Theoretically the Good Friday Agreement was excellent and revolutionary. In practice, it allowed for various interpretations without an appropriate mechanism to resolve issues that arose, is that correct?

**Ms Emma DeSouza:** I wish to comment on that. What the Good Friday Agreement sought to do was address the identity issues that were present in Northern Ireland. What is often forgotten is that identity was at the centre of decades of violence and conflict and what the Good Friday Agreement sought to do was creatively find a way to put identity on an equal footing and then remove it as a source of conflict, which is why we have this creative “Irish or British or both” clause which is unique within the United Kingdom. The real failure there has been the fact that (a), there has not been a dispute mechanism and (b), that it has not found any expression in UK domestic law. If one just looks at the language under the article it clearly points to it being a right to hold both or either. What is happening is a reinterpretation on the British side to find a way to excuse themselves from having to implement change.

**Chairman:** Would Professor Harvey like to add to that?

**Professor Colin Harvey:** The Good Friday Agreement itself is fine, and in many ways could not be clearer in terms of what is required here. That is reflected in the British-Irish Agreement. There is a good faith obligation on the British Government to implement its international commitments. In this case it simply has not done so and it needs to do so. In many ways it is as clearcut as that.

**Deputy Catherine Connolly:** I agree with what the witnesses are saying and I want to thank Ms DeSouza for her courage and persistence; I should have said that at the beginning, and thank her for her persistence. However it is not clear really. To the witnesses’ reading and my reading it is crystal clear, and certainly it was very creative, allowed for a just solution, allowed for people to choose and all of that. I agree with all of that. However in retrospect, it allowed for a completely different interpretation by one party. There is no dispute resolution mechanism to deal with that within the Good Friday Agreement. Is it not right that there is no way of dealing with that different interpretation in a speedy way and in an effective manner?

**Professor Colin Harvey:** In all practical terms, and for our purposes today and, on reflection, it is one of the weaknesses in the Good Friday Agreement and British-Irish Agreement that one can have a situation where the Irish Government says “This is our reading of the Agreement”, the British Government says “This is our reading of the Agreement”, and, as they are the co-guarantors we are in a sense left with that. The weight of opinion, I have to say, is on the side of the Irish Government, and with Ms DeSouza’s reading of this provision. The focus should

be on the British Government, in good faith, implementing its international legal obligations. The Irish Government needs to ensure that happens, in the context of European Union support for the Good Friday Agreement in all its parts and support for the Good Friday Agreement in the US and elsewhere.

**Deputy Catherine Connolly:** I accept all of that. However, all agreements have to have some type of dispute resolution because with the best will in the world, the good faith, and given the history of Ireland and England and the various pieces of legislation which I read, it was a constantly evolving process in relation to citizenship was it not with different pieces of legislation going back to 1922. It was wonderful on paper but it was clear there would be issues with it in practice. I do not quite understand how the UK or any country can simply ignore its obligations under an international binding agreement. That has huge implications for all international binding agreements does it not, that it can simply ignore it?

**Ms Emma DeSouza:** That is why the UK Government is trying to rewrite it. I think that is why it is trying to say it was never meant to be a right to choose one's nationality, and if it can find success and favour with that argument through the courts, then that will absolve it of any responsibility to implement change or legislate for that provision. That is the reason it is trying to redefine the definition of that provision.

**Deputy Catherine Connolly:** To confine it to a matter of interpretation.

**Ms Emma DeSouza:** Exactly.

**Deputy Catherine Connolly:** The Northern Ireland Human Rights Commission is in the process of doing a review and is looking at all of the issues including the statelessness issue.

**Ms Emma DeSouza:** Yes.

**Deputy Catherine Connolly:** Perhaps Ms DeSouza could go back on that because I did not quite understand that. It was an issue that was raised in the Upper Tribunal as well, namely, if people are left with the option to choose, they are stateless until the point where they choose.

**Ms Una Boyd:** It is essentially the UN Convention Relating to the Status of Stateless Persons. A person is stateless when under operation of the law he or she cannot become a citizen so in this scenario he or she would have, under operation of the law, access to two citizenships, so it would not be a situation of statelessness. Statelessness is really intended for people who, under operation of the law cannot access a citizenship and it is interpreted by the UK itself quite narrowly. We would say that a position - the Irish legislation being a very good example - where a person has an entitlement under operation of the law to a citizenship, and in this case, to two citizenships, he or she would not be considered stateless.

**Deputy Catherine Connolly:** On the review that is promised, separate from the Human Rights Commission, the review promised by Mrs. May at the time, has Ms DeSouza any hope of getting that published or is there any point in looking at that? Is it worth pursuing it?

**Ms Emma DeSouza:** I believe that the Irish Government in particular has been pursuing that for quite some time, and pressing to get this review released. The reluctance of the Home Office and the British officials to release the review is clear as they will not give us, in any freedom of information requests, or any parliamentary questions, any indication of a timeline, timeframe or terms of reference. We have been told that it is an informal review, it is not formal, and we have during that time a new Prime Minister, a new Home Secretary and potentially

others again next month. I do not think that this review is going to come out. I myself pressed quite hard with it and all indications point to it being shelved with Theresa May's government.

**Deputy Catherine Connolly:** Does Ms DeSouza think it is something we should pursue as a Government?

**Ms Emma DeSouza:** Certainly there is no harm in trying, but I think the time has come after pursuing it since February to move on to finding a different way to help.

**Deputy Catherine Connolly:** On something I did not quite understand either - we did not have enough time really, I look forward to the Human Rights Commission report that will tease out the issues - why has it taken Ms DeSouza's courage and determination to expose the problems on the ground? How come it has not come to the surface before? I understand there was a policy decision that made it easier. Perhaps the witnesses could just clarify that.

**Ms Una Boyd:** My background is practising as an immigration solicitor in Belfast. We saw this come up after 2012 when the McCarthy decision caused the Home Office to change its policy, and we started to see families coming in who were affected by this. The simple fact is there are very few people who are in a position to take a fight that is going to be lengthy litigation, and potentially years of uncertainty. One's spouse could end up, as Ms DeSouza's husband, Jake, did, without a passport, without the right to work or the right to drive. For many of these people, they have young children, sick relatives, employment needs and they need to be able to travel. What I typically saw as a solicitor was that people would either make the decision to renounce, with everything that comes with that, or would choose to make one of the UK visa applications at the cost of thousands of pounds - or they would move. A lot of people simply chose to move with their family members, to leave the UK. I have said it before but Emma was pretty much the first person who was stubborn enough to say, "No, I really can't accept this. This goes against all of my rights and I want to fight it."

**Deputy Catherine Connolly:** Would any of the witnesses have the numbers of people concerned? Professor Harvey said there were no winners or losers, ultimately, but there are certainly winners or losers in how they are being affected by the process on the ground.

**Ms Emma DeSouza:** I tried to secure numbers through freedom of information requests, but there is such a reluctance to release these figures and it has been very difficult to get them out. I personally know and work with maybe two dozen people who are affected by this situation and other families who have tried to go through the courts. It is going to be impossible to pinpoint it in terms of figures because every other week there seems to be someone else stating that they are now renouncing British citizenship, and I cannot get a hold of these figures from the Home Office. I do think that it affects more people than we realise, and with Brexit it will certainly affect many more. Really it should not be happening, full stop. If one person is suffering a rights infringement like this then we all lose.

**Professor Colin Harvey:** Regarding the winners and losers, it is a good point just to underline the sense in which the Good Friday Agreement obligations that we are talking about will benefit everyone who is affected. Sometimes that gets lost in the conversation around the agreement. Second, the Northern Ireland Human Rights Commission - I declare an interest in that I was on the commission at the time we submitted the advice to the British Government in 2008 - spotted a lot of this in 2008. What we noticed was that a lot of the core concepts in the agreement, particularly those around parity of esteem, mutual respect, and equality of treatment, were not reflected in domestic law. We proposed, as part of a comprehensive set of proposals

on human rights, a bill of rights that included those things. I think we feel that absence, and it is part of the wider implementation gap that needs to be addressed. It is also part of the reason I think we have the problems we do at the moment in the North.

**Deputy Catherine Connolly:** This took Ms DeSouza courage and persistence. This happened from 2012 onwards. Is that the key? There was legislation in 2012 on dual citizenship, was there not?

**Ms Emma DeSouza:** That is correct. Through the McCarthy judgement.

**Deputy Catherine Connolly:** This was in relation to the EEA. If a person had British citizenship, he or she did not have the rights under the EEA. Is that right? I am a little bit confused. I wish to clarify that. Was there not also a case against that, separate from McCarthy, questioning that legislation?

**Ms Una Boyd:** I am not aware of the case challenging it, but what happened after McCarthy was the court ruling allowed for dual British and EU nationals to be excluded from exercising EEA family reunion rights. This concerned a British person who acquired Irish citizenship through descent. As Emma touched on, there was no real factual connection and it did not really reflect on Northern Irish-born Irish citizens or the terms of the Good Friday Agreement. In their eagerness to prevent people bringing family to the UK through the EEA route, however, the Home Office took it and applied it across the board to anyone they would consider a British and EU dual national. This is when it began stating that everyone in NI was British automatically, therefore excluding them from exercising those rights.

**Deputy Catherine Connolly:** Those rights in particular, among a number of other rights, would allow family to come and settle with them.

**Ms Una Boyd:** Yes. It was mainly focused on the family reunion rights, such as the right of someone - an EU citizen - to bring a non-EU partner to live with them in the UK.

**Deputy Catherine Connolly:** I thank the witnesses.

**Professor Colin Harvey:** I wish to flag something for the committee to consider and to identify the theme. This is an example of where Good Friday Agreement rights come up against immigration law in the UK and the Home Office, and it should be noted who the casualties are when that happens. In the context of Brexit, I think we have to keep a close eye on that because it seems to be the outcome when Good Friday Agreement rights come up against the Home Office and immigration law and policy. That is something we need to be very mindful of in the time ahead, that the Good Friday Agreement is not the casualty of some other priorities of the British Government.

**Chairman:** I thank Professor Harvey for that footnote, and I thank Deputy Connolly. I call Senator Niall Ó Donnghaile.

**Senator Niall Ó Donnghaile:** I wish to thank our contributors this morning. There has been a broad range of fairly extensive legal questions, understandably given the legal complexities of this case and the challenge, so I will not rehearse all of those.

I wish to make a couple of observations. I suppose the core political component of this is that there should not be a dispute around this and that a dispute mechanism should not be sought, because of the nature of the agreement. For all of us, this may have been disputed

beforehand but ultimately it was agreed. The British Government were a co-guarantor and a co-signatory to the agreement, and the agreement is explicitly clear in terms of the right not just to identify but also to be accepted as Irish, as British, or as both.

The other challenge and the other consideration for us in the Oireachtas is how this stance by the British Government does not just run up very roughly against the Good Friday Agreement but also runs up against Article 2 of Bunreacht na hÉireann in terms of our rights to be part of the Irish nation. There is a consideration for us, and Deputy Breathnach makes a very valid suggestion in terms of that cross-party motion. There is one on the Seanad Order Paper, which the Deputy's colleagues and others have signed, so maybe it is something that both Houses can pursue in equal measure going forward.

I am also encouraged that the Tánaiste has finally agreed to meet Ms DeSouza later this month, with me and a number of colleagues from the North as well. One of the things that we could do, if it is in order, is to suggest that this committee write to the British Secretary of State seeking an update on the review, because my experience, along with our visitors' experience, is that it has been like trying to grab smoke. I am not suggesting that we will have any additional success in that regard, but it is worth actioning off the back of today's meeting.

The question I always like to ask, and it has sort of been covered already, is what we can do, what pressure we can bring to bear on the Irish Government. The Irish Government, to be fair to it, has said all of the right things in terms of upholding Ms DeSouza's rights, and that it considers her to be an Irish citizen, which is very good of it 21 years after the Good Friday Agreement. Nevertheless, it is important that that is said. Perhaps the witnesses could expand on what they have said to colleagues already on the challenges and the work for us both as members of this committee and as individual Members of the Oireachtas.

**Chairman:** The Senator has not asked a particular question.

**Senator Niall Ó Donnghaile:** Are there other avenues open to the Irish Government outside of the dispute mechanism that we know? Are there other avenues through existing institutions? Is there a concern in this in terms of how it impacts upon Bunreacht na hÉireann, and Article 2 thereof? What more could the Irish Government do? Professor Harvey referenced the referendum on voting rights, which it is hoped will be upcoming. However, while the Irish Government keeps telling us consistently that we are Irish citizens, there are no tangible actions in terms of enfranchising that citizenship. I am curious whether, within the confines of the Good Friday Agreement and the Constitution, there are tangible actions that the Irish Government could take in the here and now and over the short to medium term that would tangibly enfranchise those of us who are Irish citizens resident in the North beyond simply the holding of a passport?

**Ms Emma DeSouza:** I think that the absence of a dispute mechanism in the Good Friday Agreement does not undermine or minimise the strength, weight and power that the Irish Government does have when it comes to the agreement. It is a co-guarantor, and I think that what is needed now is for a realisation that the Irish Government does have that ability to take a stand in defence of this provision. We need more political pressure at this point, and there are a lot of negotiations happening right now around the withdrawal agreement and around Brexit. A lot of conversations are happening. I would personally like to see this start to creep its way onto those papers and onto those negotiations, and potentially have some sort of political weight put behind that as to finding a way to find a resolution in order to safeguard our rights. In terms of other avenues, maybe Professor Harvey would have something more on that than I do.

**Chairman:** Is there a page there you have not used yet, Professor Harvey?

**Professor Colin Harvey:** These are great comments and questions from members. What today is underlining is that Ireland made fundamental constitutional changes as a consequence of the agreement. The overriding concern at the moment is, for reasons that are about the peculiarity of the British constitutional legal system, the agreement has not found the home it needed to find within that system, and I think that needs to change. If that means changing domestic law to reflect these things more effectively, then that must be done.

I am going to underline something today speaking in a personal capacity. I found myself in the public sphere recently in relation to a range of interventions, some of which have not been entirely pleasant, and somebody commented to me about what would be the case if we had an executive in the North. It made me think about this evidence session today because that is an incredibly problematic narrative and it is suffocating political discourse on the island at the moment. The idea that the answer to all the problems in Northern Ireland rest in an executive and an assembly is fundamentally wrong. It is not true, and I think it is creating a dangerous narrative and expectations around any power-sharing administration that may return. The things that we are talking about today rest within the gift of both governments to show leadership - to show, not tell. This is a call today for both the British and Irish Governments to show, not tell. The implementation gaps that we are identifying today primarily rest with either or both governments. So in the spirit of showing and not just telling, it is about time both governments worked harder, as co-guarantors of that agreement, to take these forward and make them meaningful.

There are British-Irish negotiations ongoing around what is happening in terms of the power-sharing administration, but perhaps most significantly in the time ahead are the EU and UK negotiations, in which Ireland has a very significant voice. We have seen the interventions from the US this week as well. I am not somebody who overplays legal remedies, as important as they are. There are also political negotiations upcoming on which pressure must be brought to bear on the British Government to address the range of implementation gap - including in Emma's and Jake's case - that we have outlined today. The negotiations around the withdrawal agreement and protocol - as flawed and problematic as aspects of that are - did show there are ways to do this, so I think it is time for both governments really to step up in relation to the implementation gap that we have mentioned today.

**Chairman:** Ms Boyd, would you like to add anything?

**Ms Una Boyd:** Yes, I would just like to say that the engagement and the stance taken by the Irish Government, as Ms DeSouza said, was incredibly helpful and very strong, and we would like to see that continue and increase. We can see clearly in this Upper Tribunal decision, and in the Home Office arguments, the stance that the UK Government is taking, which is this idea that the citizenship provisions were never enacted because that was the clear intention of the drafters - that there was no need and the British Nationality Act has always been in compliance with the Good Friday Agreement. That is not even touching on the fact that UK policy and practice does not follow the Good Friday Agreement. It does not reflect that, but the Irish Government following the Good Friday Agreement made significant legislative change to enact the citizenship provisions and it would be good to see a strong stance coming from the Irish Government on what the intention of the provisions were, and coming back against that argument that it is inconceivable that this is what it intended. If this is the stance that the British Government is going to take, I would like to see a strong stance against that from the Irish Government, particularly in reflecting its own legislative actions, and perhaps on a smaller scale it would be good to see engagement with the Northern Ireland Human Rights Commission's report and

fresh calls for the Northern Ireland bill of rights. Those are really increasing, and it would be good to see the Irish Government engage meaningfully with that as well.

**Chairman:** Thank you Ms Boyd. Thank you, Senator Ó Donnghaile. Our final contributor here today, whom I am very happy to welcome, is Deputy Gerry Adams. It is his first appearance before the current Joint Committee on Justice and Equality. He is very welcome.

**Deputy Gerry Adams:** Gabhaim buíochas leis an gCathaoirleach agus táim an-sásta go bhfuilimid ag déanamh díospóireachta faoin obair thábhachtach seo. Fáiltím go mór roimh Emma, Colin agus Una. I just want to very quickly speak about the empirical experience. First of all, let us start from the premise that this is entirely malicious. I was one of the people who negotiated The Good Friday Agreement. I was always uncomfortable that we were negotiating rights issues. I always thought the best option was just to adopt best international practice. I always thought it would come down to governments which are notoriously reluctant to give legislative effect to people's rights, and also given the nature of the North. However we are where we are, and we got the Good Friday Agreement and it was a keystone agreement. There were huge difficulties trying to get the British Government to give proper legislative effect to the agreement. For example, we do not have a bill of rights, and it is not that the British Government do not know that, or that it has not been raised week in and week out for the last 21 years. Neither do we have a charter of rights, because the Irish Government was supposed to bring in a charter of rights, and there was to be an all-Ireland charter of rights.

In this institution, the Good Friday Agreement falls victim to partisan politics, all the time. It is only when one gets this sort of in-depth discussion of some of the issues involved that one can almost see people here starting to come to an understanding of what this is about. Bunreacht na hÉireann was changed, but the other side of that was that the Irish Government as of right, as opposed to having an aspirational symbolic - and in my opinion meaningless - constitutional claim to the North, was to have an involvement in all of these matters. The onus therefore, I believe, is on the Irish Government, if one starts from my premise that this is entirely malicious. Why do I say that? It is because the British Government will always act in what it perceives to be its own interests. If there is some immigration issue, or some other issue that the Home Office has responsibility for, that will take precedence and priority, and the people on the island of Ireland, or the northern part of the island, will fall victim to that. They will be a secondary consideration. The onus is very clearly on the Irish Government to act in this issue. No matter how strong a statement there is from an Irish Government in these issues - and of course strong statements are very welcome - they are not read in Downing Street. They are not paid any attention to in the British Home Office. They are not listened to even though it is important that the Government sets out its position in robust and strong terms. The Government has to reach above itself. Notwithstanding all the difficulties, we saw how the diplomatic weight of the Government, with the support of the parties in this institution, could be used to secure the least worst Brexit so far. That approach also needs to be taken on this issue.

Time out of number, the Taoiseach has fudged a very important point. Paragraph 52 of the political declaration, which declared that people in the North with Irish citizenship would have European citizens' rights, is not in the withdrawal agreement. This provision was heralded as being bulletproof. I cannot remember the various terms used to describe it but it was supposedly armour-plated. It is not in the withdrawal agreement and, as such, we fell at the first hurdle when it came to the rights of people in the North. The Government needs to accept that and work honestly on that issue.

After that meander, I would like to return to Ms DeSouza's case. Every day, I and others

see that ordinary people have to become activists and experts and have to put themselves out to secure rights in a large number of areas. In that regard, Emma and Jake are to be commended on what they are doing. Who is funding their case? Working people have to go and raise funds by running raffles and ballots and holding fundraising events in local pubs. That should not be the case. I do not know if protocol allows it but back in the day an Irish Government took a case to the European Court of Human Rights on behalf of internees who had been tortured. There should be some exploration of the possibility of the Government using diplomatic and other avenues. It must also take responsibility. If the people of the North are not to be left behind again by an Irish Government, this is a *déan é ná habair é moment*. The Government should something about this by adopting this case. That in itself would put pressure on the British Government by showing that an Irish Government is prepared to support a legal case of this kind. The question, which is not directed at the witnesses but at the committee, is whether there can be some space to show very practical support to Ms DeSouza because if she loses, we all lose.

Obviously, Brexit brought this case to a head but as we meander our way through Brexit, unionists will lose because they will lose their right to claim British citizenship. Incidentally - I am going off on another tangent - there is no concept of British citizenship. We are British subjects, not citizens so there is no definition of that.

To come back to my main point, however, everybody loses if Emma and Jake lose. For this reason, I commend to the committee that it at least explore the possibility, among whatever other remedies it may have, of seeking practical support from the Government by having it adopt this case.

**Chairman:** Would the witnesses like to give their views on the points Deputy Adams has raised? Would Ms DeSouza like to reply?

**Ms Emma DeSouza:** Yes. I thank Deputy Adams very much. I certainly appreciate the points he made around practical assistance which, of course, would be very welcome. It is a very difficult case for me and my husband to pursue for such a long period without any financial assistance or support.

I also want to address the point the Deputy made about paragraph 52 of the political declaration. I agree that the fact that it did not make it into the withdrawal agreement is a failure. As a citizen, I do not understand why that happened. This ties into another point around citizens' rights. We know that it falls entirely within the remit of Ireland to extend MEP seats to the North. As a citizen, I do not understand why that option is not being pursued. In the Brexit negotiations, we are seeing a watering down of rights. The fact that, under the withdrawal agreement, Northern Ireland born Irish citizens cannot access the EU settlement scheme whereas all other Irish citizens can is almost a breach of the agreement before it has even come to pass. There are definitely big concerns to be raised about negotiating those rights.

**Chairman:** Would Professor Harvey like to address any of those points?

**Professor Colin Harvey:** I thank Deputy Adams for his questions, on which I will make a number of reflections. The Deputy will not get an argument from me on the British Government's track record on international agreements and human rights. There is a sense that international pressure is important and that internationalising some of these issues can have an enormous effect. What has been interesting about the Brexit discussions and the involvement of the United States and other parties is the way in which the British Government has been the

weaker party. I cannot remember another time in history where the British Government has been the weaker party in a negotiation where the Irish Government has been on the other side of the table. In the context of that sort of negotiation, it is vital that outcomes are maximised, particularly where people are talking about the Good Friday Agreement in all its parts. There is an imperative on the European Union, and the Irish State as an EU member state, to ensure that in the negotiations going forward the language of the Good Friday Agreement in all its parts means something. We are talking here about a right provided for in the Good Friday Agreement. Congress in the US has made itself clear in relation to any future free trade agreement and the commitments that would apply under the Good Friday Agreement. Again, this is a right under the agreement so the more international pressure that is brought to bear on the British Government, the better. It will not do so on its own but it can be encouraged to do the right thing in relation to the agreement. As has been said, the British Government does not have a wonderful track record in implementing a number of aspects of the agreement.

Regarding the paragraph 52 issue, we have discussed a range of human rights and equality issues today. I want to speak personally again. I am an Irish citizen living in the North and this has a direct effect on me. I underline the human rights of everyone in the North and on this island but there is a big problem in relation to the Good Friday Agreement that we have to state. Certain Irish citizens are second class citizens on this island by some distance. Irish citizens in the North who are now facing into Brexit will find themselves being second or third class European Union citizens as well. That is a fundamental problem. Now, 21 years on from the Good Friday Agreement, there is a stark problem with regard to parity of esteem, mutual respect and equality of treatment that specifically impacts upon Irish citizens in a broader context of a human rights implementation gap. We have to be able to say that out loud and it has to be addressed. It is one of the reasons, but not the only one, that the North is in the mess it is in.

Deputy Adams is absolutely right that remarkable and courageous civic leadership has been at the forefront of achieving change in relation to rights and equality. I can only commend Emma and Jake on taking this courageous stand. As I have made clear, they speak for many others in the work that they have done. The Deputy also rightly raised the issue of capacity. There comes a point in a range of civic conversations on this island, and on the question of civic leadership, where governmental resourcing and governmental level support and assistance are urgently required. The Government needs to move beyond reassurances and the welcome warm words about the Good Friday Agreement and match those with actual practical action to support the implementation of the agreement in all its parts.

**Chairman:** adfadf

**Ms Una Boyd:** I agree that it is very telling that in order to prevent Ms DeSouza having her husband live with her in the UK, the Home Office has taken this stance where it has dragged a family through the courts at the expense of the public purse, all to argue that it does not have to respect its obligations under the Good Friday Agreement. At the end of the day, this came down to an immigration matter. As was said, Brexit has really taken this beyond that. We are now seeing how this policy alone will cause huge issues. We have Northern Irish-born Irish citizens not able to access the EU settlement scheme, and there is no guarantee of how they will be able to legally enforce and protect their EU rights after Brexit. We have seen the massive flaws and gaps in the common travel area exposed through this. It has certainly gone beyond one family, and Ms DeSouza trying to have her husband live with her in the UK.

We are now in a position where the UK Government has made its stance very clear. We know some of what we are facing with Brexit, and we need to be able to act now to pre-empt

that, to protect those rights and to ensure that, going forward, no one ends up in a similar position.

**Chairman:** I thank Ms Boyd and Deputy Adams. Does Senator Devine wish to speak? She is very welcome to the Joint Committee on Justice and Equality.

We are at the end of our engagement with Emma, Professor Harvey, and Ms Boyd. There were a couple of proposals that we should certainly take up. One was correspondence with the British Secretary of State in the North regarding an update on the review. Are members happy that we would write as a committee to the British Secretary of State seeking an update on the review? Of course, we will share what information we receive, if any, with you all.

It strikes me that we are looking at a situation here where British taxpayers' money is being used to crush Irish citizens' rights - that is really where we are at. I refer to the point Deputy Adams made on the weight of this, not only in terms of taking on the case, but the additional factor of how all of this is financed. I would like to suggest that we write to our Tánaiste and Minister for Foreign Affairs and Trade to that say we fully support the efforts of the Government to pursue the matter, as it has demonstrated it is doing, but to explore what other avenues, if any, that it can employ in order to, significantly if possible, ratchet up the pressure. Added to that is a request for consideration in relation to the cost of Emma's case because it is not just about Emma and her husband. This is something that goes much farther and much deeper. Are we in agreement that as a committee we write to the Tánaiste and cover those issue?

I am not going to rehearse any of the points made, which have been excellent. I want to commend all the members, the non-members, and those who have attended and engaged here today. There is just one thing I want to say to Emma, and it sums up my personal position, and I think that of the whole committee. In our deliberations today, she has been awarded the stubborn badge, and nobody is more entitled to wear it proudly. Well done Emma and thank you very much on behalf of all of us.

On behalf of the Joint Committee on Justice and Equality, I wish to thank Ms Emma DeSouza, Professor Harvey and Ms Una Boyd. I am going to invite them to join us for a photograph to record their attendance this morning. I look forward to progress on the case and the opportunity of engaging again in the future.

I am going to suspend the session for a few minutes. We will resume in private session to address the report on direct provision. I appeal to members to please come back in once the photograph is taken.

*The joint committee suspended at 11.15 a.m. and resumed in private session at 11.22 a.m.*

The joint committee adjourned at 12.34 p.m. until 9 a.m. on Wednesday, 11 December 2019.