**Human Rights and Public Administration in Northern Ireland: Accountability, Transparency and Responsiveness**

*They constantly try to escape*

*From the darkness outside and within*

*By dreaming of systems so perfect that no one will need to be good.*

*From TS Eliot, Choruses from the Rock*

1. **Introduction**
   1. **Purpose of paper.** This paper is a short ‘think-piece’ on the accountability and transparency of Northern Ireland’s administrative culture with respect to human rights law, policy and practice. The purpose of the paper is to inform a forthcoming conference on how human rights organisations might work together to further the protection and promotion of human rights in Northern Ireland.
   2. **Methodology for paper.** In addition to desk-based research, information was gathered from the organisations on the conference organising committee and some others, on their experience of public administrators and human rights. A list of questions and organisations contacted is included in an appendix. However, this paper is not a research paper documenting and analysing organisational responses or views on administrative culture. Nor is it a research paper on forms of administrative accountability that technically exist, and how they might be reformed. Rather, the interviews with organisations have formed an important backdrop to ensuring that the ‘thought-piece’ is responsive to the particular experience of those organisations.
   3. **A framing of issues.** Based on comparative examples, the paper attempts to frame issues in their context, and set out – more to provoke discussion and response than to settle - some possible responses to challenges. The purpose of the paper is to frame and prompt further discussion and deliberation among these organisations as to how best to use concerted efforts to achieve change.
   4. **Need for more research.**  Even a cursory glance at the relevant literature on the civil service and public administration in Northern Ireland post-agreement and devolution, indicates that some of the difficulties encountered by human rights and equality organisations when engaging with the administrative culture in Northern Ireland, go beyond the human rights and equality context. They are rooted in the complex history of public administration in Northern Ireland, and the difficulties of implementing reform in a context in which devolution has been fragile and continues to be characterised by sectarian and political division. It is beyond the scope of this short think-piece to fully document and explain these connections, but it does acknowledge this context which deserves further consideration.
   5. **Structure of paper.** The paper begins by setting out in very outline form: who the ‘public administrators’ are (2); legal and political frameworks of accountability and transparency and responsiveness that govern public administrators (3); processes of reform and comparative examples (4); some of the experiences of human rights and equality organisations with regard to administrative culture in Northern Ireland (5) some thoughts as to the context (6) and challenges to change, and creative approaches for addressing them (7).
   6. **Core message.** The core message of the paper is that in Northern Ireland, the culture of public administration is complex, fragmented across different bodies, operating in a context of on-going political division, and with multiple reform processes, that have often been constrained by those same political divisions. This paper suggests that no-one problem leads to lack of implementation of human rights, and that this makes it difficult for human rights and equality organisations to address. Different problems each time lead to difficulties that require different forms of redress and a high level of lobbying skills. The central challenge of addressing administrative culture is that of addressing diverse problems across administrative organisations with very different jobs and accountability frameworks.
   7. However, the manifestation of similar problems across issues and organisations mean that human rights organisations experience failures to promote and protect human rights as a system-wide failure of ‘administrative culture’ that goes beyond particular institutions. It is important to understand the distinct reasons for failures (because these point to different ‘solutions’ for different contexts), *and* to understand the cumulative effect of those failures to be a lack of confidence in the accountability and responsiveness of administration as a whole. The central and difficult challenge for change is how to recognise and deal with the complexity of the problems without losing the ability to articulate the type of simple cross-system cultural change which needs to take place: basic human rights require to be addressed whatever the bureaucratic or political obstacles.
2. **Who are ‘public administrators’?**

* 1. The case studies raised by the NGOs, and indeed the range of organisations engaged with by the NIHRC in its civil service, indicates just how broad the notion of ‘public administrators’ is, and how many different types of public administrators exist. As Knox writes: Northern Ireland is administered by ‘a complex mosaic of government departments, agencies, local authorities, non-departmental public bodies (NDPBs) quangos, boards and trusts’, and was criticised by the Comptroller and Auditor General as ‘disastrously fragmented’ (Knox 212:119).
  2. ‘Administrators’ in different roles and different types of public body all operate slightly differently. They all have slightly different relationship to key human rights laws, such as the Human Rights Act 1998; are governed by different mechanisms of accountability; and have often had different processes of reform aimed at producing greater accountability, transparency, and accountability, emanating from quite different political impulses. Reform impulses include: that of the Belfast/Good Friday peace agreement (see for example reform of policing), attempts at introducing ‘efficiency’ or modernisation in Northern Ireland (see Review of Public Administration), or rolling out in Northern Ireland, of UK-wide reform processes happening independently of the peace process (see civil service reforms).
  3. Collecting and documenting the different accountability frameworks for all public administration is itself an arduous research task, which would be well outside the scope of this paper (although the main ones are listed indicatively below to illustrate the point). This itself is a challenge for human rights and equality organisations seeking change. Where they encounter a ‘block’ to implementing law or policy on human rights and equality, the reasons for the block may differ depending on the issue, the public body involved, the minister and political party with primary responsibility for a department or agency at any one point in time, the individual public administrator’s sense of what the institutional imperatives for him or her are (and here the individual may be caught between competing imperatives and expected to reconcile and even prioritise them). The problem of implementation within the institution may already have been the subject of reform processes that have had transparency, accountability and responsiveness to the public, as their stated goal, and have even produced new mechanisms.
  4. This means that the experience from the NGO end is one of dealing with a particular ‘mentality’ of lack of transparency and accountability of public administrators that seems to permeate and persist across organisations and issues, despite attempts to address it. In contrast, the public administrator’s experience can be one of being caught in multiple complex systems of transparency and accountability, which become difficult to implement coherently, and sometimes point in different possible directions for the administrator concerned with ‘being a good employee’. This paper suggests that it might be useful to consider that both of these perceptions may be true at once, and understand how together they speak to the deep problem of administrative culture. This problem is: the fragmentation of the implementation of law and policy across institutions that are in states of almost perpetual reform and change. This means that problems arise at different levels and for different reasons each time, but are all caught up in a culture of bureaucracy which generates more and more reforms, all translated into further bureaucratic responses which cumulatively lead to less accountability rather than more.

1. **What types of framework of accountability, transparency and responsiveness govern public administrators?** 
   1. A clear framework for accountability and transparency of civil servants exists within the UK and each of its devolved regions. Each of the devolved regions has different relationships between devolved and central civil service, and has taken different approaches to reform of public administration and public services, and also to reform of the civil service. Beyond that, all public bodies are under certain legal duties, and other organisations such as police, have their own accountability and transparency frameworks.
   2. In Northern Ireland, the Northern Ireland Act 1998 and the Human Rights Act 1998 provides a clear legal framework for human rights and equality, which includes:

* devolved legislature and government compliance with the European Convention on Human Rights (ECHR)
* devolved legislature and government compliance with EU law
* a statutory equality duty, and a requirement that all public bodies undertaken equality impact assessments (Section 75 and schedule 9 of the Northern Ireland Act 1998)
* that public bodies have regard for good relations (section 75, NI Act 1998)
* that all public bodies comply with the Human Rights Act (and through it the rights in the ECHR)
* that the UK state (including through its devolved governments and public administrators, such as in in Northern Ireland) abide by the international human rights commitments of the United Kingdom
* the Northern Ireland Human Rights Commission to monitor implementation of human rights in law, policy and practice
* the Equality Commission Northern Ireland, to monitor implementation of equality in law, policy and practice
* the Commissioner for Children and Young People
  1. Particular public administrators with core human rights functions, such as the police have their own legislative accountability framework, providing for mechanisms of transparency and accountability, which have been produced by specialist reform processes. Other mechanisms of accountability for some aspects of public administration exist, or govern particular issues, such as the Northern Irish Ombudsman, or the Prisons Ombudsperson or the Commissioner for Victims and Survivors.
  2. In addition to these formal legal requirements to protect and promote human rights, a number of other accountability and transparency processes have taken place. These include:
     1. Constitutional accountability in the form of collective and individual ministerial accountability. This is the idea that ministers are responsible for legislation and policy. Collective accountability demands the ministers remain collectively accountable for the law and policy of the government, even when they disagree with it personally. Individual responsibility means that each individual minister is responsible for the good implementation of law and policy within their portfolio, and can be called to account by Parliament and in extreme cases by the public and media, when they fail to implement policies properly. The civil service is constitutionally understood to be politically impartial and independent of government and also the work of central government departments, agencies, and non-departmental government bodies. The civil service provides services directly to people all over the country, including: paying benefits and pensions; running employment services; running prisons; issuing driving licenses. It also has staff working on policy development and implementation, including analysts, project managers, lawyers and economists. The civil service does not include government ministers (who are politically appointed), members of the British Armed Forces, the police, officers of local government, or NDPBs of the Houses of Parliament, or employees of the National health Service (NHS). Civil servants are accountably directly to the Ministers for whom they work and to the public. They are governed by principles of:

Integrity – putting the obligations of public service above personal interests

Honesty – being truthful and open

Objectivity – basing advice and decisions on rigorous analysis of the evidence

Impartiality – acting solely according to the merits of the case and serving governments of different political parties equally well

* + 1. Other standards and frameworks have come to supplement the constitutional principle of civil servant accountability to Ministers, and to expand the concept of accountability to include an element of ‘responsiveness’ whereby policy can be fashioned in partnership with the public / third sector, or forms of direct accountability to the public established. Some of these are set out below:
       1. **Civil Service Codes**. The civil service principles set out above have been elaborated in a Civil Service Code (see (see <http://www.civilservice.gov.uk/wp-content/uploads/2011/09/civil-service-code-2010.pdf>)) which governs civil servants in Whitehall but also devolved civil servants in Scotland and Wales, and those from the Home Civil Service who operate reserved policy with respect to Northern Ireland (there are all technically part of one civil service). Each of the devolved regions has its own version of the Civil Service Code. Northern Ireland’s civil service (which is the only one which is organisationally distinct) works to these same principles, and has devised a very detailed Code of Ethics which is not easily accessible from its central homepage (It appears to be online as a human resources document here: : <http://www.dfpni.gov.uk/6.01-standards-of-conduct.pdf>). This detailed code of practice contains a lot of technical detail relating to the above standards, much of which is focused on areas of particular concern in Northern Ireland (for example: when civil servants can make political statements or join political organisations etc). In contrast to the UK Code, the Northern Irish Code says little about how the overarching principles for how the relationship to public accountability is to be conceived.
       2. **Civil Service Commissioners**. Since 1999 Northern Ireland has had ‘Civil Service Commissioners’ whose role is to bring a level of independence to civil servant appointments.
       3. **Parliamentary or Assembly statutory and non-statutory ‘committees’.** These are committees which enable the Assembly and Parliament, to scrutinise legislation and hold inquiries, and they can interact with the public in various ways, including responding to petition and taking evidence. They therefore operate as a vehicle for ensuring that law, policy and practice is responsive to the community, and for ensuring implementation of policies committed to by Ministers and legislative obligations.
       4. **Compacts with the third sector.** The idea that civil servants and ministers should not only be accountable to Parliament and the Assembly, but directly to the public, who as far as possible should be engaged in process of policy-making and delivery, has gained ground. Since 1997, processes of ‘compacts’ between the government and third sector organisations have taken place across the UK, instigated originally by the then Labour Government. These were paralleled in Northern Ireland. Most recently the Department of Social Development published a ‘Concordat between the Community and Voluntary Sector and the Northern Ireland Government’ (available at: <http://www.dsdni.gov.uk/consultation-concordat-for-relationships-between-govt-vc-sector.pdf> ) which aimed to provide a framework for partnership and engagement, and was jointly signed by cross party Ministers and members of the community and voluntary sector.

* + 1. **Human resource ‘competency’ frameworks.** Civil service human resource processes have also attempted to create frameworks for implementing transparency, accountability and responsiveness. A very detailed Northern Ireland Civil Service Competency Framework (available at <https://irecruit-ext.hrconnect.nigov.net/resources/documents/n/i/c/nics-cf.pdf>) provides for managing decisions effectively, but also includes competencies in ‘engaging people’ as core to civil service roles.

1. **What types of reform processes are underway, and what type of comparative experience can be drawn on.** 
   1. **Reform Processes.** In addition to these mechanisms, a number of reform processes have taken place and have an on-going dimension. Again, these reform processes are complex, often on-going, and happen in different institutions in different ways, as the following examples illustrate. Key reform processes have drawn on comparative examples – often drawn from commonwealth countries.
   2. The UK-wide Coalition government set out in its 2010 Coalition Programme for Government, that it would embark on civil service reform with little detail (see https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/78977/coalition\_programme\_for\_government.pdf. )
   3. In 2012 the Government produced a Civil Service Reform plan, which covered not just the civil service, but non-departmental public bodies. This plan had a chapter on accountability. (Chapter 3: Implementing Policy and Sharpening Accountability). It focused primarily on Whitehall scrutiny processes for Ministers and Departments to make sure that policies were being appropriately implemented, rather than talking about a concept of direct accountability or ‘responsiveness’ to the public.
   4. As part of the Civil service Reform plan, the Cabinet Office commissioned the Institute on Public Policy Research, to look into civil service reform and the practice of other countries. A major report examined:
   5. The appointment process for senior officials
   6. The level support to Ministers to enable them to perform their roles effectively
   7. Internal accountability arrangements for civil servants
   8. External accountability arrangements for civil servants.

This report drew on experience from commonwealth countries to recommend – changes to the appointments process of civil servants (see <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207237/Accountability_and_Responsiveness_in_the_SCS.pdf>) . These examples had less relevance in Northern Ireland due to the existence of the ‘Civil Service Commissioners’ with a role to appoint civil servants (although there have been problems with this role). The paper addressed internal accountability through a recommendation to strengthen the role of the Head of the Civil Service. External accountability was addressed through providing for better accountability to parliament. Interestingly, there were no recommendations relating to direct public accountability to the public – indicating that the historical concept of political accountability still has strong hold.

* 1. **Dealing with the difficulties of coalitions.** Also of note, from a comparative perspective, is that in the UK and Scotland where coalition governments have recently taken place, comparative thinking and attempts to address the particular difficulties of civil servants in a coalition context have taken place (see for example: Institute of Governance Reports at <http://www.futureukandscotland.ac.uk/> ). Interestingly, there is little evidence of either research or internal arbitration agreements in Northern Ireland, where one might assume the problems of ‘involuntary’ coalitions produced as a result of power-sharing arrangements, might be more difficult (and where the experience of human rights and equality organisations indicate that it is).
  2. **Global Initiatives.** The UK has also signed up in a high profile way, to a global Open Partnership for Government Initiative, chairing its 2013 Global Summit .(see <https://www.gov.uk/government/topical-events/open-government-partnership-summit-2013>) . This initiative commits governments to ‘Improving the transparency and accountability of government and its services’ (see <http://www.opengovpartnership.org/>). This initiative indicates how global some of the issues faced in Northern Ireland are. However, the UK response so far while encouraging in the fact that it has been made, is disappointing in showing a very ‘target’ oriented approach to public services, in which the commitments to the initiatives largely appear to repeat existing government targets and timetables for public services such as the NHS, rather than trying to cut to the heart of a what an approach to open government might look like in a more visionary and participative sense. There appear to be some nascent attempts to understand the implications of UK commitments for Northern Ireland.
     1. **Northern Ireland**
     2. **Review of Public Administration.** A Review of Public Administration has been underway in Northern Ireland for many years (see <http://www.northernireland.gov.uk/index/work-of-the-executive/review-of-public-administration-short-version.htm> ). While it did not include civil service reform as such, it did concern other key elements of the administration, for example, councils, education boards, and health care trusts. In a process that became quite technocratic and aimed at structures of delivery, rather than the principles underlying change, it nonetheless provided for new bodies to perform accountability and responsiveness functions, in areas such as health and education.
     3. **Civil service reform.** Northern Ireland ‘Fit for Purpose’ reform appears to have been Northern Ireland’s attempt to articulate civil service reform in some sort of parallel to on-going reform processes in the UK (see most recent report at <http://www.niauditoffice.gov.uk/shared_services_for_efficiency.pdf> ). This process appears also to have generated an ICT reform process, and also to be related to the establishment of policy and innovation unit. This was an attempt by the civil service to ensure training and ‘lessons learned’ and dissemination of good practice across civil service departments.
     4. **Human rights training.** The Northern Ireland Human Rights Commission has undertaken human rights training of civil servants which is currently being extended to other public administrators. This training has currently trained over 300 senior staff level civil servants, including those responsible for policy and legislative development. This training has included coverage of international legal obligations and the ways in which they are reflected in domestic legal obligations, while a second course has been developed for those who have lead responsibility for developing policy, which includes consideration of how human rights approaches can improve both the process of policy-making and policy outcomes. The third aspect of the training has been a web portal which will be available to civil servants as an online resource. (See further below).

1. **Experience of administrative culture relating to human rights and equality** 
   1. **Good practice.** Human rights and equality organisations have had experiences of accountability and transparency relating to the implementation of human rights commitments. These cannot be fully documented here, but include:
      1. Instances where equality impact assessments were very well done, and showed a real commitment to inclusion and implementation of the spirit of the law, and an openness to dialogue with affected groups, with a resultant beneficial impact on the ability of policies to respond to the needs of vulnerable and marginalised groups. The Equality Coalition, for example, reported the ways in which strong equality impact assessments had promoted a careful thinking through of the impact on a range of affected groups, of re-locating the Department of Agriculture and Development, in ways that stood to mitigate any negative impact on staff from section 75 groups.
      2. Instances where challenges to equality impact assessments opened up dialogue with public administrators, and access to their statistics and decision-making in ways that informed future community engagement with decision-making. Organisations dealing with housing issues in North Belfast, had experienced initial resistance to giving statistical information, but under pressure had seen it give way to a more helpful transparency of the statistical impact of housing policy on different religious groups, although change in policy has proved more difficult.
      3. There were also several examples, where organisations were included on the development of broad strategies affecting their constituents. Age NI, for example, had participated actively with OFMDFM officials on the development of an Active Ageing Strategy, and were part of the Advisory Group for the strategy. They invested considerable time and effort in giving advice, with some evidence of influencing references to ‘positive aging’. Similarly, Disability Action had had a staff member working in OFMDFM, on a new Disability Strategy, and a Physical and Sensory Disability Strategy. Practice and Participation in Rights, which supports marginalised groups to address local concerns through a rights framework, had found that these groups had been able to influence key policies affecting them. For example, arising from work on mental health, the group had campaigned for a ‘card before you leave’ system whereby people leaving hospital after treatment, would be given an appointment card for their next appointment, something that evidence suggests is important to reducing the risks for people upon discharge. This policy had been accepted by the Minister and launched. This can be viewed somewhat positively as evidence of engagement, although as we will see below, there were often serious issues for Disability Action and Age NI with (a) the government producing a completed strategy, (b) the lack of ‘partnership’ of vehicles for joint deliberation (c) a lack of implementation mechanisms and a failure of a joint or partnership approach with relation to implementation. PPR found it very difficult to get transparency, accountability and responsiveness on how the card before you leave scheme was implemented.
      4. The Northern Ireland Human Rights Commission (NIHRC) reported very positively on their experience of designing and delivering human rights training for civil servants, in partnership with the civil service. They had focused the training on attempting to address human rights not just as principled commitments but as necessary to good policy-making and risk management. They had also encountered strong ministerial buy-in to the process of human rights training. In their view, the training had shown strong good will to human rights respecting policy and implementation, and that there was strong support for integration of human rights into decision-making both from ministerial level, to top-level civil service management down through the ranks. Not only had they not experienced a culture or mentality that was negative to human rights, in fact they had experienced enthusiasm and an increasing number of different types of public administrator were now coming to them to explore training of this sort. From their experience, they had found it useful to design training aware of the civil servant perspective. From this perspective, the civil servant’s job is to undertake the action the government has asked them to do, and then to mitigate risk and protect their minister. Integrating human rights approaches as integral to good business and part of mitigating risk, was for the Commission a key way to have them sympathetically received and positively influence future policy and practice relating to human rights.
   2. **Challenges**
      1. Research undertaken for this paper and the experience of human rights and equality organisations also indicates that while there are examples of good practice, problems persist with human rights advocacy and public administration. These problems stand to frustrate good government as articulated in the different frameworks and policies for public administration, but can also undermine the implementation of core human rights commitments of the Belfast/Good Friday Agreement. The first set of problems (paras 5.2.2 – 5.2.4) relate to problems with the framework, and the second set (paras 5.2.5-5.2.8) to problems with the experience of implementation.
      2. **Accountability, transparency and responsiveness remain illusory.** While the rhetoric of transparency, accountability and responsiveness is ubiquitous throughout public administration, and mechanisms, and reform processes to ensure these have proliferated, often new mechanisms have made it harder rather than easier to track change: it remains very difficult for individuals or organisations to call public servants to account. First, it is difficult for lay people to find and understand the multiple and constantly changing accountability frameworks. Second, the approach to developing frameworks in Northern Ireland has been very technocratic, meaning that they often appear more as human resource tools, than as principles to which the public can relate. While this detail may be useful as a human resource tool, it is not helpful to highlighting key goals, actions and ethos that the public could expect to call public administrators account with reference to. For example, the Civil Service Code of Ethics focuses on details of civil servant behaviour and reads almost like a contract of employment, in contrast to the relatively simple ‘card’ of the values-driven statement at the UK level.
      3. **Reform processes have become bureaucratic exercises rather than vehicles of change.** They have taken place without articulating any grand vision of what is to be achieved, meaning that their substance is often conceived of as primarily technocratic.The Review of Public Administration, for example, despite wider rhetoric, became very focused on structures of bureaucracy and how to reform institutions and structures. It stands in quite striking contrast to the Christie Commission in Scotland which reviewed public services in that jurisdiction (http://www.scotland.gov.uk/About/Review/publicservicescommission). The Scottish document concentrates on setting out a clear future vision for public services as rooted in four key objectives, namely that:

* public services are built around people and communities, their needs, aspirations, capacities and skills, and work to build up their autonomy and reliance
* public service organisations work together effectively to achieve outcomes
* public service organisations prioritise prevention, reducing inequalities and promoting equality
* all public services constantly seek to improve performance and reduce costs, and are open, transparent and accountable

In contrast the current NI Review of Public Administration website (http://www.northernireland.gov.uk/index/work-of-the-executive/review-of-public-administration-short-version.htm), contains documents that claim to pull the fruits of the RPA together. However, these documents provide primarily sets of agreements as to how civil servants will be treated fairly in any rationalisation process. It is difficult to find any clear statement of what the review’s end goal for responsive public services is. Without a clear vision of what public services should look like and how they should relate to the community, discrete strategies such as aging or disability are not grounded in any overarching vision (and any sense of cross-cutting dimensions may be lost).

* + 1. **International obligations are not always fully upheld and devolution is used by the UK state to obscure its responsibility.** For example, the UK response to housing rights saw the UK government rather than NI government ministers respond to international human rights mechanisms, but the UK government then defend denial of the right by suggesting that the responsibility for non-implementation lay with devolved government.
    2. **Implementation of policies.** Here a number of problems appear to be common experiences across organisations.
    3. **Equality strategies difficult to achieve.** First, key equality strategies have taken a long time to produce, and when drafts are produced they often lack any clear approach to implementation, lacking proposed outcomes, budget, targets, meaningful monitoring arrangements, indicators and provision of baseline data.
    4. **Lack of commitment to implementation mechanisms.** Second, the experience of groups is that such tentative vehicles for accountability between human rights and equality organisations and public administrators, as exist often disintegrate and break-down when implementation mechanisms are pushed. The community representatives who had pushed for the card-before-you leave scheme, had had to push very hard for representation on the body charged with implementation, tried to establish ‘indicators of participation’ with little success, and found requests to provide a written record of meetings, against which progress could be tracked, to be strongly resisted. Ultimately the Health and Social Care Board who had established the Implementation Board, disbanded it following Belfast Trust unwillingness to continue to allow the meetings to be recorded, a measure put in place to facilitate the groups participation, with the agreement that recordings were to be used for no other purpose. In other words, attempts to track implementation and hold public administrators and ministers to account against their policy commitment were frustrated. In practice, a scheme that was not politically controversial, and that was a result of responsiveness to the needs of a vulnerable group, and had full support of the minister was left with no way of tracking crucial implementation issues.
    5. **Secrecy as a default position.** Across many different areas of public administration, many organisations reported that when they press to understand why decisions have been made, or why policies are not implemented, they experience often a culture of secrecy and denial of information as a ‘default position’.Often information has to be given upon freedom of information request rather than given freely. The CAJ, for example, has often engaged in freedom of information requests and challenges, to get information on matters crucial to understanding if rights are being appropriately protected by administrators. It may be that lack of transparency provides cover for problematic behaviour such as a clash between a minister and civil servants which has a political dimension, or a bureaucratic incapacity to implement a policy. However, often secrecy appears to be a ‘default position’ when faced with human rights advocacy on controversial issues. This author, for example, encountered all requests for information from the Attorney General of Northern Ireland to be treated formally as Freedom of Information Requests, and a Freedom of Information Act exception being used for an Attorney-General for Northern Ireland letter submitted to the European Court of Human Rights on an Austrian case on adoption by gay couples, that are technically in the public domain (and that the UK foreign office and the Court itself released immediately and willingly). Other organisations cited similar resistance to recording minutes of meetings (see above) or legal proceedings, and the need to use freedom of information requests and sometimes to seek to enforce these through appeals, to get information.
    6. **Complexity and ineffectiveness of the systems for confronting system failure.** In each case of difficulty, there are mechanisms to continue to pursue accountability and transparency, such as freedom of information requests, and these often generate results producing information that in the past would have been impossible to get. There is a Compact promising partnership, although neither NGOs, nor government appear to view it as a valuable or regular tool for engagement. These frameworks and mechanisms require a high level of persistence with multiple complex machineries, skill and experience of lobbying, sometimes legal skills and financial resources to take cases. This approach is beyond the reach of most ordinary people, and most certainly the types of vulnerable groups who are most at need of public services for basic requirements of human dignity.

1. **The Context Framing the Problems**
   1. On paper and in principle, Northern Ireland has copious models of accountability and transparency for civil servants and similar public servants, with a number of overlapping reform processes under-way at devolved and UK level. Yet, as the on-going nature of reform speaks to, a number of issues relating to accountability, transparency and responsiveness persist across the UK and within Northern Ireland.
   2. Problems understood as such and targeted for reform in the UK concern (a) the relationships of accountability between civil servants and their ministers (b) direct relationships of accountability between civil public administrators and ‘the public’, in terms of responsive and accountable public services, (c) relationships between devolved and central civil servants (which everywhere but Northern Ireland technically form part of a unified civil service), (d) appointments of civil servants and use of special advisors. These are all issues which processes of modernisation in governance have brought to the fore, and which appear to be addressed almost on an on-going basis across the UK (and indeed globally), including in its devolved regions.
   3. These same issues are important in Northern Ireland. However, public administration has a particular context in Northern Ireland which exacerbates the UK-wide difficulties of having responsive and transparent public administration which is fully capable of abiding by human rights frameworks. The ‘peculiarities’ of the Northern Irish context include: (a) the legacy of the conflict on the role and shape of public administration, and (b) the unique current situation (within the UK), of an ‘enforced’ coalition, provided by the mechanism of power-sharing which operates in Northern Ireland.
   4. A historically different political context for civil servants and public administrators to politicians and civil society, during the years of the conflict, has left its imprint on the three-way relationships between civil society, public administrators, and politicians. These relationships have also changed over time and continue to change. Politicians regaining power, on occasion were reluctant to see civil society as legitimate partners in government, although this has changed over time. Civil society actors who were involved in forms of service delivery, have seen that role change over time in response to peace process funding, then devolution of power, and now austerity. As a result, their relationship to advocacy roles has also often changed over time, and required to be differently navigated at different times. Civil servants have had to move between devolution and direct rule and back again. Other public bodies have seen their own primary accountability change from central UK government to devolved government, or to new arm’s length mechanisms. Northern Irish civil servants, unlike those in Scotland and Wales, are not part of ‘home rule civil service’ with a different line of accountability, but rather are part of a different civil service.
   5. The current political situation is also one that is markedly different from that in the rest of the UK, in ways which the traditional modes of accountability and reform process do not always adequately respond to. The power-sharing government means that ministries operate somewhat as independent fiefdoms. There is little ‘joined up policy-making’ across departments. From a public administration point of view, reforms which took place in Scottish and Welsh devolved contexts to make sure that civil servant groupings were not divided up between ministries, but enabled cross-cutting governmental priorities to emerge, did not take place in Northern Ireland.
   6. Moreover, the peace process left key human rights issues either not dealt with, or not implemented, notably with relation to provision of the bill of rights, language rights, and dealing with the past. In this context, certain human rights issues remain ‘controversial’, with clear gaps in the domestic legal framework, which mean that policy and practice are left more malleable and susceptible to political roll-back.
   7. It can be difficult to tell whether the lack of implementation reflects the lack of will of ministers, politicians, special advisors, and civil servants or other public administrators. Often a veil of secrecy means that it is difficult for human rights advocates to even find out about where the block lies, much less untangle and navigate a failure to implement human rights or equality commitments. While there are human rights and equality commissions, the experience of some organisations was that significant energy was expended in also pushing them to tackle issues perceived as ‘politically controversial’.
   8. The different examples of challenges indicate that there are likely to be quite different reasons for policy failures in designing and implementing policy to protect and promote rights. In particular there seem to be different dynamics at play in trying to implement human rights obligations that are understood as ‘politically controversial’ in Northern Ireland, and trying to implement strategies for inclusion of particular groups or needs with respect to equality strategies and public services (although sometimes these come together).
      1. **Difficulties with human rights issues perceived as politically ‘controversial’.** Where human rights touch on issues which implicate political divisions in Northern Ireland, such as Irish language rights, dealing with the past, the equality duty and housing, or moral issues, then ensuring protection and promotion of human rights and equality is often particularly difficult. While the reason for blocks to implementation and information can only be speculated on, where a judicial review or freedom of information request is being resisted it is likely that the opposition to the request lies not with public administrators, but at a more senior policy level, including with relevant ministers. Some of the case studies indicated that often what is be experienced as a failure of administrative culture is in fact being driven by political opposition to a particular course of action at the Ministerial level. For example, some of the difficulties encountered by CAJ with relation to pushing for bilingual signage by the tourist board, were revealed by freedom of information requests information (themselves initially resisted and redacted) to be instigated at Ministerial level with initial communications going from the Special Advisor to the Northern Ireland Tourist Board (NITB), and later ones from other officials. Here NITB personnel appeared caught between implementing international and national legal language and equality standards, and a ‘direction’ of unclear status and authority made apparently on behalf of a Minister. Similarly, but in a different context, the failure to produce adequate guidelines on termination of pregnancy, appears to have less to do with administrative incompetence, lack of will or ‘mind-set’, and more to do with the outright political and moral opposition of political parties and Ministers. Some organisations have also felt that watch-dog human rights and equality bodies, are now also reluctant to deal robustly with what they perceive to be ‘controversial’ issues politically.
      2. In some of these instances, recourse to secrecy may be linked to political concerns that courses of action are not compliant with human rights standards (domestic or international). So, the CAJ NITB example indicated a complex situation for the Tourist Board Senior staff, whereby a policy out of line with international legal obligations of the UK was being pushed apparently by the minister, but with an extra level of complication that initial communications were made, not by departmental civil servants, but by the Minister’s special advisor. Some of the correspondence between the NITB Board and the Minister appears to indicate that the status of the Ministerial ‘advice’ or ‘direction’ is unclear. This all just appears to be bad practice of government, aside from the underlying language rights issue at stake. However, the underlying reason for both the ‘bad practice’ and the resistance to bringing policy in line with human rights standards is likely to be related to political opposition to any change in policy by the Minister. Where a Minister’s wishes are at odds with lawful action, civil servants are genuinely in a difficult situation caught between two different types of accountability: while they must always act lawfully and comply with their own Human Rights Act obligations, they also as a matter of constitutional law owe loyalty to the Minister.
      3. **Difficulties with human rights and equality and public services.** In some of the examples, failures to properly design implementation strategies for inclusion may similarly be linked to political resistance of Ministers. However, in some examples, these strategies have been publicly supported whole-heartedly by Ministers and politicians. Here failures of implementation would seem to be more likely a result of capacity and will to deliver, which may be due to any number of reasons: the complications of the bureaucracy in question, lazy, unwilling or unskilled employees somewhere in the system, lack of appropriate systems or resources in place for delivering the policy in question, or lack of vision for what implementation will require in terms of specific goals and timetables. Here again, a recourse to secrecy may be an instinct of public officials faced with a lack of capacity to implement, for whatever reason.
2. **Responding to the Challenges.** 
   1. **Accessible principles rather than more complicated bureaucracies of reform.** The existence of so many complex frame-works means that pushing for new frameworks and mechanisms of accountability, transparency and responsiveness appears unlikely to result in change. Past experience shows that it is possible to get these frameworks, and even a genuine commitment to operationalize them. However, system-wide problems of implementation still arise, and it is often at the level of understanding why implementation is difficult and not happening as planned, that organisations feel frozen out of the process of change. In the light of this conclusion, the following lines of thought are suggested to assist discussion and deliberation.
   2. **A collective articulation of human rights and equality organisation needs for change, and demands of public administration – perhaps going beyond human rights and equality constituencies as part of a wider conversation about public service.** A simple but important starting point for human rights and equality organisations might be to acknowledge that ‘implementation’ is a critical difficulty of human rights and equality policy, and the major challenge everywhere. In the absence of simple articulations of the role of public services and concepts of accountability, human rights and equality NGOS might usefully set out broad principles, drawing on existing ones throughout the UK. The approach of the conference in focusing particular attention on this issue and drawing together experiences of the issues is one which should continue to be built on. This is a global, national and local problem, the subject of intense research, deliberation and on-going reform at each of these levels. Opportunities may therefore exist for creating a wider coalition for change in administrative culture. It is quite striking to look at how many societies and global initiatives focus on issues to transparency and accountability, and how many reform processes are in place. The cutting-edge nature of work in Northern Ireland should be acknowledged as more complicated than a question of a bad ‘mind-set’ or an ‘administrative culture’. The difficulties are in part a product of fast-moving change and the complicated bureaucratic business of modern governance. It might be useful for groups to consider further whether the Open Partnership for Government process or other processes might offer some sort of international context for addressing these problems, and whether there are specific resources available for understanding the particular difficulties of human rights advocacy.
   3. **A Joint Articulation of Principles/Expectations of Partnership in Strategy Formation.** It might also be useful for human rights organisations to set out a joint articulation of what ‘partnership’ in human rights and equality issues means that could form the basis for engaging with public administrators. In collecting case studies, it is also clear that for organisations themselves, careful thinking about the relationship between ‘partnership’ and ‘advocacy’ needs to take place on an on-going basis and this is perhaps something that could be usefully deliberated and discussed across different organisational experiences. Public administrators, too when engaging in ‘partnership’ need to know when and how partners move from ‘joint deliberation’ to a more oppositional ‘advocacy’, if their confidence is to be built towards moving away from instincts of secrecy.
   4. **Establishing a clearer framework of legality for difficult human rights and equality issues.** Human rights issues that connect with political division and the ‘unfinished business’ of peace process commitments to human rights and equality, such as language rights, a range of civil and political rights, and rights relating to the legacy of conflict, need to operate within a clear framework of legality. There are many instances where this framework slips or appears insufficiently precise to compel action, or call people to account. The following matters would appear critical to keep pressing on:

- the Bill of Rights, or a clearly ‘negotiated’ rights framework which commits all departments to international legal standards in Northern Ireland. Given the difficulty of achieving this, it could be useful to think in terms of a proposal for an ‘interim bill of rights’ which would target those areas ‘peculiar to Northern Ireland’ that they are almost impossible to get agreement on politically, and work to establish programmatic rights which would require programmes of legislation on issues such as language rights, and the legacy of the past, within clearly established parameters and timetables

- a better worked out relationship between international and devolved governments, as regards reporting and responding to deficits in how the UK is complying with international human rights standards in devolved regions

- some sort of framework of legality and arbitration for issues where Ministers and others in power are reluctant to comply with international human rights obligations. These arbitration mechanisms have been put in place for other ‘coalition’ governments and civil servants, although not all are public. Some form of independent legal advice is necessary within the system, and the role of the departmental solicitor in Northern Ireland is a complicated one, in that it can end up advising different Ministers differently, or both being a recourse of legal advice on human rights obligations, and defending departments against accusations that they have not complied with human rights obligations. It might be useful for human rights and equality organisations to push for a more public transparency of how questions of departmental dispute and legality are dealt with

- Strategies, Oaths and ‘Action Plans’. As part of the push for a more overarching concept of accountability, transparency and responsiveness, consideration could be given to whether there needs to be some sort of overall National Action Plan on Human Rights and Equality, which would help drive particular strategies around race, sexual orientation, age, disability, gender, etc. The Scottish Human Rights Commission conducted a review of human rights law, policy and practice in Scotland, and concluded that many of the required laws and policies were in place, but that implementation was the key problem. It has now set out a Scottish National Action Plan, and seeks to engage with government on an on-going basis. This plan has operated to pull many of the key issues around both civil and political rights and socio-economic rights together, and has been the subject of wide consultation with civil society, vulnerable groups, and the Scottish government. The way in which this plan is translated into a set of partnership activities with government, civil society and organisations such as the police can be seen here <http://www.scottishhumanrights.com/actionplan/betterlives>. The Scottish Human Rights Consortium (an umbrella group) approach has been to consult and campaign for an ‘oath’ for public servants which would include a commitment to promote and protect human rights on a daily basis’ (which would supplement their Human Rights Act Duties) (see http://www.scottishhumanrights.com/actionplan/betterlives). While this would operate only symbolically, interestingly it was resisted by (sympathetic) officials and trade unions, on the basis that some organisations were so lacking in a human rights culture that individuals working within them would not be able to uphold such an oath, even if personally committed to it. Northern Ireland now has numerous ‘Action Plans’ or ‘Strategies’: on equality, on disability, on sex trafficking. However, there is no real sense of how these fit with programmes of government, or with any overarching vision for human rights, equality and delivery of public services. The patterning of human rights and equality NGOs, and some of their strategies in a sense mirrors this ‘fragmented approach’ (although coalitions exist). Sometimes the need for specialist strategies, means that people respond to separate accountability frameworks and action plans, with new legislative frameworks even for particular conditions, such as ‘autism’. This can mean that groups are caught up in the fragmented approach which may not always be conducive to positive change or considering cross-cutting issues: how are disability priorities, to be balanced against age priorities, (and how are issues common to both groups to be actioned?), or how are those affected by one disease to be treated in comparison to another, and how are we as a society to define ‘need’. These cross-cutting issues do not seem served by a fragmented approach at either the public administrator or NGO end.

8. **Conclusion**

8.1 There is a need for some sort of more holistic sense of (a) how Northern Ireland is going to move forward to resolve ‘controversial’ issues that have clear human rights dimensions so that they can be dealt with in a way that complies with international human rights obligations (b) how it is going to protect and promote and realise equality rights through public services. There appears to be a systems-wide failure, often due to different reasons in different areas, in getting clear implementation of human rights commitments. The problems are very hard to address. The concluding message would be that: it is just hard. But also, that there are things which can be done.

8.2 In fact, it is a combination of ‘unfinished business’ and a ‘crises in public services’ which is undermining the peace process and collective government in Northern Ireland, but also affecting in particular disadvantaged individuals and communities in their capacity to live safely with a level of human dignity. Inserting some sort of ‘people’s demand’ and criteria into on-going talks processes, to addressing these issues might be also therefore be useful.

**Bibliography**

Acheson, A (2013) ‘Independence as a Principle of Voluntary Action: Developing a New Story About Who We Are: The Challenge for Voluntary Action in Northern Ireland’ (Belfast: Building Change Trust) available at http://www.buildingchangetrust.org/download/files/IndependenceNICVS.pdf

Acheson, Nicholas (2010) ‘[Welfare State Reform, compacts and restructuring relations between the state and the voluntary sector: reflections on Northern Ireland experience](http://eprints.ulster.ac.uk/14700)’ Voluntary Sector Review, Vo1 (2) pp 175-192

Acheson A & C Milofsky (2008), ‘Peace building and Participation in Northern Ireland: Local Social Movements and the Policy Process since the ‘Good Friday’ Agreement, Ethnopolitics vol 7(1) pp 63-80

Birrell, D (2012) *Comparing Devolved Governance,* (Basingstoke: Palgrave Macmillan), Chapter 6, ‘The Civil Service and Central Administrations’

Birrell, D (2008) ‘The final outcomes of the review of public administration in Northern Ireland. Tensions and compatibility with devolution, parity and modernisation.’ Public Administration, Vol 86(3) pp 779-83

Institute for Public Policy Research (2013), Accountability and Responsiveness in the Civil Service: Lessons from Overseas, (London: Cabinet Office) available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207237/Accountability_and_Responsiveness_in_the_SCS.pdf>

Knox, C (2010), ‘Devolution and the Governance of Northern Ireland (Manchester: Manchester University Press)

Knox, C (2012), ‘The Reform of Public Administration in Northern Ireland: A Squandered Opportunity?’ Administration Vol 60(1) pp 117-138

Marshall, C, K Ward and N Browne, (2014) ‘Re-imagining rights-based accountability: community use of economic and social rights’, The Irish Community Development Law Journal Vol 3 (1) pp 65-81

Northern Ireland Civil Service Competency Framework (available at <https://irecruit-ext.hrconnect.nigov.net/resources/documents/n/i/c/nics-cf.pdf>)

Review of Public Administration, (2006) Better Government for Northern Ireland: Final Decisions of Review of Public Administration, available at http://cain.ulst.ac.uk/issues/policy/publicadmin/rpani210306.pdf

Spence R. ‘The Review of Public Administration in Northern Ireland’ institute of Governance, Public Policy andd Social Research Briefing Paper No. 4. (December 2002) available at http://qub.ac.uk/schools/SchoolofLaw/Research/InstituteofGovernance/Publications/briefingpapers/Filetoupload,47660,en.pdf

**Administrative Culture and Human Rights**

**Questions for response from organisations:**

Do you or your organisation have evidence of an ‘administrative culture’ among civil servants and public bodies in Northern Ireland which lacks accountability, transparency and responsiveness? If so, can you offer examples or case studies?

Have you encountered good practice in accountability, transparency and responsiveness of civil servants and public bodies in Northern Ireland? If so, can you provide examples or case studies?

Are you aware of the Concordat between the Community and Voluntary Sector and the Northern Ireland Government?

If so, have you or your organisation ever sought to rely on it in dealings with government, or otherwise seen it make a difference?

Finally, have you any comments to add on what might usefully be changed with regard to the current administrative culture, to help promote human rights based in human dignity?

**Organisations contacted:** Email questions and/or phone interviews were conducted with Age NI, the Committee on the Administration of Justice, Disability Action Northern Ireland, the Equality Coalition, the Human Rights Consortium and the Northern Ireland Human Rights Commission. The Northern Ireland Council for Ethnic Minorities and the Children’s Law Centre were also contacted, but were not able to respond in the timescale.