**The Practice of Participation and the new Dispensation in Northern Ireland**

**Introduction**

Politics is, of course, a Greek concept and essentially concerns how societies are governed in accordance with the wishes of citizens. In a democratic society - where everyone over the age of 18 has the right to choose their politicians in a free and secret ballot - it is puzzling that the theme of a “disconnect” between politics and people should be so widespread. This “them and us” narrative is pervasive in Western democracies - a sense that the system and those that run it no longer care or listen to the concerns of ordinary citizens. Northern Ireland is no exception. It has endured its own versions of political disconnect - the many years of direct rule by politicians who did not stand for election in this part of the United Kingdom and the violent conflict which raged over the very existence of the state.

However the Belfast/Good Friday Agreement (the “Agreement”) and subsequent versions of devolved government were supposed to address this problem by giving everyone a say in government. Few other parts of the world operate mandatory coalition governments where parties are allocated ministerial power on the basis of their relative strength. As a system, it could hardly be more inclusive. There is no opposition because everyone is included. Yet disenchantment with this system has grown. The mutual vetoes that dictate progress, or the lack of it, at Stormont have contributed to a sense of a parliament detached from the wishes and desires of its people and pandering to party interests in order to gain tactical advantage over political opponents. The fact that coalition government is mandated and not voluntary has, at times, served to underline the lack of consensus at the heart of the political process within Northern Ireland. Horse-trading rather than agreed compromise is the modus operandi with brittle relationships leaving little room for trust or goodwill.

There is also clearly a feeling that the new regime of devolution ushered in with the DUP/Sinn Fein deal of 2007 has prioritized the primacy of elected power over all else and that the aspects of civic engagement which formed a key part of the Agreement, have been marginalised. The Civic Forum was dismissed as an expensive talking shop that did little to support the political process and has been largely forgotten. The Stormont Committees, to be fair, have expressed willingness to receive input from individuals and groups however there remains a suspicion that despite all the talking, there is little listening being done. Similarly, there is a question within civil society about whether the significant amount of time and money invested in responding to public consultation documents over recent years has been worth the effort and whether public consultation has simply become a somewhat perfunctory box-ticking exercise.

At the same time, it is important to remember that engagement with civil society is a vital part of any democracy and a necessary component if we are to avoid what Lord Hailsham famously described as an “elective dictatorship”. Politicians need not find consensus on every policy area, but the wider the engagement with civil society, the more credible the political process becomes. This is particularly the case with the current political arrangements in Northern Ireland that crucially do not provide a mechanism for a formal party political opposition to the government. In this context of course, the role of the courts as a check on potential abuses of power by either the legislature or the executive becomes more important. Again however, there is also a frustration that to date, the courts have been unwilling, or unable to provide a satisfactory role with respect to holding politicians and public officials to account.

The purpose of this paper is to consider both the politics and the law of consultation in order to establish what lessons might be drawn at this stage of the political process. Some 16 years after the Agreement, the aim here is to seek to provide some thoughts as to how civil society might gain an enhanced role with respect to holding politicians to account and gaining an influence in decision making. This paper will consider three key consultations that took place since the signing of the Agreement in 1998 in order to establish what broad lessons might be learned from these processes. Of the three examples chosen, one, the Patten Commission on policing, might be seen to have been reasonably successful with what it set out to do, while the other two, the Maze/Long Kesh and Eames/Bradley remain deadlocked. This will be followed by an overview of how courts in the UK have in effect established a “law of consultation”, illustrating, from a range of judgments, what standards public bodies are required to adhere to in order to deliver a lawful consultation exercise. This will be followed by an outline of some broad conclusions and recommendations for the way forward.

**Participation in Practice – The case of the Patten Commission on Policing**

Policing was too difficult a task for politicians to sort during the Good Friday negotiations, so a separate process was agreed to examine the issue in its entirety and make recommendations designed to achieve consensus. Even before the birth of the Provisional IRA and the conflict of the later part of the 20th century, “normal” policing within Northern Ireland was often usurped by the requirement to deal with insurgent elements and the need to uphold a contested state. Historically, the RUC was predominantly Protestant and Unionist and this pattern became even more pronounced during the decades of conflict. During the conflict over 300 members of the RUC lost their lives, and the force was drawn into conflict with the wider nationalist population through the policing of civil unrest and controversial tactics including “shoot to kill”.

Despite all the sacrifice and hard work of many dedicated officers who performed their roles impartially, a narrative developed that the RUC was a force “for” unionists and “against” nationalists while even the terminology emphasised the primacy of its security role - it was most often referred to as a “force” rather than a “service” and its offices were in “barracks” rather than “stations”. Even if elements within the police were ready and open to change, many unionist politicians were more nervous. To them, the RUC was the institution that had held the line during bloody years of conflict and it deserved recognition rather than reform. To nationalists, however, a new beginning for society required a new type of policing with fundamental reform including - but not limited to - a new name, new symbols and new systems of accountability.

Meanwhile the Good Friday Agreement had been endorsed by more than 70% of the population in a referendum. This gave a big mandate for the change process, but the divisions within unionism meant that even many who had supported the Agreement remained skeptical, at best, about the need for large-scale police reform. Nationalists and republicans too remained split with the SDLP strongly backing the process of reform and Sinn Fein more wary of endorsing a process that might imply a more fundamental commitment to some form of “British Rule”.

It was against this background and in this context that the Independent Commission on Policing for Northern Ireland was tasked with the job of creating this “new beginning”. The eight-member commission, led by the former senior Conservative politician Chris Patten, set about its task with serious intent and focus. Its members carried the necessary expertise of politics, government, policing, law and corporate governance. In an unprecedented number of public and private meetings with interested individuals and organisations, the Commission gathered evidence and then sifted the responses constantly testing them against its key goal of creating a new police service that would be the best possible and command the widest possible support. Interviewees who engaged with the Patten Commission paint a picture of being taken seriously. Because they respected the process, the people involved, and the purpose at hand, they felt their contributions were worthwhile and would make a difference.

At the time Dawn Purvis was a leading member of the Progressive Unionist Party and the lead person on policing within the PUP was former ex-prisoner and former member of the Red Hand Commando, William Smith. She recalls that they decided it was important to do some “internal” consultation of their own before engaging with Patten.

“We in the PUP recognised the breadth of expertise but before we engaged with Patten we engaged with our own community…We spent a considerable amount of time taking our own evidence and developing our own understanding of what people wanted.”

This included speaking to the police directly to get a sense of where the RUC saw the process going:

“William Smith called a series of meetings, we went out and met people. We listened to people about their concerns. We spoke to the police independently - we held a meeting with the Superintendents Association at the Argyle Centre.”

It soon became apparent to the PUP, through this engagement, that despite the negative political commentary from some unionist quarters, many within loyalism and the force itself were ready for change and wanted confident representations made to the Patten Commission on their behalf.

“We wanted to find out if this idea of “losing, losing, losing” that you heard reported and repeated by some politicians was what people actually felt. There wasn’t much focus from them on what we stood to gain. It was important that our constituency got to hear all of that potential as well. We wanted to see change. We wanted more community policing. Ironically, perhaps, a lot of the concerns we heard were very similar to what was being picked up in nationalist and republican areas.”

This tactic of pre-consultation: engaging first with your own community to develop a coherent message was also being practiced elsewhere - among nationalists and in the police itself. One nationalist politician said it was important to sell the benefits of engagement to a population that had been directed to disengage for so long.

“We had boycotted the policing board and kept contact with the RUC to fairly minimal, or simply confrontational, terms for decades. Now we were telling people that they should speak up for change and secure the kind of policing that they wanted. There was a lot of skepticism, but the mood was optimistic and people soon warmed to the idea. They had faith in the process and they could see that Patten was going about things in a fresh and open-minded way.”

For senior RUC officer Peter Sheridan, change was inevitable and most of his colleagues could see that too.

“Most thinking people, there was always going to be a uncertainty as to what it would mean at the end, but most of us realised that things were not ever going to be the same. You don’t embark on something like this thinking that things won’t change.”

Sheridan was impressed with how the Commission was willing to engage directly, where necessary, and how efficiently it went about that process.

“Even within the police itself they spent a considerable effort, broke themselves up into groups and spent a lot of time going round and taking views from people and gathering evidence and understanding.”

At the same time, the Patten Commission itself conducted an unprecedented number of open public meetings, a brave exercise in participation considering the contested views about policing within communities across Northern Ireland. Peter Sheridan reflects that

“It’s a process that stands out in my mind as the one that did consult and genuinely consult without a pre-ordained result. I don’t think anybody can say in terms of Patten that they weren’t consulted or didn’t have the opportunity to be consulted. All those town hall events that they did when they went round and took views, I haven’t seen anything of a similar nature happening since.”

For Dawn Purvis, the combination of targeted private meetings combined with the town hall events gave great credibility to the process.

“We went to a number of meetings with the Commission including some of the public meetings. We were very much getting ourselves and the people that we represented to feel part of the change, that they had a say in what was happening and could see their fingerprints on what was recommended. …And by holding many meetings in public it allowed our people to feel included while also giving us the right forum to put forward our position.”

A republican community worker who attended meetings also reflected on the positive effect:

“There was a lot of nervousness about speaking out, but it was also cathartic. We knew what we were against, we saw that these people wanted to listen, and slowly we began to articulate what we were for.”

For Dawn Purvis and the PUP, the experience of Patten was more effective because of the soundings that they had done themselves within loyalism. It was almost as if the very credible nature of the Patten process required serious engagement from others - everyone had to raise their game.

“We felt that Patten was a serious attempt to make positive change and that we were listened to and we felt that our position and engagement with the Commission was stronger and better received because of the groundwork that we had done - our own process of engagement. Patten was robust because it had the right mix of people on it - not just international experts but people who understood the communities on the ground.”

The mix of expertise was also a factor in persuading others that the process of engagement would be worthwhile. According to one republican source:

“We didn’t trust the Brits. We didn’t like Guards either. But there were international experts on the panel that we couldn’t really argue with. If we imagined what non-political policing should be, these guys were the sort of cops we saw.”

This expertise, combined with a clear aim of improving policing and a process that couldn’t be faulted laid the ground for change. Again, according to Peter Sheridan:

“They were never going to be able to satisfy everybody and I think they decided among themselves to rise above the ordinary tug and pull of politics here. Inevitably for some people changing the name, changing the uniform was never going to be acceptable but they took the bigger view. I remember being at a number of their sessions where they started off saying “Do we agree that we want to create the best policing service ever?” - and who can disagree with that? I think they genuinely took account of what people said and then balanced that with what they thought would work knowing that it was always going to be seen by some people as losing. That’s almost inevitable when you’re moving from the status quo.”

Clearly, another key factor in Patten’s apparent success was it’s resourcing – i.e. it had the funds needed to conduct the exhaustive consultation process, and it knew the funds would be available to implement its recommendations - including an oversight commissioner to ensure progress. All of this lent weight to the consultation process and ensured that those taking part in the engagement were aware that this was a most serious endeavour that was designed to succeed.

In the aftermath of the Patten proposals, political controversy remained. Unionists fought change and denounced key measures in public and in House of Commons debates. Republicans remained detached from the process, giving no early commitments that they would support a reformed police service. But somehow the Patten Commission did its job. Characterised by the most widespread and deep consultation on any key issue in the history of Northern Ireland, it was a process that by most objective measures succeeded. Radical changes were implemented - a new name, new uniform, new symbols, new structures, 50/50 recruitment with swift and generous redundancy for the old guard. Policing in Northern Ireland may not be the best in the world, but for the first time in the history of the state it enjoys the support of the widest possible number in society.

**The Consultative Group on The Past - Eames Bradley**

The Consultative Group on the Past - otherwise known as Eames Bradley after its co-chairs - was set up in June 2007 by the then Secretary of State Peter Hain. Consult is the word that defines this group, both in its title and in its defining mission to

“consult across the community on how Northern Ireland society can best approach the legacy of the events of the past 40 years”.

Once again, this initiative was begun at a time of great hope. The political process had been in cold storage of varying degrees since suspension of the institutions in late 2002 but a remarkable deal had just been struck between the DUP and Sinn Fein that brought them into government as the leading parties of the new Executive. Decommissioning was done, the IRA was gone, Sinn Fein was signed up to policing - and a major drive was on to sort issues that might cause the new political arrangements to sour. Stormont took charge of one such issue - parading - while the Northern Ireland Office decided to press ahead with a plan to confront that most difficult of subjects - the past. Difficult though it was, with goodwill on all sides it was felt that a genuine attempt to find a process that would contain and resolve these painful issues of the past had a realistic chance of success, given the remarkable new dispensation at Stormont. Yet, even at the outset there remained some nagging doubts, summed up by one nationalist politician:

“The DUP and Sinn Fein had agreed to share the spoils of power, but there was still little agreement on a shared vision of the future - never mind a shared narrative of what had happened in the past. We were concerned that the NIO wanted a quick fix on these issues because it would have been convenient. But there was no way a quick fix would work. It just wasn’t an option.”

Indeed it soon became clear to the Group that its expected timeframe of operation was optimistic and it extended its work by six months beyond its original reporting date. The Group then embarked on a widespread consultation process - 141 individuals or groups were met in private holding meetings across Northern Ireland, the Republic and Great Britain with hundreds attending those public gatherings. The group also took account of much of the good work and research already conducted in this field.

Those who engaged with the process respected the Group, its intentions and expertise. But the subject matter was difficult, more raw and contested than policing, and sometimes the format of engagement didn’t work. Dawn Purvis attended meetings both on behalf of the PUP but also in her capacity as a director of leading victims group Healing Through Remembering.

“The process was more closed than Patten, understandably so, but this perhaps impacted on the confidence that people had in the process. The meetings were often in private. They wanted to allow people the space to speak with anonymity and so people could give as much information as they wanted. That’s very important when you’re dealing with important issues like dealing with the past.”

She also felt that in this case, the open sessions were less successful:

“Public meetings can become platforms for those who shout the loudest. I spoke to a number of people, victims, who felt frightened and intimidated by some of the public events. Unfortunately you have to conclude that some of these issues don’t lend themselves to public forums. So it was very hard for the Group to find the balance between openness and effectiveness.”

This difficult balancing act was also apparent to Peter Sheridan:

“It’s very hard to do that sort of work in public. Sometimes it can be very beneficial to be open, but they are only debates and discussions and most of those groups don’t come to a final decision until they’ve heard the evidence. Yet sometimes when things are aired in public, people get the impression that this may be the view of the Group.”

For some, particularly those affected by republican violence, and those scarred by state violence, there was never any expectation of an outcome that would resolve their issues. One unionist victim said:

“I didn’t like my loved one being categorised with IRA murders. I know that makes me unpopular. But that’s how I feel.”

Republicans were also wary of an “NIO process” that they felt was designed to ensure there would be no further inquiries, and no answers given to questions of the state’s role in controversial killings. Most people however appeared to respect the individuals concerned and the process they conducted, even if they remained sceptical about the potential for an agreed outcome.

Time was also a factor given the range and scope of what was being considered. The “past” is a neat word, but a vast topic. Again, Dawn Purvis reflects that:

“The timescale was probably a problem too. They extended by months but could easily have gone on longer, and with hindsight, probably should have.”

Despite the difficulties and disagreements the Group did, in the end, reach a consensus that they believed offered the best way forward to dealing with the past. It was at this point, however, that their lengthy and diligent engagement came unstuck. One recommendation, among many in the report, was a one-off ex-gratia recognition payment to all nearest relatives of someone who died as a result of the conflict. This £12,000 proposed payment was designed to simply mark and recognise the hurt that families feel. However the proposal was leaked and was soon being reported in the media as a “blood money” offer that would compensate terrorists and innocent victims alike.

Before the report’s publication it had already been condemned in large measure by the DUP and Conservative Party at Westminster forcing the Secretary of State Shaun Woodward to begin distancing the Government from the report’s findings. This was followed by an official launch of the report where press, politicians and vociferous victims campaigners were mixed together in a rowdy, bitter and chaotic press conference. The story of the report became one of conflict rather than healing. This open approach and desire to engage widely now appeared naive and self-defeating. All the good work done, lost in a messy photo opportunity gone wrong. According to Peter Sheridan:

“I think the unfortunate part was at the very end the good detail of it was all lost on the back of a few headlines and maybe in terms of how the press conference itself played out on that day and then obviously the £12,000 compensation got the headlines.”

Dawn Purvis, who attended the launch, was dismayed and even wondered if there was an element of sabotage:

“My initial reaction at the public launch of the report when things descended into a shouting match was that somebody wanted this report rubbished. When the leak came out days earlier about the payment to all victims I began to think that this Group had been set up to fail. The people on the Group were independent and serious. They knew the difficulties and they had different views, but they worked hard to reach a consensus - which they did - and produce a report. But I fear that darker forces wanted it buried.”

Purvis wonders in hindsight whether a different, less public, tactic might have saved the report.

“They should have cancelled the public launch whenever the payment issue was selectively leaked. Unfortunately it meant that people were at each other’s throats by the time of the launch. The Group should have briefed different groups privately. They would have felt respected even if they disagreed with some of the recommendations. They could have then held a public airing at a later time.”

Sheridan felt however that a more open approach to the payment issue - earlier in the process - might have helped draw the sting out of it. Rather than it emerge late in the day, leaked to the press ahead of the launch. When the report was considered at Westminster however, it also became clear that MPs had concerns about funding the recommended solutions. Here another key distinction with Patten is apparent. With Patten, money was not an issue but with Eames Bradley it clearly was and arguments began to emerge about whether solutions to the past should be funded by Westminster or Stormont creating a public impression of unseemly squabbling in light of the historic importance of what was proposed.

The verdict on Eames Bradley therefore would seem to be not that the Group didn’t consult widely or conduct a serious and rigorous process, but more that some aspects of the subject matter were so incendiary that more careful management of the messaging was required. Further, the political context though kind on the surface was, in fact, much more treacherous than the broad and united supported offered to Patten.

In particular, the treatment of the key authors of the report - Robin Eames and Denis Bradley - is viewed as unfair in light of their commitment both in terms of the time and energy that they invested in the process. One source, who is someone who might otherwise be an excellent candidate for working on such a process in the future, said it proved the need to “keep out of politics”. There is clearly a view that these individuals had devoted time, energy and their reputations to an honest and thorough process of civil engagement only to be badly let down by politicians and the political process. Eames Bradley therefore is not just a reminder of the difficulty in dealing with the past, it is a warning to those who might be tempted to offer their services in other public consultation processes that they might have to expect little reward and much cost for taking part. In addition, there is also of course the impact that the whole process had on those relatives who endured reliving the personal trauma of the loss of a loved one, only to discover that their contribution was in vain.

**The Maze/Long Kesh Regeneration Project**

The site of the former Maze Prison/Long Kesh site was gifted to the Northern Ireland Executive as a prize of the peace process designed to generate economic benefit for the region. The political complications centred however around republican reverence for the H Block and hospital wing of the prison in which hunger strikers died. The practical complications centred around the vastness of the area combined with limited access roads - good for a prison, but not ideal for an economic hub. The initial desire of most unionists was to raze the entire site and develop in its entirety; however Sinn Fein was determined to preserve the heritage aspects of the prison with the Sinn Fein stance boosted by the listing of key parts of the complex by the direct rule administration.

It soon became clear that a political compromise was on offer - limited retention of key parts of the prison and maximum development of the remainder of the site. The economic benefit would be a big boost in a largely unionist area while the museum would allow republicans to visit the site connected with a key part in their history. Unionists, however, remained nervous about the possibility of a “republican shrine” on the site and sought various ways to overcome this problem. Proposals for a “Conflict Resolution Centre” were developed and eventually received a promise of £18 million in European funding. The intention was that the centre would have developed – through collaboration with the local universities - an expertise in dealing with internationally relevant conflict issues.

Perhaps unsurprisingly, the prospects for regenerating the site gave arise to another consultation process, although engagement with stakeholders in this case was much less structured and open than either Patten or Eames Bradley. One participant spelled this out:

“We all wanted the site developed, but the unionists were particularly sensitive over the Maze issue. It seemed like the Conflict Resolution Centre was the perfect solution - hard to argue with that. But it remained a problem for some unionists that public money was being used to develop this site which republicans held dear. We had to conduct meetings in private and try and keep as many people on board. I suppose that made the process appear secretive - in many ways it was.”

Dawn Purvis was involved in the process initially as a PUP politician and later in her capacity as a director of Healing Through Remembering. She recalls that:

“The Maze Long Kesh process was long and drawn out. Initially in the PUP we suggested that the whole site be razed and used for economic development. When it became clear that they wanted to keep part of the prison and move ahead on that basis, we decided we needed to be involved.”

During this period many groups were invited to offer their input, and indeed, for a while it appeared that the “Maze Long Kesh” project was like a giant magnet attracting a whole range of interested parties.

“Because it was controlled at the centre, the project was seen as having maximum importance. Anything big that was possible was directed towards it - economic, political, academic - it was the potential solution to everything,” said one official.

A development corporation was formed to oversee the entire project. This involved hiring talent from the private sector. One business professional recalls being approached to consider an application for a board position.

“They thought I would be useful because of my particular expertise in business. I’ve served on public bodies before and - to be honest - I wasn’t dying to do another. However, I said I might be interested and would also like to be considered for a senior position - such as chair. I was told that I shouldn’t bother applying for that role.”

This businessperson was left with the impression that the top job was not open to them, which, if true, doesn’t say much about the openness or fairness of the appointments procedure. Others in the business community stated that they would “run a mile” from any involvement in the scheme because it was “far too political”. Ultimately, such doubts proved to be justified, when under growing pressure about the “republican shrine”, DUP First Minister Peter Robinson decided to withdraw support for the project. The consultation had been going for about a year, the development corporation was created, the first anchor tenant in the form of the Royal Ulster Agricultural Association had been secured, the European funding was on its way, but politically the First Minister judged it right to call a halt to everything. Dawn Purvis describes the impact of this decision:

“It came as a bit of shock to say the least whenever the First Minister dismissed the whole project with a letter. It was a massive disappointment and sent a very negative message to all the people, the victims groups and everyone in civic society who had engaged positively with that process over many years. There must have been thousands consulted and with the stroke of a pen it was all gone. It was a huge disappointment to people who engaged and a huge disappointment that our local parties seemed incapable of agreement.”

This process, being driven directly by local politicians, appeared to be most susceptible to the poison of local politics. Dawn Purvis contrasts the failings of the Maze Long Kesh project with the others considered above:

“If you look at the three processes - Patten, Consultative Group on the Past, Maze Long Kesh - the first two were set up by the British Government and both came to agreed solutions, even though the Consultative Group’s recommendations are gathering dust on a shelf somewhere. These were serious people engaged in serious work who brought all sections of society into the process. With Maze Long Kesh you got a sense too that people were ready to make this work, they were moving ahead of the politicians but the politicians reminded them that they have the ultimate power. What is this fear that some politicians have of civil society and engagement?”

For Peter Sheridan, the lessons of the three examples above is that there remains a need for a better process of civic engagement, but not another Civic Forum that could simply duplicate the work, and indeed problems that exist at Stormont. In his view, what is required is a more ad hoc arrangement on specific projects that sought and appreciated the best that civil society can offer.

“There is a disconnect between politics currently and civil society here. I would like to see civic engagement for selected pieces of work rather than an established forum that meets every month and almost has the danger of acting like a duplicate Executive which it shouldn’t do.”

In some ways the vision of people like Peter Sheridan - for a more effective process of civic engagement for selected pieces of work without the presence of a body like the civic forum - is not a million miles removed from the way in which the courts in the UK have approached this problem. Recent years have seen the development of a legal framework around public consultation that provides much to consider, and it is to that framework that we now turn.

**Consultation, Participation, and the Role of the Courts**

There are a number of sources, both domestic and international, that can be drawn upon to illustrate the various ways in which the law has sought to regulate the practice of consultation or participation in decision-making by prescribing both the circumstances where consultation ought to take place, and the particular form that public consultations should take. Significantly, a recent case from the UK Supreme Court has shown the extent to which the judiciary are prepared to go in relation to prescribing a formula for “fair and proper consultation”. This formula, which now has the imprimatur of the highest court in the UK, may well provide some comfort to those seeking to press for more meaningful engagement with the wider government decision-making process. This section will provide an overview of the general legal obligations regarding public participation in decision-making processes by public bodies and conclude by offering some suggestions about how these obligations might be taken forward as part of a wider strategy for promoting and protecting human rights.

**International Framework**

The broader international human rights framework contains a number of specific references to the need for state parties to guarantee rights to consultation or participation on behalf of certain specified groups. For example one of the general principles underlying the UN Convention on the Rights of Persons with Disabilities is to ensure the “full and effective participation and inclusion in society” of persons with disabilities. Article 29 of this Convention, which is entitled “participation in political and public life” requires that state parties shall undertake to promote actively an environment in which persons with disabilities can “effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others” and that state parties “encourage the participation of people with disabilities in public affairs generally”.

Similarly, Article 12 of the UN Convention of the Rights of the Child requires that state parties to the Convention shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. The UN Convention on the elimination of discrimination against women (CEDAW) also specifies the need for women to participate on equal terms with men in the political, social, economic and cultural life of their respective countries.

One of the difficulties with international human rights provisions generally however is the fact that they lack applicability in the domestic courts in the UK, and this is certainly a limiting factor with regard to the requirements regarding participation. Fortunately however, within the realm of domestic law a much more robust framework exists for ensuring the participation of those directly affected by decisions which directly affect them.

**Domestic Statutory Framework**

Within the context of the particular circumstances of Northern Ireland it is worth noting that the “Rights, Safeguards and Equality of Opportunity” section of the Belfast/Good Friday Agreement provided that:

*“…Public bodies would be required to draw up statutory schemes showing how they would … cover arrangements for policy appraisal, including an assessment of impact on relevant categories, public consultation, public access to information and services, monitoring and timetables”.*

This particular aspect of the Agreement was given effect to by legislation with Section 75 and Schedule 9 of the Northern Ireland Act 1998 (“Section 75” provisions) and subsequently by quite detailed guidance issued by the Equality Commission for Northern Ireland (ECNI). The general Section 75 duties give public authorities in Northern Ireland some degree of discretion as to the particular policies that they consider require a full Equality Impact Assessment (EQIA). However once an EQIA is carried out, the process by which consultation is to be conducted with those directly affected by the policy in question is quite prescriptive. Guidance from the ECNI for example requires that public authorities take specific measures such as providing information in alternative formats etc. in order to ensure effective consultation with those directly affected by the policy, and that the public authority in questions outlines alternative measures within the EQIA which may lessen adverse impacts, or better promote equality of opportunity for affected groups. There is also a general requirement as part of the EQIA process that the necessary information is provided to those directly affected by the relevant policy in order for them to engage effectively in the consultation process.

The Section 75 duties, while presenting quite a detailed framework for how public consultation ought to take place, are however merely one of a number of statutory obligations that require public authorities to engage in consultation with affected groups and individuals. Moreover, the range of ways in which legislation has specified that consultation should take place differs quite considerably. For example, in some cases legislation has required that only certain affected and prescribed groups should be consulted (e.g. the Police Act (Northern Ireland) 1970 required the Secretary of State to consult with the Police Association before making regulations concerning re-numeration). In other instances, the scope of the consultation is much wider with a general requirement that the decision-maker consult “persons appearing to be representative” of those to be affected. The Local Government (Best Value) Act (Northern Ireland) 2002 is one such example and requires that local councils consult representatives of persons liable to pay rates in respect of estates in the district of the council. Similarly, there are quite specific statutory requirements for consultation in order to process a planning application, and in the case of major developments, Article 31 of the Planning (NI) Order 1991 provides that the nature of the proposal or of issues raised by representations may require that the Planning Appeals Commission (PAC) hold a Public Local Inquiry in order to establish if the development may proceed.

**Common Law Consultation Duties**

Not infrequently however, the duty to consult is generated by the wider common law requirement upon public authorities to act “fairly”, linked to the doctrine of “legitimate expectation”. Lord Reed in a recent case in the UK Supreme Court involving a challenge to Haringey Council[[1]](#footnote-1) has pointed out that while the common law imposes a general duty of procedural fairness upon public authorities exercising a wide range of functions which affect the interests of individuals, the content of that duty varies “almost infinitely” depending on the circumstances and that there is no general common law duty to consult persons who may be affected by a measure before it is adopted. At the same time however, he went on to point out that a duty of consultation exists in circumstances where there is a “legitimate expectation” of such consultation, usually arising from an interest that is held to be sufficient to found such an expectation, or from some promise or practice of consultation. An example of such a duty arose in the case of *R v Devon County Council, ex parte Baker* where the court held that there was a legal duty to consult the residents of a care home for the elderly before deciding whether to close it. Stanley-Burnton J in *R (BAPIO Action Limited and Ors) v Secretary of State for the Home Department[[2]](#footnote-2)* held that:

“On any basis…a duty to consult, if not expressly or impliedly imposed by the legislation…must be based on special circumstances. One of those circumstances may be an established practice of prior consultation.”[[3]](#footnote-3)

Clearly therefore, the fact of whether or not there is a duty to consult in each individual case will depend upon the particular circumstances of that case, with a range of factors potentially giving arise to a “legitimate expectation” that consultation will take place – not least, that there has been prior consultation about the particular issue in question. Where the court finds that a legitimate expectation that consultation will take place has been established, then any decision that is arrived at without consultation will be unlawful, although it will be the task of the applicant to establish that no consultation took place.

**Fair and Proper Consultation**

Irrespective of how the duty to consult has been generated however, the same common law duty of procedural fairness will inform the manner in which the consultation should be conducted. Of relevance here are the comments from Auld LJ in the Court of Appeal in R *(Edwards) v Environment Agency[[4]](#footnote-4)* that

“It is an accepted general principle of administrative law that a public body undertaking consultation must do so fairly as required by the circumstances of the case.”[[5]](#footnote-5)

In other words, once consultation is embarked upon, it must be carried out properly.[[6]](#footnote-6) It is worth noting that the requirement that consultation be carried out fairly is connected to what the courts consider the wider purpose of consultation to be. Lord Wilson has pointed out that the requirement for fairness in consultation is liable to result in better decisions by ensuring that the decision-maker receives all relevant information and that the favoured option is properly tested. In addition, the court has pointed out that fair and proper consultation avoids the sense of injustice that the person who is the subject of the decision will otherwise feel and considers these to be “two valuable and practical consequences of fair consultation”.[[7]](#footnote-7)

**Manner of Fair Consultation**

Certainly the courts in the UK have provided some detail with regard to what form “proper” consultation ought to take. In *R v Brent London Borough Council, ex p Gunning* (1985) 84 LGR 168 Hodgson J quashed Brent Council’s decision to close two schools on the ground that the manner of its prior consultation, particularly with the parents, had been unlawful. In this case the court held that some basic requirements are essential if the consultation process is to have a sensible content. First, the court considers that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer or initiator of the consultation process must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third, that adequate time must be given for consideration and response to the proposals under consideration, and finally, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals. These four requirements were subsequently given endorsement by the Court of Appeal in the *Baker* case (see above), and in *R v North and East Devon Health Authority, ex parte Coughlan*[[8]](#footnote-8)*at* para. 108.

These four requirements for proper consultation were endorsed even more recently by the UK Supreme Court with Lord Wilson stating that “It is hard to see how any of the four suggested requirements could be rejected or indeed improved”, going on to say that these “core requirements” amounted to “a prescription for fairness”.[[9]](#footnote-9) In the Coughlan case, which concerned the closure of a home for people with disabilities, the Court of Appeal, in a judgment delivered by Lord Woolf MR, at para 112 elaborated further on the views expressed above finding that:

“It has to be remembered that consultation is not litigation: the consulting authority is not required to publicise every submission it receives or (absent some statutory obligation) to disclose all its advice. Its obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response. The obligation, although it may be quite onerous, goes no further than this.”

**Specificity and Deprivation of Benefit**

Two further points emerge from examination of case law in this area. First the degree of specificity with which, in fairness, the public authority should conduct its consultation exercise may be influenced by the identity of those whom it is consulting. Thus for example, the court considered that local authorities who were consulted about the government’s proposed designation of Stevenage as a “new town” (Fletcher v Minister of Town and Country Planning [1947] 2 All ER 496 at p 501) would be likely to be able to respond satisfactorily to a presentation of less specificity than would members of the public, particularly perhaps the economically disadvantaged. Second, in the words of Simon Brown LJ in the *Baker* case, at p 91, “the demands of fairness are likely to be somewhat higher when an authority contemplates depriving someone of an existing benefit or advantage than when the claimant is a bare applicant for a future benefit”.

**Presentation of Alternatives**

Another issue that the courts have ruled on relates to the need for public authorities conducting a consultation exercise to present those being consulted with a range of alternative options. Sometimes, particularly when statute does not limit the subject of the requisite consultation to the preferred option, fairness will require that interested persons be consulted not only upon the preferred option but also upon arguable yet discarded alternative options. For example, in R (Medway Council and others) v Secretary of State for Transport the court held that, in consulting about an increase in airport capacity in South East England, the government had acted unlawfully in consulting upon possible development only at Heathrow, Stansted and Thames estuary and not also at Gatwick; while R (Montpeliers and Trevors Association) v Westminster City Council, at para. 29 provided further authority on the need for alternative options to be presented as part of the consultation process.

Even when the subject of the requisite consultation is limited to the preferred option, fairness may nevertheless require passing reference to be made to arguable yet discarded options. In Nichol v Gateshead Metropolitan Borough Council (1988) 87 LGR 435 Gateshead, confronted by a falling birth rate and therefore an inability to sustain a viable sixth form in all its secondary schools, decided to set up sixth form colleges instead. In this case however local parents failed to establish that Gateshead’s prior consultation had been unlawful with the Court of Appeal holding that Gateshead had made clear what the other options were (see pp 455, 456 and 462).

In the Royal Brompton case, cited above, the defendant, an advisory body, was minded to advise that only two London hospitals should provide paediatric cardiac surgical services, namely Guys and Great Ormond Street. In the Court of Appeal the Royal Brompton Hospital failed to establish that the defendant’s exercise in consultation upon its prospective advice was unlawful. In its judgement, delivered by Arden LJ, the court, at para. 10, cited the Gateshead case as authority for the proposition that “a decision-maker may properly decide to present his preferred options in the consultation document, provided it is clear what the other options are”. The court in this case held that the defendant had made it clear to those consulted that they were at liberty to press the case for the Royal Brompton.

The issue of the need for alternative proposals to be presented to those being consulted arose again in the recent case involving Haringey Council with the UK Supreme Court affirmed the view of Pitchford LJ in the Court of Appeal that:

“consulting about a proposal does inevitably involve inviting and considering views about possible alternatives.”

It was on this point in fact that the Supreme Court held that the consultation on the Council Tax Reduction Scheme proposed by Haringey Council was unfair and therefore unlawful because the council had failed to outline the range of possible options that would have allowed the Council to absorb a reduction in finances from central government. Instead, Haringey had simply asked those consulted to give their views on how spending cuts should be absorbed by different groups, as opposed to presenting other options that were available to the Council such as raising Council Tax. The views expressed by Lord Wilson on this matter are worth considering:

“Those whom Haringey was primarily consulting were the most economically disadvantaged of its residents. Their income was already at a basic level and the effect of Haringey’s proposed scheme would be to reduce it even below that level and thus in all likelihood to cause real hardship, while sparing its more prosperous residents from making any contribution to the shortfall in government funding. Fairness demanded that in the consultation document brief reference should be made to other ways of absorbing the shortfall and to the reasons why…Haringey had concluded that they were unacceptable.”

Clearly, in the Haringey case, the Supreme Court were not ruling on the relative merits of the different options that were open to the Council, i.e. raising Council Tax or imposing the burden of reduced funding from central government on the poorest section of its residents - which are quintessentially political decisions. The Court did however find that the consultation was unfair and unlawful because the Council had not presented all the options that were available to it, and given reasons as to why they had sought to pursue the course of action which they did – namely, impose the burden on the poorest residents.

It is clear therefore that in order for a consultation to be fair, public authorities must provide a range of viable options to consultees, although they can, fairly, and lawfully, make clear which particular option they themselves prefer. However, in cases where there is an absence of viable and credible alternatives put forward, the courts may well consider the consultation to be unlawful.

**Remedies for Unfair Consultation**

In the Haringey case, the Supreme Court held back from ordering a re-consultation. Similarly, in the case of *R (Smith) v East Kent Hospital NHS Trust*[[10]](#footnote-10) where the hospital Trust had made recommendations to the Secretary of State for the reduction of services at a local hospital[[11]](#footnote-11) the consultation document had suggested four options but in the event the proposal selected had a number of elements in common with all of the options.[[12]](#footnote-12) Silber J stated that the concept of fairness should determine whether there was a need to re-consult if the decision-maker wished to accept a fresh proposal, but that the Court should not be too liberal in the use of the power of judicial review to compel further consultation on any change.[[13]](#footnote-13) He concluded:

“…there should only be re-consultation if there is a fundamental difference between the proposals consulted on and those which the consulting party subsequently wishes to adopt.”

There was held to be no fundamental difference in the *Smith* case. In *R (Greenpeace Limited) v Secretary of State for Trade and Industry[[14]](#footnote-14)* which involved a challenge to the decision to support nuclear new build as part of the United Kingdom’s future electricity generating mix[[15]](#footnote-15) there was found to be procedural unfairness, as the consultation document in that instance was “manifestly inadequate.”[[16]](#footnote-16) The problem in this case was that the consultation document contained no proposals as such and no information of any substance on the two issues of critical importance, namely the economics of new nuclear build and the disposal of nuclear waste.[[17]](#footnote-17) Sullivan J stated:

“In reality, a conclusion that a consultation exercise was unlawful in the grounds of unfairness will be based upon a finding by the court, not merely that something went wrong, but that something went ‘clearly and radically’ wrong.”[[18]](#footnote-18)

One important point of note however is that the courts may decline to grant a remedy where it is of the opinion, on the facts, that proper consultation would not have made any difference to the course of action that the applicants would have taken and that they had thereby suffered no significant unfairness. In Re National Union of Public Employees and Confederation of Health Service Employee’s Application [1988] NI 255 the court held that although the applicant unions had a legitimate expectation of consultation in respect of hospital closures and the reorganisation of certain general medical services, they would not have addressed themselves to the merits or demerits of the proposals, even if they had been furnished with fuller financial and staffing information. It is also worth noting that a court will not accede to arguments about procedural impropriety where the applicant did not respond to a genuine invitation to offer an opinion: “Were it otherwise organisations with a right to be consulted could, in effect, veto the making of any decision by simply failing to respond to the invitation.”[[19]](#footnote-19)

One case worth noting in Northern Ireland[[20]](#footnote-20) in which the courts chose to provide for the ultimate sanction for unfair consultation related to a challenge to the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006 by the *Christian Institute and others*[[21]](#footnote-21) who argued that the consultation on the regulations carried out by OFMDFM had been flawed. The Court in that case held that there had indeed been an absence of proper consultation ruling that the consultation document was drawn in a manner that pointed to the issue of “harassment on the grounds of sexual orientation being addressed by other means”, and that the Regulations relating to harassment subsequently introduced were “fundamentally different from the scheme of the consultation paper”.[[22]](#footnote-22) The Court concluded that:

“It was unfair to the consultees who agreed with the proposed deferral of harassment to induce them not to address their objections to the respondent and then to introduce harassment provisions.”[[23]](#footnote-23)

In other words, the court in effect found the consultation to be unfair because those being consulted had been misled by the language of the consultation document into thinking that one particular aspect of the legislation was not being considered, only for it to appear in the final regulations that were issued by OFMDFM. By reason of the finding of an absence of proper consultation, and taking into account the scope of the harassment provisions, the Regulations were quashed by the Court.[[24]](#footnote-24) This is a significant ruling for two reasons. Firstly, it is clear that in instances where those being consulted feel that they have been misled about what is to be included or omitted from a particular consultation exercise, they may well have grounds for successfully challenging the process. Secondly, this case is important in that the court struck down the regulations that were the subject of the challenge, illustrating that courts will, where they deem it necessary, not hold back from quashing decisions which they consider have been arrived at by an unfair process. In other words, a finding of unfair consultation can, in certain circumstances, produce a substantive outcome and thereby provide a useful check on the power of the executive – in its wider sense.

**Conclusions**

In summary there are a number of conclusions that can be drawn from the way in which the courts in the UK have addressed the issue of consultation between those directly affected by decisions made by public bodies, and the public bodies themselves. Firstly, it is important to note that there are a number of instances in which public authorities are under a specific legislative duty to engage in consultation – either with the public at large, or with specific sections of the public. In addition to these statutory requirements, it is also important to note that the courts have deemed it necessary for public authorities to engage in consultation with those directly affected by the decision making process. This is not to suggest that there is a general, freestanding “right to consultation” in every instance for persons who may be affected by a measure before it is adopted, but rather that the courts will look at the facts of each individual case and determine whether a right to be consulted can be established.

Significantly however, irrespective of how the duty to consult has been generated, it is an accepted general principle of law that a public body undertaking consultation must do so fairly as required by the circumstances of the case. Moreover, the courts have themselves established a fairly robust framework, essentially “four limbs”, for determining what “proper” consultation requires. First, the court considers that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer or initiator of the consultation process must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third, that adequate time must be given for consideration and response to the proposals under consideration, and finally, that the product of consultation must be “conscientiously” taken into account in finalising any statutory proposals.

This framework has been held by the UK Supreme Court to be “a prescription for fairness”.[[25]](#footnote-25) In addition, Lord Woolf has declared that the obligation of fair (i.e. lawful) consultation is “to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response”. In addition, it has also been established that “the demands of fairness are likely to be somewhat higher when an authority contemplates depriving someone of an existing benefit or advantage than when the claimant is a bare applicant for a future benefit”. In addition, the courts have also found that consulting about a proposal does inevitably involve inviting and considering views about possible alternatives to the preferred course of action. Moreover, as has been shown above, where courts deem consultation to be unfair, i.e. unlawful, they have been prepared to deploy a range of remedies up to and including quashing any decision reached as a consequence of the flawed process. It is suggested that this represents a not insignificant opportunity for those who may feel aggrieved that either they have not been consulted on a particular issue, or that the consultation exercise that they engaged in was inadequate.

Looking at these findings within the context of the problems that currently exist with respect to the perceived failings of consultation exercises there are a number of broad conclusions that can be drawn. Firstly, it is clear that by establishing a framework for fair and proper consultation the courts are providing a benchmark for public authorities with which they are obliged to comply. It is also clear that the intention of the courts is to address many of the kinds of problems that the interviews in the three case studies identified. A consultation process that is serious about actually engaging the views of those affected will clearly begin at a time when proposals are still at a formative stage, give sufficient reasons for any proposal to permit of intelligent consideration and response, will ensure that adequate time be given for consideration and response to the proposals under consideration, and finally, will ensure that the outcome of the consultation will taken into account in finalising any proposals. Clearly this is precisely what happed in relation to the Patten Commission. Similarly, consultations that are lawful, and fair, will by definition be provided with the necessary resources to succeed – it is difficult to conceive of a public authority complying with the four requirements established by the courts without adequate resourcing for the process. Furthermore, one can conclude from the judgments considered above that the courts are willing to declare that consultation processes which appear to be perfunctory, box-ticking exercises, are unlawful and in some cases to quash decisions that are arrived at via unfair consultation.

Nonetheless, there are some important caveats with respect to how courts have addressed the issue of public consultation. Perhaps the main point to note is that by and large, the consultation exercises that the courts have addressed have not sought to impose solutions on inherently political problems, where politicians fail to agree. In other words, while there may have been (although that is not to say that there was!) scope for potential legal challenges to the procedures surrounding either the Eames/Bradley or Maze Long Kesh consultation exercises, it is doubtful that the courts would ever have ordered that government proceed with recommendations, or ordered that government actually move ahead and carry out a regeneration plan. UK courts tend not to make those kinds of judgments. In other words, there is a greater scope for getting courts to strike things down, or stop proposals going ahead, than there is for ordering government to move forward and implement particular options – particularly in cases where the decisions are clearly political, requiring cross-community agreement, as laid down in the Northern Ireland Act. In other words, the cross-community checks and balances, inherent within the Agreement, can also be used to frustrate decision-making – but one has to remember, that this safeguard was at the heart of the Agreement itself.

This would suggest that for those wishing to use litigation as a way to hold public authorities to account, and it is strongly suggested that this option should be seriously considered, there is much value in examining the pronouncements of the courts in the case law outlined above. It is worth noting for example that the kinds of issues that have featured in the judgments considered here i.e. the closure of care homes, schools, etc, and the development of policies that impact disproportionately and incur financial loss on the least well off, are all issues that campaigning groups within Northern Ireland currently wish to see addressed. Looking at the legal framework for “fair and proper” consultation that now has the endorsement of the UK Supreme Court, there would certainly seem to be quite a degree of scope for strategic litigation in this area.

This of course leaves the larger problem of what to do with the “big decisions”, such as the Maze Long Kesh, or Eames/Bradley/ Dealing with the past, or progress towards a Bill of Rights. It is suggested that there are two possible options with respect to these cases, neither of which is mutually exclusive. First, it is clear that the mutual cross-community safeguard/veto inherent within the power-sharing framework at Stormont means that if one community is opposed to a particular proposal, then it simply will not go ahead. Frustration at this fact may well leave one to reflect on the advantages of direct rule, and the fact that the Patten Commission recommendations were implemented by a Westminster government that was not hampered by the requirements of cross-community power-sharing. For all the advantages that direct rule had with respect to implementing Patten recommendations however it is important to note that many other initiatives introduced via direct rule, such as Diplock Courts, emergency legislation, and compulsory competitive tendering within health and social services did not have any democratic input from the Northern Ireland electorate. Viewed from this perspective, it is important that one recognise why there was such a degree of enthusiasm for the introduction of devolved government in the first place.

Perhaps the lesson for those being faced with the large-scale consultation exercises where they feel there is little degree of success due to cross-party gridlock therefore is that they simply refuse to take part. In other words, that the feeling of being disconnected with the political process that was outlined in the opening paragraphs, is actually given practical form. Given the cost in time and money of attending meetings, writing responses, etc, perhaps the best option may be simply to assess the likelihood of a successful outcome in light of the degree of cross-party consensus and then decide whether or not engaging at all is worth the effort. To decide not to participate may run somewhat against the orthodoxy of organisations whose raison d’etre is to campaign, and seek a voice for themselves and those whom they represent, but perhaps in some cases this actually may be the wisest, and certainly the most cost-efficient course of action. This leads on to the second option that organisations may choose to pursue which is based on the fact that although progress may be gridlocked on the “big questions” it does not mean that there is no room to manoeuvre, particularly through the courts, on relevant, but smaller aspects of the debate. Dealing with the past would be a prime example of this where failure to implement Eames/Bradley, or more recently Haas, has not prevented relatives of those killed from pursuing answers through the courts, with ongoing litigation into inquests for example. One might conclude therefore that in relation to a number of the “big questions”, a more prudent course of action is to step aside from the larger consultation processes that have had limited success, and focus on individual aspects of the debate where progress may be achieved. In relation to the Bill of Rights for example this may well mean less focus on seeking to resurrect a consultation process that in all likelihood will have limited success, and focus instead on litigating or campaigning in the kind of cases referred to above, e.g. closures of care facilities, and indeed general “austerity” measures of the kind all too prevalent in Northern Ireland at the moment. The disadvantage of course is that a solution to the “big issues” will always be more desirable. The question however from a campaigning point of view is not simply the potential impact of success, but also the likelihood of success. It is also important to note that by litigating and influencing in a strategic way, it may be possible to develop a critical mass of influence that will help achieve a solution to the “big issue”. In other words, choosing to opt out of a particular consultation exercise at a particular time does not mean opting out of it for all time.

Going back to Patten, it is worth recalling that the evidence shows that elements of loyalism, nationalism, republicanism, the police themselves, and indeed the British, Irish and US governments all knew that the status quo was not an option and were all prepared to put their resources into ensuring that a viable alternative was arrived at – whatever the cost in terms of time, money and personnel. It is also important to note that the Patten recommendations were driven through Westminster by a Labour government with an unassailable majority in Parliament that meant that it could, in effect, do what it pleased. These particular political circumstances simply do not exist presently around any issue – regardless of how desirable a resolution to the past, or indeed resolving the gridlock around the Bill of Rights might appear. It would seem therefore that the present situation requires some fresh thinking and it may just be that the UK Supreme Court has offered a potential way forward that is certainly less than ideal, but which may be the best that can be hoped for in the present circumstances.

1. Moseley R v London Borough of Haringey [2014] UK 56 [↑](#footnote-ref-1)
2. [2007] EWHC 199 (QB). [↑](#footnote-ref-2)
3. Ibid. para. 17. [↑](#footnote-ref-3)
4. [2006] EWCA Civ 877 at paragraph 90. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. Moseley R v London Borough of Haringey [2014] UK 56. [↑](#footnote-ref-7)
8. [2001] QB 213 at para. 108 [↑](#footnote-ref-8)
9. See also the Court of Appeal in R (Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of Primary Care Trusts. [↑](#footnote-ref-9)
10. [2002] EWHC 2640 (Admin) para. 31. [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. Ibid. [↑](#footnote-ref-13)
14. [2007] EWHC 311 (Admin). [↑](#footnote-ref-14)
15. Ibid. para. 32. [↑](#footnote-ref-15)
16. Ibid. [↑](#footnote-ref-16)
17. Ibid. [↑](#footnote-ref-17)
18. Ibid. [↑](#footnote-ref-18)
19. .(P. 211) [↑](#footnote-ref-19)
20. The Christian Institute and Others v The Office of the First Minister and Deputy First Minister [2007] NIQB 66. [↑](#footnote-ref-20)
21. Ibid, para. 1. [↑](#footnote-ref-21)
22. Ibid. [↑](#footnote-ref-22)
23. Ibid. [↑](#footnote-ref-23)
24. Ibid. para. 43. [↑](#footnote-ref-24)
25. See also the Court of Appeal in R (Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of Primary Care Trusts. [↑](#footnote-ref-25)