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# *Human Rights in Northern Ireland in 2013*

BRICE DICKSON\*

## INTRODUCTION

**T**O FACILITATE COMPARISON, this report has been structured in a similar way to that used for the 2012 report. It also draws upon the same sources, but gives even greater prominence to case law since it is not as well covered in the review of human rights for 2013, which is already to be found in the ‘Annual Statement’ of the Northern Ireland Human Rights Commission.<sup>1</sup>

### PROTECTING HUMAN RIGHTS AMIDST NORTHERN IRELAND’S POLITICAL PROBLEMS

Many outside observers assume that, because the level of politically motivated violence has dramatically decreased in Northern Ireland in recent years, the environment within which further progress can be made on human rights issues there is very favourable. In fact, partly on account of the mandatory power-sharing arrangements put in place under the Belfast (Good Friday) Agreement of 1998 and the St Andrews Agreement of 2006, and particularly ever since the two political parties which were previously seen as representing the more extreme elements of unionism and nationalism gained the electoral upper hand within each of their respective communities in 2007,<sup>2</sup> the chances of securing cross-community consensus on the way forward on human rights issues are not high.

The end of 2013 saw the failure of all-party talks on three issues which continued to divide the politicians most deeply: the display of flags, the regulation of parades and the mechanisms for dealing with the past.<sup>3</sup> The relative disengagement of the British and Irish governments from ‘the peace process’ meant that pressure from those quarters was no longer being exerted on rights and equality issues in the way that it used to be. Northern Ireland’s equality laws now trail behind those in the rest of the UK, there is no longer any talk about introducing a Bill of Rights for Northern

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<sup>1</sup> [www.nihrc.org/uploads/publications/105282\\_NIHRC\\_Annual\\_Statement\\_BOOK\\_4\\_LOW\\_FOR\\_WEB.pdf](http://www.nihrc.org/uploads/publications/105282_NIHRC_Annual_Statement_BOOK_4_LOW_FOR_WEB.pdf).

<sup>2</sup> The Democratic Unionist Party won 36 seats as opposed to the Ulster Unionist Party’s 18; Sinn Féin won 28 seats as opposed to the Social Democratic and Labour Party’s 16.

<sup>3</sup> For the draft agreement that could not achieve cross-party consensus see [www.northernireland.gov.uk/haass.pdf](http://www.northernireland.gov.uk/haass.pdf).

Ireland, and the innate conservatism of local political representatives in Northern Ireland (from both sides of the divide) means that it is difficult to achieve reform on issues such as discrimination against LGBT people, women's reproductive rights and the right of parents to choose to send their children to religiously integrated schools. The first three of the 10 key points highlighted in the Community Relations Council's invaluable 'Northern Ireland Peace Monitoring Report 2013–14' are that 'the moral basis of the 1998 peace accord has evaporated', 'the absence of trust has resulted in an absence of progress' and 'there has been some increase in polarisation'.<sup>4</sup> At the start of 2014, the differences of opinion over flags and parades seemed particularly intractable, and the most likely to result in unrest on the streets.

In 2013, the Northern Ireland Human Rights Commission (NIHRC) submitted four papers to the Haass talks<sup>5</sup> and there is some evidence that they influenced the draft agreement, which, unfortunately, did not achieve consensus but to which the political parties were committed to return during 2014. In particular, the Commission's overview of transitional justice mechanisms already in place in Northern Ireland is very useful and its plan of action looks promising.<sup>6</sup> It aims to build on recommendations of relevant UN bodies and engage with political society. The Commission is focused on ensuring that the rights of victims are given high prominence, but it also wants to consider the rights of former members of paramilitary groups.

In September 2013, Westminster's Northern Ireland Grand Committee met in the Senate Room at Stormont to debate progress in the peace process. It was a largely self-congratulatory affair, with few new ideas being promulgated.<sup>7</sup> In November, the Criminal Justice Inspectorate (CJI) published a report on the cost of dealing with the past,<sup>8</sup> concluding that in 2013–14, the cost would exceed £30 million and in the following five years would exceed £187 million. For the Police Service of Northern Ireland (PSNI), the cost in 2013–14, was estimated at just over £25 million. The CJI found that the current work of criminal justice organisations was being hampered by the 'historic' work and recommended that a Legacy Executive Group be established to ensure better liaison between the various bodies. Perhaps the most surprising intervention on dealing with the past in 2013 was the suggestion made by the Attorney General for Northern Ireland, John Larkin QC, that there should be no further police investigations, inquests or inquiries into any relevant killings that took place before the Belfast (Good Friday) Agreement in 1998.<sup>9</sup> The Attorney General admitted that he would be guided by the views of victims on what he said and almost immediately he was left in no doubt, both from that sector and from a wide range of politicians, that his suggestion was offensive. There is a widespread feeling in Northern Ireland that an amnesty provision already exists. It resides in the fact that anyone convicted of a troubles-related pre-1998 killing has to serve no more than two years in custody.

<sup>4</sup> At p 11. The report was written by Paul Nolan.

<sup>5</sup> 'Dealing with Northern Ireland's Past—Towards a Transitional Justice Approach'; 'The Display of Flags, Symbols and Emblems in Northern Ireland'; 'Parades and Protests'; and 'Human Rights to Culture in Post Conflict Societies'.

<sup>6</sup> These are dealt with in the first of the four papers listed in the preceding note.

<sup>7</sup> [www.publications.parliament.uk/pa/cm201314/cmgeneral/nigc/130909/nigc130909s01.pdf](http://www.publications.parliament.uk/pa/cm201314/cmgeneral/nigc/130909/nigc130909s01.pdf), cols 13–49.

<sup>8</sup> Review of the Cost and Impact of Dealing with the Past on criminal Justice Organisations in Northern Ireland, available at [www.cjini.org/CJINI/files/8b/8b89d447-fb32-41d7-ae26-57b18509c8a2.pdf](http://www.cjini.org/CJINI/files/8b/8b89d447-fb32-41d7-ae26-57b18509c8a2.pdf).

<sup>9</sup> 'NI Attorney General John Larkin Calls for End to Troubles Prosecutions', available at [www.bbc.co.uk/news/uk-northern-ireland-24999051](http://www.bbc.co.uk/news/uk-northern-ireland-24999051).

## THE RIGHT TO LIFE

While it remains the case that achieving convictions for ‘historic’ killings is extremely difficult, just a week after the Attorney General’s intervention referred to above Seamus Kearney was convicted of the murder of a police reservist in 1981 on the basis of DNA evidence obtained from a cigarette butt found at the scene of the crime.<sup>10</sup> The conviction was the fourth to result from a review of about 1,800 original investigations by the PSNI’s Historical Enquiries Team (HET).<sup>11</sup> Unfortunately, the work of the HET was suspended in July because of a damning report by Her Majesty’s Inspectorate of Constabulary (HMIC) into the way it had been reviewing killings at the hands of British soldiers. It transpired that the soldiers involved were treated differently from suspects in ‘non-state’ cases. Some were interviewed without being cautioned (meaning that they could speak more freely knowing that what they said could not be used against them as evidence) and were provided in advance with information about what other people involved at the incident had already said. While the HET might have been operating out of the best of motives—to provide families of victims with information which might otherwise never become available—the process used meant that the HMIC could plausibly conclude that ‘state’ killings were not being reviewed as independently as ‘non-state’ killings, in breach of Article 2 of the European Convention on Human Rights (ECHR). The HMIC report went so far as to say that the HET reviewers were acting unlawfully. It also drew attention to serious organisational defects within the HET.<sup>12</sup>

The Northern Ireland Policing Board, which had prompted the HMIC inspection in the first place, was given the task of overseeing the PSNI’s implementation of the report’s recommendations, and by the end of 2013 good progress had been made with that process. However, the Board itself was unable to reach consensus on whether the HET could be rescued, with pressure mounting from various NGOs, such as Amnesty International, the Committee on the Administration of Justice, Relatives for Justice and WAVE,<sup>13</sup> to close down the HET altogether and replace it with a review and investigation body entirely outside of the PSNI. The report of the Board’s Working Group on the HET has since been published on the Board’s website.

Little progress was made during 2013 on the resolution of some high-profile historic killings. Police investigations into the murders on Bloody Sunday in 1972 continued, but are liable to take years to come to fruition. No further inquiry into the murder of the solicitor Pat Finucane in 1989 was established, despite continuing lobbying by his family and other supporters,<sup>14</sup> although the family did persuade a High Court judge to require the Northern Ireland Office to release for his inspection the representations that had been made to the Secretary of State concerning whether an inquiry should

<sup>10</sup> *R v Kearney* [2013] NICC 33 (Judge McFarland).

<sup>11</sup> In May one of those convicted lost his appeal: *R v McGeough* [2013] NICA 22.

<sup>12</sup> *Inspection of the Police Service of Northern Ireland Historical Enquiries Team* (HMIC, 2013), available at [www.justiceinspectors.gov.uk/hmic/media/inspection-of-the-police-service-of-northern-ireland-historical-enquiries-team-20130703.pdf](http://www.justiceinspectors.gov.uk/hmic/media/inspection-of-the-police-service-of-northern-ireland-historical-enquiries-team-20130703.pdf).

<sup>13</sup> WAVE is a grassroots-based cross-community organisation which supports people bereaved as a result of violence in Northern Ireland and anyone injured or traumatised through the troubles.

<sup>14</sup> The da Silva review in December 2012 concluded that no government Minister had known of the murder in advance.

be held.<sup>15</sup> Likewise no inquiry was put in place to examine the so-called ‘Ballymurphy massacre’, which refers to the killing by members of the parachute regiment of the British army of 11 people in a number of incidents in West Belfast over a two-day period in August 1971. In May 2013, Brian Shivers was acquitted of the murders of two British soldiers at Masserene Barracks in 2009;<sup>16</sup> he had previously been convicted, but was retried after a successful appeal, where the court upbraided Hart J at the first trial for assuming that a person who provides assistance after a murder with full knowledge of what has happened becomes guilty of murder.<sup>17</sup> The evidence against Shivers was circumstantial, and at the retrial Deeny J found that it ‘clearly’ did not amount to proof beyond reasonable doubt.<sup>18</sup> In the long-running saga concerning the killing of Pearse Jordan by the police in 1992, his family succeeded in getting leave from the High Court to challenge aspects of the inquest which had been held towards the end of 2012 and resulted in a split jury decision.<sup>19</sup> The family also succeeded in getting leave to challenge the police’s refusal to release to the family the documents they had disclosed to the coroner prior to the inquest.<sup>20</sup> On a more positive note, 12 plaintiffs succeeded in their case against Colm Murphy and Seamus Daly for the injuries and deaths they caused through their part in the planting of the bomb in Omagh in 1998 which killed 29 people and two unborn babies,<sup>21</sup> although it remains to be seen whether any compensation will materialise from the two defendants. And in *Re Rodgers’ Application*, Treacy J rejected an argument raised by a man convicted in 2013 of a murder committed in 1973 that he should have been granted the royal prerogative of mercy because he had already spent 16 years in prison for a related murder.<sup>22</sup> The judge even suggested that granting the prerogative of mercy might have been a breach of the state’s positive obligation under Article 2 of the ECHR to put in place effective criminal law provisions to deter the commission of offences.<sup>23</sup>

Back on the streets, there was only one ‘Troubles’-related death in 2013–14, one fewer than in 2012–13. There were also fewer shooting incidents (54 compared with 64), but more bombing incidents (69 compared with 44).<sup>24</sup> In *Re Carlin’s Application*, the Divisional Court rejected an application for an anonymity order from a man who had been charged with offences relating to the making of indecent images of children.<sup>25</sup> He argued that he needed to be kept anonymous because otherwise his right to life under Article 2 of the ECHR would be in danger. This was based on the fact that two days after being arraigned for the offences the applicant had been the victim of a shooting by a group calling itself Republican Action against Drugs. The court held that the applicant had not demonstrated that there was a real risk of his being further attacked in relation to these particular charges.

<sup>15</sup> *Re Finucane’s Application* [2013] NIQB 45 (Stephens J).

<sup>16</sup> *R v Shivers* [2013] NICC 10.

<sup>17</sup> *R v Shivers* [2013] NICA 4.

<sup>18</sup> *R v Shivers* [2013] NIQB [May].

<sup>19</sup> *Re Jordan’s Application (Leave Stage)* [2013] NIQB 74 (Stephens J).

<sup>20</sup> *Re Jordan’s Application (Leave Stage)* [2013] NIQB 75 (Stephens J).

<sup>21</sup> *Breslin and others v Murphy and Daly* [2013] NIQB 35 (Gillen J).

<sup>22</sup> [2013] NIQB 69.

<sup>23</sup> *Ibid*, para 8.

<sup>24</sup> [www.psnipolice.uk/annual\\_security\\_situation\\_statistics\\_report\\_2013-14.pdf](http://www.psnipolice.uk/annual_security_situation_statistics_report_2013-14.pdf).

<sup>25</sup> *Re Carlin’s Application* [2013] NIQB 144.

In relation to the right to life in the context of reproduction, the High Court required the Department of Health, Social Services and Public Safety (DHSSPS) to pay the legal costs of the Family Planning Association (FPA) when, on the eve of the hearing of the FPA's application for judicial review of the DHSSPS's refusal to issue revised guidance on termination of pregnancy, the DHSSPS produced such guidance for consultation.<sup>26</sup> This was a welcome vindication of the utility of judicial review proceedings in prompting action on the part of a public authority. In July, the NIHRC responded to the draft guidance,<sup>27</sup> advising that the proposed framework would likely be incompatible with the ECHR because, for example, it did not explain how differences of opinion between a woman and her doctor or between doctors were to be addressed.

In May 2013, the Attorney General applied to the High Court for an order that an inquest be held into the death of a baby boy who was stillborn in 2001; the Senior Coroner had refused to do so because he believed that he had no power to conduct such an inquest. Treacy J agreed with the Senior Coroner's view,<sup>28</sup> but later in the year the Court of Appeal supported the Attorney General's interpretation of the relevant legislation.<sup>29</sup> On the other hand, in *Re McMahon's Application*, Treacy J rejected a challenge to the coroner's decision not to hold an inquest into the death of a man whose killing had already been the object of successful criminal proceedings against his killers.<sup>30</sup> The case illustrates well the principle that there is no right to an inquest; whether one is required in order to satisfy Article 2 of the ECHR is always a fact-sensitive question.

In 2013–14, the new Prisoner Ombudsman (Mr Tom McGonigle) opened investigations into four deaths in custody and three further deaths of persons who had left prison within the two weeks preceding their deaths. In the previous year there had been eight deaths in custody. As regards deaths from road traffic accidents (including those occurring as late effects), the number reached a record low of 59 in 2013, compared with 78 in 2012; the most vulnerable category of victim remained males aged between 15 and 34.<sup>31</sup> The Health and Safety Executive reported that in 2013–14, there were 10 work-related fatalities, down from 19 in 2012–13.<sup>32</sup> In 2013, the number of suicides in Northern Ireland was 303, just seven short of the record set in 2010;<sup>33</sup> of these individuals, 229 (76 per cent) were men. In *ZY v Higgins*, the claimant, who had been sentenced to 21 months' imprisonment for a series of offences of blackmail, engaging in sexual activity with a minor and possessing indecent images of children, succeeded in prolonging an injunction preventing a journalist and the Courts Service

<sup>26</sup> *Re Family Planning Association's Application* [2013] NIQB 108 (Treacy J).

<sup>27</sup> Available at [www.nihrc.org/uploads/documents/advice-to-government/2013/NIHRC%20Response%20to%20Consultation%20on%20Draft%20Guidance%20on%20Termination%20of%20Pregnancy.pdf](http://www.nihrc.org/uploads/documents/advice-to-government/2013/NIHRC%20Response%20to%20Consultation%20on%20Draft%20Guidance%20on%20Termination%20of%20Pregnancy.pdf).

<sup>28</sup> *Re Attorney General's Application* [2013] NIQB 52.

<sup>29</sup> *Re Attorney General's Application* [2013] NICA 68; the legislation is the Coroners Act (NI) 1959, s 18(1)(a). The court also recommended that the DHSSPS should urgently reformulate its Guidance on Stillbirths.

<sup>30</sup> [2013] NIQB 22. The criminal proceedings are reported at *R v Notarantonio* [2008] NICC 39 (Stephens J).

<sup>31</sup> Annual Report of the Registrar General 2013, Table 6.9.

<sup>32</sup> Annual Report and Statement of Accounts of the Health and Safety Executive for Northern Ireland 2013–14, 3.

<sup>33</sup> [www.nisra.gov.uk/demography/default.asp31.htm](http://www.nisra.gov.uk/demography/default.asp31.htm).

from publicising his identity because there was medical evidence that he could be at risk of suicide.<sup>34</sup>

#### THE RIGHT NOT TO BE ILL-TREATED

In June 2013, the UN Committee against Torture (CAT) issued its fifth periodic Concluding Observations on the UK report under the UN Convention against Torture.<sup>35</sup> CAT regretted that Northern Ireland retained non-jury trials for some serious cases, ‘despite the apparent consensus among a broad range of actors that the problem of juror intimidation in Northern Ireland still needs to be demonstrated’.<sup>36</sup> That is not, however, the view of the PSNI or the Public Prosecution Service. It also expressed concerns about the UK government’s decision not to hold a public inquiry into the death of Patrick Finucane and urged the government to ensure more generally that prompt, thorough and independent investigations be conducted to establish the truth and identify, prosecute and punish perpetrators.<sup>37</sup> It added that all victims of torture and ill-treatment should be able to obtain adequate redress and reparation.<sup>38</sup> CAT welcomed the raising of the age of criminal responsibility in Scotland from 8 to 12 years,<sup>39</sup> but regretted the reluctance to raise the age from 10 years in Northern Ireland<sup>40</sup> (and in England and Wales) in defiance of repeated recommendations to that effect made by the UN Committee on the Rights of the Child.<sup>41</sup> It was also worried that some forms of corporal punishment are still legally permissible in the home if carried out by parents or those *in loco parentis*.<sup>42</sup> It welcomed the plan by the Justice Minister in Northern Ireland to construct a separate custodial facility for women prisoners and recommended that construction should be begun without further delay.<sup>43</sup>

According to PSNI statistics,<sup>44</sup> in 2013–14, there were 27,628 recorded incidents with a domestic abuse motivation, an increase of 1.6 per cent on the figure for 2012–13. Unfortunately, in 2013–14, the annual outcome (or clear-up) rate for these crimes dropped by 5 per cent, to 31.7 per cent, which means that less than one-third of all the recorded crimes with a domestic abuse motivation were ‘solved’. The police had even less success in bringing perpetrators of hate crime to book. During 2013–14, racist incidents increased by 30.9 per cent to 982, homophobic incidents by 13.8 per cent to 280, and disability hate incidents by 44.6 per cent to 107. There were also 24 faith/religion hate incidents and 23 transphobic incidents. Remarkably, there was a 6.4 per cent fall in the number of recorded sectarian incidents, down to 1,284. As is to be expected, given these figures, the number of *crimes* with a hate motivation also

<sup>34</sup> [2013] NIQB 8 (McCloskey J).

<sup>35</sup> Both the Report and the Concluding Observations are available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en).

<sup>36</sup> *Ibid.*, para 13.

<sup>37</sup> *Ibid.*, para 23.

<sup>38</sup> *Ibid.*

<sup>39</sup> Achieved by the Criminal Justice and Licensing (Scotland) Act 2010.

<sup>40</sup> By the Criminal Justice (NI) Order 1998, Art 3.

<sup>41</sup> Above n 35, para 27.

<sup>42</sup> *Ibid.*, para 29.

<sup>43</sup> *Ibid.*, para 32.

<sup>44</sup> The source for all the figures in this paragraph is [www.psnipolice.uk/2013\\_14\\_press\\_release\\_for\\_web.pdf](http://www.psnipolice.uk/2013_14_press_release_for_web.pdf).

increased within five of the six hate crime types in 2013–14. In particular, racist crimes were up by 47 per cent and disability hate crimes by 100 per cent. The outcome rate was 17.3 per cent for racist crimes, 17.3 per cent for homophobic crimes and 15.4 per cent for sectarian crimes. These rates were also lower than in 2012–13 so, as with domestic abuse, incidents and crimes of hate are increasing but detection rates are dropping. Whether the latter is a result of poorer policing is another question. The NIHRC issued a report on racist hate crime in September 2013.<sup>45</sup> With its 66 findings and 29 recommendations, the report is a valuable analysis of the hate crime phenomenon and a call for better responses from several criminal justice agencies.

The Historical Institutional Abuse Inquiry, led by retired High Court judge Sir Anthony Hart, got under way in 2013.<sup>46</sup> It is examining alleged abuse in residential institutions (except schools, and also not the abuse of children in foster care<sup>47</sup>) over a 74-year period, from 1922 to 1995. Its ‘Acknowledgement Forum’ began listening to the experiences of people who were children in the institutions at the time and by the deadline of the end of April 2014 as many as 514 individuals had applied to tell their story. The inquiry itself began investigating in 2014 whether children suffered abuse in the same institutions. It is sitting in Banbridge Courthouse in County Down.

Paramilitary punishment shootings and beatings, which have been the scourge of Northern Ireland for decades, continued in 2013–14, and indeed were more common than in 2012–13. PSNI statistics show that there were 28 shootings and 42 assaults, compared to 27 and 36, respectively, the year before.<sup>48</sup> The patterns suggest that Republican paramilitaries tend to shoot their victims (often in the knees) while loyalist paramilitaries tend to beat them (often with baseball bats). Just under one-half of the shootings took place in West Belfast.

The Prisoner Ombudsman began investigating 450 new complaints during 2013–14. He upheld 46 per cent of those dealt with and made a total of 323 recommendations as to how the Northern Ireland Prison Service could improve its performance, 90 per cent of which were accepted. At the end of 2013–14, the Ombudsman had 11.5 full-time equivalent staff and a budget of £695,000, but the office itself still lacked statutory backing. In October 2013, the CJI published reports on the women’s prison at Ash House<sup>49</sup> and on Hydebank Wood Young Offenders Centre (YOC).<sup>50</sup> As regards the former, the CJI noted that, while most of the women prisoners felt safe, security arrangements were not always proportionate and, for many, the Progressive Regimes and Earned Privileges Scheme did not motivate positive behaviour. The co-location of women and men led to fundamentally disrespectful outcomes and severely restricted access to outside areas. Health services had improved since the previous inspection in 2007, but outcomes were still not good enough. Likewise, the management of learning and skills was poor, and there were not enough activity places. The management of resettlement had improved, but still lacked a current needs analysis. As regards the

<sup>45</sup> ‘Racist Hate Crime: Human Rights and the Criminal Justice System in Northern Ireland.’

<sup>46</sup> For details see the Inquiry’s website: [www.hiainquiry.org](http://www.hiainquiry.org). It is operating under the Inquiry into Historical Institutional Abuse Act (NI) 2013.

<sup>47</sup> *Re CM’s Application* [2013] NIQB 145 (Treacy J).

<sup>48</sup> See above n 24.

<sup>49</sup> ‘Report on an Announced Inspection of Ash House, Hydebank Wood Women’s Prison 18–22 February 2013’, available at [www.cjini.org/CJINI/files/e9/e919ac2b-4e79-4a80-b1f6-fb753bea3444.pdf](http://www.cjini.org/CJINI/files/e9/e919ac2b-4e79-4a80-b1f6-fb753bea3444.pdf).

<sup>50</sup> ‘Report on an Announced Inspection of Hydebank Wood Young Offenders Centre, 18–22 February 2013’, available at [www.cjini.org/CJINI/files/e3/e3d615ca-29e7-40ec-9907-cf119a9dd7b0.pdf](http://www.cjini.org/CJINI/files/e3/e3d615ca-29e7-40ec-9907-cf119a9dd7b0.pdf).



YOC, the CJI's main recommendations were that procedures for supporting prisoners at risk should be improved (with an emphasis on individualised care plans and less use of observation cells), security procedures should be improved, the reasons why Catholics' perceptions of the prison were worse than Protestants' should be explored, the advertised core day should be delivered consistently and not routinely curtailed, and prisoners should be offered a better range of purposeful activity, including a strong focus on the development of their literacy and numeracy skills.

At Roe House in Maghaberry, where Republican prisoners are housed, there continued to be tensions concerning the use of 'full searches'. In February 2013, representatives of the Prison Service gave evidence to the Assembly's Justice Committee on the use of body scanners in the prison.<sup>51</sup> The results of a three-month pilot of millimetre wave scanners were disappointing because the machines performed less reliably than the current full searching system. The Prison Service was planning to run a pilot of transmission X-ray scanners as soon as the authorisation for using such technology in UK prisons had been obtained. In December, the Justice Minister told the Assembly that the licensing of transmission X-ray scanners was still awaited and the matter was out of his hands.<sup>52</sup> In the same month, Treacy J held that the policy on the use of full body searches at Maghaberry Prison was not so inflexible as to be unlawful<sup>53</sup> or incompatible with the right to a private life protected by Article 8 of the ECHR, thereby adding to the Court of Appeal's decision the previous year that the full body policy was not disproportionate.<sup>54</sup>

Northern Ireland had its fair share of new allegations of child sexual exploitation (CSE) in 2013. In September, the PSNI announced that it was investigating allegations that 22 young people aged between 13 and 18 might have been sexually abused; they were supposedly plied with drink or drugs and, on occasions, trafficked around Northern Ireland in taxis.<sup>55</sup> The investigations followed a report by Barnardo's in 2011.<sup>56</sup> In September 2013, the Ministers of Health and Justice agreed to set up an independent expert-led inquiry, supported and facilitated by both the Regulation, Quality and Improvement Authority and the CJI; it was to be chaired by Professor Kathleen Marshall, a former Commissioner for Children and Young People in Scotland. The inquiry is expected to identify the nature and extent of CSE in Northern Ireland, determine how CSE can be prevented, and consider the effectiveness of measures to secure the safety and well-being of children in care. In December, the Safeguarding Board for Northern Ireland gave evidence to the Assembly's Committee on Health, Social Services and Public Safety, explaining<sup>57</sup> how it intended to conduct its own thematic review of CSE cases.

<sup>51</sup> See [www.niassembly.gov.uk/globalassets/Documents/Official-Reports/Justice/2012-2013/130214\\_FullbodySearchesProgressontheIntroductionofTechnologicalAlternatives.pdf](http://www.niassembly.gov.uk/globalassets/Documents/Official-Reports/Justice/2012-2013/130214_FullbodySearchesProgressontheIntroductionofTechnologicalAlternatives.pdf).

<sup>52</sup> Answers to oral questions, 9 December 2013, available at [www.niassembly.gov.uk/assembly-business/official-report/reports-13-14/09-december-2013/#AQO%205206/11-15](http://www.niassembly.gov.uk/assembly-business/official-report/reports-13-14/09-december-2013/#AQO%205206/11-15).

<sup>53</sup> *Re Conway's Application* [2013] NIQB 125.

<sup>54</sup> *Re Conway's Application* [2012] NICA 11.

<sup>55</sup> See [www.psnipolice.uk/pr\\_general\\_\\_police\\_investigation\\_into\\_child\\_sexual\\_exploitation\\_160913](http://www.psnipolice.uk/pr_general__police_investigation_into_child_sexual_exploitation_160913).

<sup>56</sup> This was authored by Dr Helen Beckett and entitled 'Not a World Away—The Sexual Exploitation of Children and Young People in Northern Ireland', available at [www.barnardos.org.uk/13932\\_not\\_a\\_world\\_away\\_full\\_report.pdf](http://www.barnardos.org.uk/13932_not_a_world_away_full_report.pdf).

<sup>57</sup> A record of the evidence is available at [www.niassembly.gov.uk/assembly-business/official-report/committee-minutes-of-evidence/session-2013-2014/december-2013/thematic-review-of-child-sexual-exploitation-cases-safeguarding-board-for-northern-ireland](http://www.niassembly.gov.uk/assembly-business/official-report/committee-minutes-of-evidence/session-2013-2014/december-2013/thematic-review-of-child-sexual-exploitation-cases-safeguarding-board-for-northern-ireland).

In January 2013, McCloskey J gave judgment in an important case supported by the Law Centre (NI) concerning the procedure for assessing whether a mentally vulnerable person is suitable for resettlement in the community.<sup>58</sup> The judge paid tribute to a written intervention made by the Mental Disability Advocacy Centre, ‘an international human rights organisation which advances the rights of children and adults who have intellectual and/or psycho-social disabilities’.<sup>59</sup> The submission focused on the UN Convention on the Rights of Persons with Disabilities, which has been ratified by the UK (but not yet by Ireland), and the judge described it as ‘a model of its kind’. He concluded in the case that, under Article 15 of the Health and Personal Social Services (NI) Order 1972, the DHSSPS, or its agent, was under a duty to subject to appropriate assessment any person within the scope of its knowledge or attention who it appeared might reasonably qualify for the enjoyment of any benefit available thereunder.<sup>60</sup> He added that the DHSSPS’s ‘guidance on care management’ had generated a substantive legitimate expectation that assessments of social care needs and any resulting care plan would normally accord with the frameworks specified in the guidance and that, in cases where an assessment had been carried out, the DHSSPS or its agent was under a duty to provide the assessed social care benefit within a reasonable time.

In June 2013, the Equality Commission for Northern Ireland published a review of the progress that had been made since the publication in 2008 of a report on how to improve the ways in which people with a learning disability can access health information.<sup>61</sup> The review concluded that improvements in the provision of written information had been gradual and that work remained to be done to provide accessible appointment letters and information about medicines. It also found that oral information was still not being provided in the way that it should and that there was not yet any mandatory training on this issue for healthcare professionals. People with a learning disability were also still not being allocated longer appointment times, which they required.

In August, the DHSSPS issued a summary of the responses it had received to its consultation document on a new adult social care policy in Northern Ireland,<sup>62</sup> but by the year’s end no final strategy on the matter had been issued. Nor had there been an announcement concerning the final outcome of the consultation conducted on more general proposals for reform of health and social care contained in ‘Transforming Your Care: Vision to Action’,<sup>63</sup> although on 19 March 2013 the Health Minister told the Northern Ireland Assembly that one of the key elements in the ‘Transforming Your Care’ proposals was integrated care partnerships (ICPs), which ‘enable local health and social care professionals and the voluntary and community sector organisations to

<sup>58</sup> *Re JR47’s Application* [2013] NIQB 7.

<sup>59</sup> *Ibid.*, para 21.

<sup>60</sup> *Ibid.*, para 87.

<sup>61</sup> ‘Review of the Formal Investigation into the Accessibility of Health Information for People with a Learning Disability in Northern Ireland’, available at [www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Disability\\_Investigation\\_paper\\_full\\_ross\\_harknessep13\\_1.pdf](http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/Disability_Investigation_paper_full_ross_harknessep13_1.pdf).

<sup>62</sup> ‘Who Cares? The Future of Adult Care and Support in Northern Ireland: Consultation Analysis Report’, available at [www.dhsspsni.gov.uk/who\\_cares\\_consultation\\_analysis\\_report.pdf](http://www.dhsspsni.gov.uk/who_cares_consultation_analysis_report.pdf). For the views of the NIHRC see [www.nihrc.org/uploads/documents/advice-to-government/2013/NIHRC%20-%20Response%20Adult%20Care%20and%20Support.pdf](http://www.nihrc.org/uploads/documents/advice-to-government/2013/NIHRC%20-%20Response%20Adult%20Care%20and%20Support.pdf).

<sup>63</sup> The consultation document is available at [www.transformingyourcare.hscni.net/wp-content/uploads/2012/10/TYC-Vision-to-Action-Consultation-Document.pdf](http://www.transformingyourcare.hscni.net/wp-content/uploads/2012/10/TYC-Vision-to-Action-Consultation-Document.pdf). The consultation ran from October 2012 to January 2013.

work more closely together on a collaborative basis to improve efficient and effective service delivery'. He added that 17 ICPs would be in place within 12 months covering the whole of Northern Ireland.<sup>64</sup>

As a result of a provision in the Crime and Courts Act 2013,<sup>65</sup> the use of disproportionate force can now be regarded as reasonable in Northern Ireland whenever householders are acting to protect themselves or others from trespassers in their homes, although the use of grossly disproportionate force in such circumstances is still prohibited.

The right not to be subjected to inhuman or degrading treatment was considered in *Re ALJ's and A, B and C's Applications*, which were challenges to the decision of the UK Border Agency to remove a Sudanese mother and her three children to the Republic of Ireland, their first country of entry into the EU, under the Dublin II Regulation.<sup>66</sup> The judge refused to hold that returning the applicants to Ireland would put them at real risk of inhuman or degrading treatment, but he quashed the removal decision on the basis that the Border Agency had not made the welfare of the children a primary consideration in the decision-making process, contrary to its statutory obligation to do so.<sup>67</sup> This meant that the decision was not 'in accordance with the law' for the purposes of Article 8(2) of the ECHR, which limits interferences with the right to a family life.<sup>68</sup> Likewise, in *Lithuania v Campbell*, the Divisional Court rejected an appeal by Lithuania against the decision of Judge Burgess that the extradition of Liam Campbell to that country would be a breach of his Article 3 rights because of the real risk of his suffering inhuman or degrading treatment in a Lithuanian prison.<sup>69</sup> Evidence from Professor Rod Morgan, a member of the European Committee for the Prevention of Torture, seems to have contributed greatly to the court's conclusion.

#### THE RIGHT NOT TO BE SUBJECTED TO FORCED LABOUR

Forced labour is often a consequence of human trafficking, and in 2013 the PSNI reported 37 individuals as being victims of trafficking, 17 of whom were also sexually exploited.<sup>70</sup> The commonest country of origin was Romania. In May, the Justice Minister published the first Human Trafficking Action Plan for Northern Ireland, and this led to a new policy on the prosecuting of trafficking offences issued by the Public Prosecution Service. During the year, there was one successful conviction in Northern Ireland for the offence of trafficking a person into the UK. The man convicted was given a two-year prison sentence and ordered to be deported on release. In September, the Law Centre (NI) established an Anti-Trafficking and Young People Project, with funding from Comic Relief. This provides specialist legal advice and representation to victims of trafficking who are under the age of 25 and refers them to other agencies

<sup>64</sup> See [www.northernireland.gov.uk/index/media-centre/news-departments/news-dhssps/news-dhssps-march-2013-archive/news-dhssps-190313-poots-updates-assembly.htm](http://www.northernireland.gov.uk/index/media-centre/news-departments/news-dhssps/news-dhssps-march-2013-archive/news-dhssps-190313-poots-updates-assembly.htm).

<sup>65</sup> Section 43, amending the Criminal Justice and Immigration Act 2008, s 76 (which also applies in Northern Ireland).

<sup>66</sup> [2013] NIQB 88 (Stephens J).

<sup>67</sup> Borders, Immigration and Citizenship Act 2009, s 55.

<sup>68</sup> Above n 66, para 91.

<sup>69</sup> [2013] NIQB 19 (Morgan LCJ, Girvan and Coghlin LJ).

<sup>70</sup> 'The Nature and Scale of Human Trafficking in 2013' (National Crime Agency, September 2014) 41.

for access to appropriate support services. Moreover, under the Criminal Justice Act (NI) 2013, the law of Northern Ireland was brought into line with the EU Directive on preventing and combating trafficking in human beings<sup>71</sup> by creating new offences and addressing the international dimension of trafficking.<sup>72</sup> The Act also provided that human trafficking offences have to be tried as offences on indictment, not as summary offences;<sup>73</sup> this means that sentences which appear unduly lenient can now be referred to the Court of Appeal by the Director of Public Prosecutions. A Private Members' Bill was also introduced to the Assembly aimed at further regulating the trafficking and exploitation of people; its most controversial provision made it a criminal offence to pay for sex.<sup>74</sup>

### THE RIGHT TO LIBERTY

Throughout 2013, the threat from Northern Ireland-related terrorism was declared by the UK government to be severe in Northern Ireland but moderate in Great Britain. In his annual review of how some of the counter-terrorism powers were used in Northern Ireland, the Independent Reviewer, David Anderson, reported that the number of arrests and detentions under the Terrorism Act 2000 were roughly in line with those in recent previous years, but that the charging rate fell.<sup>75</sup> In 2013–14, 168 persons were arrested on reasonable suspicion of involvement in terrorism, a rise of 11 on the figure for 2012–13.<sup>76</sup> However, of the 168 arrested, only 32 (19 per cent) were later charged, compared with 50 (32 per cent) the previous year. David Anderson commented that the percentage charged was the lowest for 10 years, a fact he found disappointing because *prima facie* it suggests that many people are being arrested unreasonably.<sup>77</sup> All but nine of the individuals arrested were held for 48 hours or less; in relation to the other nine (eight of whom were eventually charged), there were 12 applications for extensions of detention, all of which were granted. Every person arrested requested access to a solicitor, and all such requests were granted immediately, without the police taking advantage of their power to delay it. There were only 59 requests to have someone informed of the detention, 52 of which were granted immediately; in the other seven cases, the delay was less than 12 hours in six cases and between 24 and 36 hours in the seventh. The maximum permissible pre-charge detention period for suspected terrorists remained at 14 days throughout the year, the same as in the rest of the UK. No 'terrorist prevention and investigation measure' was issued in relation to any person in Northern Ireland. The charges brought against the 32 detained persons

<sup>71</sup> 2011/36/EU.

<sup>72</sup> Sections 6–7.

<sup>73</sup> Section 8.

<sup>74</sup> Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill, clause 6. The Bill had not completed its Assembly stages by the end of 2013.

<sup>75</sup> The Terrorism Acts in 2013 (2014), available at <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2014/07/Independent-Review-of-Terrorism-Report-2014-print2.pdf>.

<sup>76</sup> The 2013–14 figures in this paragraph are all taken from the Northern Ireland Terrorism Legislation: Annual Statistics 2013–14 (Northern Ireland Office, 2014), especially Tables 6, 8 and 9, available at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/365691/NI\\_Terrorism\\_Legislation\\_Annual\\_Statistics\\_2013-14\\_-\\_Final.PDF](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365691/NI_Terrorism_Legislation_Annual_Statistics_2013-14_-_Final.PDF).

<sup>77</sup> Above n 75, para 8.12.

who were charged related to a total of 88 offences, including six of murder, seven of attempted murder, 11 firearms offences and 14 explosives offences. Two persons were charged with the offence of preparing terrorist acts under the Terrorism Act 2006.<sup>78</sup> In 2012–13, no use was made of the post-charge questioning power conferred by the Counter-Terrorism Act 2008,<sup>79</sup> and as far as this writer is aware it was not used in 2013–14.

In May 2013, the government took the opportunity to include within the Anti-social Behaviour, Crime and Policing Bill some amendments to the powers conferred on ports officers by Schedule 7 to the Terrorism Act 2000. These amendments (and others) were suggested by David Anderson in his report on the Terrorism Acts in 2012. Chief amongst them were that, in place of the power to detain a person at a port for up to nine hours before having to accord him or her the rights enjoyed by detained persons under Schedule 8 to the Terrorism Act 2000, such as the right to consult a solicitor and to have someone informed of the detention, a person who is to be examined at a port for more than one hour would need to be taken into detention and all such detained persons would have to be released after no more than six hours. The bill also proposed to remove the intimate search and sample-taking powers, and to impose new limits on strip searches and new requirements for regular reviews of the detention.<sup>80</sup>

In August 2013, the Divisional Court of England and Wales decided in *Beghal v Crown Prosecution Service*<sup>81</sup> that a woman who had pleaded guilty to a charge of wilfully failing to answer questions while being examined at a port under Schedule 7 to the Terrorism Act 2000 had not suffered a violation of her rights under Article 5, 6 or 8 of the ECHR. The judges did, however, suggest, as David Anderson and the Parliamentary Joint Committee on Human Rights had previously done,<sup>82</sup> that legislation should be enacted to bar the use of Schedule 7 admissions at subsequent criminal trials. The decision of the Supreme Court on Ms Beghal's appeal against the Divisional Court's decision is still awaited. In another case, *Sabure Malik v UK*,<sup>83</sup> the European Court of Human Rights is considering a number of other issues concerning port powers, such as the non-availability of police bail, the covert surveillance of detained persons and the procedures for extending detention.

Throughout 2013, there were discussions over whether the new National Crime Agency (NCA), which began its operations in Great Britain in October, should also have a remit in Northern Ireland. Nationalist MLAs staunchly resisted this, since to them it would mean an additional British agency operating in Northern Ireland without satisfactory local accountability arrangements. By the end of the year, a solution had still not been found to this issue, meaning that in several respects—such as the investigation of child sexual exploitation and the civil recovery of unlawfully obtained assets—serious crime was quite possibly not being dealt with as effectively

<sup>78</sup> Section 5.

<sup>79</sup> Above n 75, para 9.12.

<sup>80</sup> These changes were eventually enacted in the Anti-social Behaviour, Crime and Policing Act 2014, most of them coming into effect in July 2014.

<sup>81</sup> [2013] EWHC 2573 (Admin).

<sup>82</sup> D Anderson, 'The Terrorism Acts in 2012' (July 2013) ch 10; Joint Committee on Human Rights, 'Legislative Scrutiny: Anti-social Behaviour, Crime and Policing Bill', 2013–14, 4th Report (HL 56/HC 713) paras 90–138.

<sup>83</sup> App No 32968/11, declared admissible on 28 May 2013.

in Northern Ireland as in other parts of the UK. NCA officers can operate in relation to reserved matters, such as immigration and tax evasion, but they cannot themselves deprive anyone of their liberty in Northern Ireland: for that, they have to request the services of the PSNI.

In July 2013, the Department of Justice issued a consultation paper seeking the public's views on the report and draft bill issued by the Northern Ireland Law Commission in 2012 relating to reform of the law on bail in criminal proceedings. The Department also held a half-day conference on the topic in October. By the end of the year, it had still not announced how it intends to proceed in this area.

In *Re JMcA's Application*, Treacy J upheld restrictions placed on a person who was the subject of a guardianship order under the Mental Health (NI) Order 1986.<sup>84</sup> The judge noted that Article 22 of the 1996 Order confers a specific power on a guardian (here the Belfast Health and Social Care Trust) to require a person subject to guardianship to reside in a specified place, while Article 29(2) allows for a person who absents him- or herself without leave from that place to be retaken and returned to the place of residence. Treacy J read these provisions as providing implied backing for restricting the applicant's right to leave his home address at any time of his choosing and unaccompanied. There was therefore no breach of Article 5 (or Article 8) of the ECHR.

#### THE RIGHT TO A FAIR TRIAL

In Northern Ireland, as in the rest of the UK, attention on fair trial rights in 2013 focused on 'closed material procedures' (CMPs), the process by which secret information can be presented by one party in a court case but disclosed only to a 'special advocate' working on behalf of the other party, not to that party directly or to his or her own legal representative. They have been used in hearings before the Special Immigration Appeals Commission, the Investigatory Powers Tribunal and employment tribunals, but the Supreme Court ruled in *Al Rawi v The Security Services*<sup>85</sup> that they could not otherwise be used in civil cases without express legislative backing. The UK government wanted to enact such legislation so that it could better defend itself against claims that it had breached the rights of detained persons. Despite spirited objections to the government's plans from distinguished sources,<sup>86</sup> Parliament went ahead and approved the new legislative provisions, which are set out in the Justice and Security Act 2013.<sup>87</sup> CMPs can now be applied for so long as the court is satisfied that the Secretary of State has already considered making or advising another person to make an application for public interest immunity for the material in question (if a PII certificate is issued, the information cannot be used by either side in the case). The applicant must then persuade the court that disclosure of the material would damage national security and explain why a CMP would be in the interests of the fair and

<sup>84</sup> [2013] NIQB 77.

<sup>85</sup> [2011] UKSC 34, [2012] 1 AC 531.

<sup>86</sup> See eg the Parliamentary Joint Committee on Human Rights, 2012–13, 4th Report (HL 59/HC 370) and 8th Report (HL 128/HC 101); Equality and Human Rights Commission, 'Briefing for the Report Stage and Third Reading in the House of Lords' (2012).

<sup>87</sup> Pt II (ss 6–18); s 20(3) makes it clear that these provisions apply in Northern Ireland.

effective administration of justice. Before allowing a CMP, the court must consider whether a non-damaging summary of the material could be provided in open court,<sup>88</sup> and the Home Secretary must present an annual report to Parliament on the operation of the CMP provisions.<sup>89</sup> Given the breadth usually attributed to the undefined term 'national security', the scope for use of CMPs in Northern Ireland in future cases is significant. No doubt the compatibility of the new law will sooner or later be challenged before the European Court of Human Rights because it could be portrayed as violating the equality of arms principle which lies at the heart of Article 6 of the ECHR.

The Justice and Security Act 2013 also formalised arrangements for the oversight of intelligence and security activities by the Intelligence and Security Committee of Parliament, and prohibited the use of so-called Norwich Pharmacal orders to obtain disclosure of sensitive information. Such orders have been available ever since a House of Lords' decision in 1974 permitted a court to compel a third party who had been mixed up in another's wrongdoing and had information relating to that wrongdoing to disclose information which might assist a person suffering damage from the wrongdoing to take legal steps against the party responsible.<sup>90</sup> In *Re Nelson's Application*, Treacy J quashed a decision of the police to reject an applicant for a security job because he failed the vetting process; the judge held that Mr Nelson, a member of the former Police Reserve until just before applying for the new position, had not been treated procedurally fairly because he had not been told enough about why he had failed the vetting process.<sup>91</sup>

In *R v Livingstone*,<sup>92</sup> the Court of Appeal of Northern Ireland, on a reference from the Criminal Cases Review Commission, quashed the conviction of a man who had been found guilty by a Diplock court in 1977 of a murder committed in 1975. The Court of Appeal thought the conviction was unsafe because evidence had not been disclosed to the appellant's defence lawyers which might have affected the trial judge's assessment of the credibility of three police officers who had alleged that Livingstone had confessed to the murder while being questioned by them in Dundalk. The evidence at issue derived from two other cases, one of which was decided after Livingstone's conviction, in which the same police officers had been unable to show that persons had not received identifiable injuries through being beaten while in the custody of the officers. Although the Court of Appeal acknowledged that in 1977 the common law practice concerning pre-trial disclosure was materially different from that which was later demanded by the courts,<sup>93</sup> it applied the principle which it had set out in another case in 2012,<sup>94</sup> namely that, in looking at the safety of a conviction, it is relevant to consider whether the appellant may have been denied rights which he or she should have enjoyed under the rules in force at the time and whether he or she may have lacked protections which it was later thought right that he or she should enjoy.

<sup>88</sup> *Ibid*, s 8(1)(d).

<sup>89</sup> *Ibid*, s 12(1).

<sup>90</sup> *Norwich Pharmacal Co v Commissioners of Customs and Excise* [1974] AC 133.

<sup>91</sup> [2013] NIQB 131.

<sup>92</sup> [2013] NICA 33.

<sup>93</sup> As in eg *R v Keane* [1994] 1 WLR 746.

<sup>94</sup> *R v Brown* [2012] NICA 14, itself drawing upon the English case of *R v King* [2000] 2 Cr App R 391.

In *Re Magee's Application*,<sup>95</sup> the High Court quashed a decision by the Department of Justice that it had no discretionary power to reconsider a decision taken by the Secretary of State in 2002 refusing the applicant any compensation under the Criminal Justice Act 1988<sup>96</sup> for the time he had spent in custody following a wrongful conviction. An order of *mandamus* was issued requiring the Department to reconsider the matter. However, the judge made it clear that the Department did not necessarily have to reach a different decision from that reached in 2002 just because there had meanwhile been a decision of the Supreme Court clarifying what is meant by a miscarriage of justice for the purposes of the 1988 Act.<sup>97</sup> Despite an objection from, amongst others, the Joint Parliamentary Committee on Human Rights to the effect that it required an applicant to prove his or her innocence beyond reasonable doubt, in 2013 Parliament enacted an amendment to the 1988 Act which states that 'there has been a miscarriage of justice . . . if and only if the new or newly discovered fact shows beyond reasonable doubt that the person did not commit the offence'.<sup>98</sup>

The Justice Minister continued to pursue his aim of reducing the legal aid budget in Northern Ireland. Having consulted on reforms to financial eligibility rules for legal aid,<sup>99</sup> which have not been raised since 2009, he planned to introduce changes in 2014 through, amongst other channels, the Legal Aid and Coroners' Courts Bill. The Northern Ireland Legal Services Commission published a very useful detailed guide to legal aid in Northern Ireland in January 2014.<sup>100</sup> During 2013, a dispute arose over amendments made in 2011 to the Legal Aid for Crown Court Proceedings (Costs) Rules (NI) 2005, which removed any provision for exceptional fees to be paid to lawyers in Crown Court cases. During his trial for serious offences, Raymond Brownlee had dismissed his legal team, but the trial continued and he was convicted. He instructed new solicitors prior to his sentencing hearing, but they were unable to find counsel who would act for him, as there would be no remuneration for any work done in preparing for the hearing. In a judicial review, Treacy J made an order of *mandamus* requiring the Department of Justice to take all necessary steps to make Mr Brownlee's right to legal aid effective, as otherwise there would be a breach of his right to a fair trial

<sup>95</sup> [2013] NIQB 59 (Stephens J). Mr Magee had previously won a ruling from the European Court of Human Rights that his detention in Belfast had violated Art 6(1) of the ECHR, in conjunction with Art 6(3)(c), because he was denied access to a solicitor (*Magee v UK* (2001) 31 EHRR 35). In 2001, after a reference from the Criminal Cases Review Commission, the Court of Appeal of Northern Ireland quashed his conviction.

<sup>96</sup> Section 133. This provision was enacted to give effect to the UK's obligation under Art 14(6) of the International Covenant on Civil and Political Rights 1966 to provide compensation for those who are found to have been wrongly convicted on the ground that a newly discovered fact shows conclusively that there has been a miscarriage of justice.

<sup>97</sup> *R (Adams) v Secretary of State for Justice* [2011] UKSC 18; two of the appellants in these conjoined appeals were from Northern Ireland. In 2014 the applicant was again refused compensation. Two other former prisoners also lost their claim for compensation for a miscarriage of justice: *Re Fitzpatrick's and Shiels' Application* [2013] NICA 66.

<sup>98</sup> Anti-social Behaviour, Crime and Policing Act 2013, s 175, inserting a new s 133(1ZA) into the 1988 Act.

<sup>99</sup> 'Proposals for the Reform of Financial Eligibility for Civil and Criminal Legal Aid' (Department of Justice, March 2013), available at [www.dojni.gov.uk/index/public-consultations/archive-consultations/proposals-for-the-reform-of-financial-eligibility-for-civil-and-criminal-legal-aid.pdf](http://www.dojni.gov.uk/index/public-consultations/archive-consultations/proposals-for-the-reform-of-financial-eligibility-for-civil-and-criminal-legal-aid.pdf).

<sup>100</sup> 'A Guide to Legal Aid' (NILSC, 2014).



under Article 6 of the ECHR.<sup>101</sup> However, this decision was then successfully appealed to the Court of Appeal.<sup>102</sup>

In two other important decisions, the Divisional Court held that the systems for enforcing through imprisonment fines issued by a magistrates' court<sup>103</sup> or confiscation orders issued by the Crown Court<sup>104</sup> were in breach of Article 6 because, amongst other defects, they did not provide for a hearing and the individual who was the subject of the fine or order was given no opportunity to make representations either in person or through a lawyer. Although these decisions did not attract much publicity at the time, they clearly have great practical significance for enforcement procedures in future criminal cases.

The Department of Justice issued a consultation paper entitled 'Making a Difference: Improving Access to Justice for Victims and Witnesses of Crime—A Five-Year Strategy', the aim being to develop a strategy that would build on the Action Plan 2013–15 for the current victim and witness strategy.<sup>105</sup>

#### THE RIGHT TO A PRIVATE AND FAMILY LIFE AND HOME

In *Re Canning's Application*,<sup>106</sup> to many people's surprise, the Court of Appeal of Northern Ireland struck down stop and question and stop and search powers that are peculiar to Northern Ireland (conferred by the Justice and Security (NI) Act 2007<sup>107</sup>) on the basis that they were not supported by relevant codes of practice. On the day of the decision, to plug the gap in police powers at a time when the G8 Summit was about to be held in Northern Ireland, an assistant chief constable issued an authorisation for stop and search powers to be used under section 47A of the Terrorism Act 2000, and the authorisation was confirmed by the Secretary of State the next day. It remained in place until a code of practice was brought into effect a few days later. In Northern Ireland, 70 people were stopped and searched under section 43 of the Terrorism Act 2000 in 2013–14,<sup>108</sup> a drop of 31 on the figure for 2012–13. A further 10 were stopped under section 43A,<sup>109</sup> as against only 1 in 2012–13.<sup>110</sup>

During 2013, the Northern Ireland Policing Board carried out a review of the way in which the police were using their stop and search powers under both the Terrorism Act 2000 and the Justice and Security (NI) Act 2007.<sup>111</sup> The Board was worried that the police might be abusing their powers by repeatedly stopping some people,

<sup>101</sup> [2013] NIQB 47.

<sup>102</sup> [2013] NICA 57. In January 2014 the UK Supreme Court reversed the Court of Appeal ([2014] UKSC 4); the Department had already agreed to amend the Rules.

<sup>103</sup> *Re McLarnon's Application* [2013] NIQB 40 (Morgan LCJ, Girvan LJ and Treacy J).

<sup>104</sup> *Re Maye's Application* [2013] NIQB 39 (Morgan LCJ, Girvan LJ and Treacy J).

<sup>105</sup> The Action Plan is available at [www.dojni.gov.uk/index/publications/publication-categories/public-criminal-justice/victim-and-witness-strategy-action-plan-2013-15.pdf](http://www.dojni.gov.uk/index/publications/publication-categories/public-criminal-justice/victim-and-witness-strategy-action-plan-2013-15.pdf).

<sup>106</sup> [2013] NICA 19.

<sup>107</sup> See ss 21, 24 and Sch 3, para 4(1).

<sup>108</sup> Section 43 allows stops and searches of persons reasonably suspected to be a terrorist.

<sup>109</sup> Section 43A allows the stop and search of a vehicle if a police officer reasonably suspects that it is being used for the purposes of terrorism.

<sup>110</sup> PSNI Statistics, 'Stop and Search Statistics, Financial Year 2013/14' (2014) Table 1.

<sup>111</sup> Human rights thematic review on the use of police powers to stop and search and stop and question under TA 2000 and JS(NI)A 2007 (2013).

especially amongst the Catholic community, to a degree which amounted to harassment. The review made 11 recommendations, one of which was that the ‘community background’ of all persons stopped (ie whether they were perceived to be Protestants or Catholics) should be recorded. By the year’s end, no such recording had occurred, and David Anderson, the Independent Reviewer, later voiced two warnings on the matter: that the data gleaned might be misused to inflame community tensions and that the police might be tempted to redress an imbalance in the use of stop and search powers by using them more frequently in relation to members of a community from which no threat was expected.<sup>112</sup> In 2013–14, 14 persons were made subject to notification requirements under the Counter-Terrorism Act 2008,<sup>113</sup> meaning that they must provide the police with prescribed information about any change of address etc on an ongoing basis.<sup>114</sup>

The Northern Ireland Assembly voted in 2013 not to extend to Northern Ireland the Marriage (Same Sex Couples) Act 2013, which permits same-sex marriages in England and Wales. Any such marriages will be recognised in Northern Ireland only as civil partnerships. Most unionist MLAs are implacably opposed to the concept of same-sex marriage. In October 2013, Treacy J held that the Health Minister had acted irrationally when he decided not to alter the lifetime ban on males who have had sex with other males donating blood (contrary to the policy in place in the rest of the UK, where such donations are restricted only during a one year ‘deferral period’).<sup>115</sup> The judge pointed out that the minister had also breached the Ministerial Code<sup>116</sup> because the ban is both a controversial and cross-cutting matter and therefore should have been brought to the attention of the whole Executive Committee at Stormont. Moreover, he held that it is the UK Secretary of State for Health who is responsible for the determination of appropriate ‘deferral periods’ in Northern Ireland and also for the technical requirements in relation to products such as blood.

An important victory was won by the Northern Ireland Human Rights Commission when the Court of Appeal upheld its challenge to the Health Minister’s refusal to allow people other than married couples to apply to adopt children. Northern Ireland’s law had already been found to be in breach of Article 8 of the ECHR by the House of Lords,<sup>117</sup> but the minister had refused to make the necessary changes to give effect to that decision. An attempt by the Health Minister to seek leave from the Supreme Court to appeal against the Court of Appeal’s decision was also unsuccessful. In *Belfast Health and Social Care Trust v JK, GC and JC*, Maguire J emphasised how important it is for a trust, when deciding to remove a child from the care of his or her mother, to ensure that the Human Rights Act 1998 is fully taken into account.<sup>118</sup>

In *Re JR57’s Application*, Horner J ruled that the Northern Health and Care Trust, by retaining and sharing information that the applicant had allegedly sexually abused his sister many years earlier, had violated the applicant’s Article 8 rights because there

<sup>112</sup> See his report for 2013, above n 75, paras 6.16–6.19.

<sup>113</sup> Pt IV (ss 40–61).

<sup>114</sup> See n 76 above, Table 15.

<sup>115</sup> *Re JR65’s Application* [2013] NIQB 101.

<sup>116</sup> Under the Northern Ireland Act 1998, s 28A(10).

<sup>117</sup> *In re G (Adoption: Unmarried Couple)* [2008] UKHL 38, [2009] 1 AC 173.

<sup>118</sup> [2013] NIFam 10.

was no pressing need to disclose such information.<sup>119</sup> However, in *Re JR60's Application*, the same judge upheld the policy of Health and Social Care Trusts to keep and use for up to 75 years various records generated when the applicant was a resident of children's homes and a training school between 1978 and 1991.<sup>120</sup> The Criminal Justice Act (NI) 2013 also allows the indefinite retention of DNA profiles collected from people who have been sentenced to an imprisonable offence.<sup>121</sup> The decision in *Re JR60's Application* and the legislative provision both push to the limits the state's margin of appreciation under Article 8 of the ECHR.

#### THE RIGHTS TO FREEDOM OF EXPRESSION, ASSEMBLY AND ASSOCIATION

The law on defamation in Northern Ireland was not affected by the Defamation Act 2013, most of which applies only in England and Wales. The consequence of this is that it remains easier for people to sue for defamation in Northern Ireland than anywhere else in the UK: the 2013 Act provides that a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant or serious financial loss. In *Ewing v Times Newspapers Ltd*, the Court of Appeal of Northern Ireland rejected the appellant's libel claim because, under the principle set out by the Court of Appeal of England and Wales in *Jameel v Dow Jones & Co*,<sup>122</sup> it is not a breach of Article 6 of the ECHR to reject such a claim 'where the reputation which the claimant seeks to uphold is minimal and the use of the court process is disproportionate having regard to the complexity of the proceedings'.<sup>123</sup> Northern Ireland followed England's path<sup>124</sup> in abolishing the ancient common law offence of 'scandalising the court'.<sup>125</sup>

In December 2012, Belfast City Council voted to amend its policy on the flying of the Union flag on Belfast City Hall. Previously it had been flown every day; the unionist councillors wanted this practice to continue, while the nationalist councillors wanted the flag to be removed completely. The balance of power was held by Alliance Party councillors, who voted for the compromise solution of allowing the flag to be flown on no more than 18 designated days, as at the Northern Ireland Assembly building, and it was this proposal which won through. Some unionists were so opposed to this outcome that they took part in widespread street protests, blocking roads and disrupting commercial activities. The protests continued throughout 2013<sup>126</sup> and there was no sign of a solution by the end of the year. The display of flags was one of the issues considered during the Haass talks, but no agreement could be reached. In September, the NIHRC published a helpful report on the subject, highlighting the relevant human rights standards that needed to be brought to bear on the matter.<sup>127</sup> The PSNI adopted

<sup>119</sup> [2013] NIQB 33.

<sup>120</sup> [2013] NIQB 93.

<sup>121</sup> Section 9 and Schs 2 and 3.

<sup>122</sup> [2005] EWCA 75.

<sup>123</sup> [2013] NICA 74, para 37.

<sup>124</sup> See Crime and Courts Act 2013, s 33.

<sup>125</sup> Criminal Justice Act 2013, s 12.

<sup>126</sup> For details of incidents see [http://en.wikipedia.org/wiki/Belfast\\_City\\_Hall\\_flag\\_protests](http://en.wikipedia.org/wiki/Belfast_City_Hall_flag_protests).

<sup>127</sup> *The Display of Flags, Symbols and Emblems in Northern Ireland* (NIHRC, 2013).

a fairly hands-off approach to the protests, preferring not to arrest many people at the time of the protests (for fear of provoking even greater disturbances) but instead to take photographs and video footage of the events so that they could later identify individuals who may have committed offences and proceed against them accordingly. On 18 November 2013, the police reported that 560 people had been charged or reported in connection with the flag protests to date and that 260 had already been convicted of offences.<sup>128</sup> It remained unclear to what extent the protests were being orchestrated by elements connected to unlawful loyalist paramilitary organisations.

## THE RIGHT TO FREEDOM FROM DISCRIMINATION

At the high constitutional level, discrimination against women was eliminated by the Succession to the Crown Act 2013, which provides that, in determining the succession to the Crown, the gender of a person born after 28 October 2011 does not give that person, or that person's descendants, any precedence over any other person, whenever born.<sup>129</sup> While the sovereign must him- or herself still be a Protestant, the Act provides that a person is not disqualified from holding the Crown as a result of marrying a person of the Roman Catholic faith.<sup>130</sup> Strangely, the Act continues to require that, if any of the six persons next in the line to the throne wishes to marry, they must first obtain the consent of the sovereign.

The UN's Committee on the Elimination of Discrimination against Women issued its Concluding Observations on the UK in July 2013 and made a number of specific recommendations relating to discrimination against women in Northern Ireland.<sup>131</sup> First, it suggested that provisions in the Equality Act 2010, which applies only in Great Britain, should be extended to Northern Ireland, in particular so that women can be protected against multiple discrimination and pay secrecy clauses. Secondly, it proposed that the mandate of the Historical Institutional Abuse Inquiry should be extended to embrace women who entered residential institutions when they were already over the age of 18, a point also made by the UN Committee against Torture in its fifth periodic Concluding Observations on the UK report.<sup>132</sup> Thirdly, it regretted that there was no UK-wide strategy for the implementation of the Convention on the Elimination of Discrimination against Women. Fourthly, it repeated its concern at the low representation of women in the post-conflict process in Northern Ireland, and the failure to fully implement Security Council Resolution 1325 (2000). Fifthly, it called on the UK government to decriminalise abortion in Northern Ireland and to ensure that legal abortion is possible not only in cases of threats to the life of a pregnant woman but also in cases of threats to her health, rape, incest and serious malformation of the foetus.

Under the Mental Health (Discrimination) Act 2013, which applies throughout the UK, a person cannot now be disqualified from membership of the House of Commons

<sup>128</sup> See [www.bbc.co.uk/news/uk-northern-ireland-24986841](http://www.bbc.co.uk/news/uk-northern-ireland-24986841).

<sup>129</sup> Section 1.

<sup>130</sup> Section 2(1).

<sup>131</sup> Available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDA.W%2fC%2fGBR%2fCO%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDA.W%2fC%2fGBR%2fCO%2f7&Lang=en).

<sup>132</sup> See above n 35, para 24.

or other devolved legislatures just because he or she has a mental illness.<sup>133</sup> The Act also reduces the disqualifications based on mental illness concerning jury service or service as a company director.<sup>134</sup> In May 2013, the Office of the First and Deputy First Minister published a Disability Strategy for Northern Ireland, developing it on a rights-based approach and on monitoring indicators modelled around the UN Convention on the Rights of Persons with Disabilities.

Discrimination on the basis of caste was prohibited in England, Scotland and Wales in 2013,<sup>135</sup> but no such provision has been enacted for Northern Ireland. This adds to the growing number of discrepancies between the law on equality in Great Britain and that in Northern Ireland. The Assembly did nothing during 2013 to extend the prohibition on age discrimination to include discrimination in access to goods, facilities or services. The Equality Commission and the Northern Ireland Commissioner for Children and Young People jointly commissioned an expert paper from Robin Allen QC and Dee Masters on this subject.<sup>136</sup>

In the wake of the controversial appointment of Mary McArdle, a convicted murderer, to the post of Special Adviser to a Minister in the Northern Ireland Executive, Jim Allister MLA successfully piloted through the Assembly a law disqualifying some persons from holding such a post. The Civil Service (Special Advisers) Act (NI) 2013 was carefully drafted so as to be compatible with the ECHR. It prohibits people from serving as special advisers to government ministers if they have ‘a serious criminal conviction’, defined as a prison sentence of five years or more.<sup>137</sup>

Incidents of racially motivated crime continued to rise during 2013, yet the Northern Ireland Executive had still not published a Racial Equality Strategy by the end of the year. The NIHRC published a report on the topic in September,<sup>138</sup> concluding that, while Northern Ireland’s laws and policies on racist hate crimes were in general compliance with international standards, there was considerable room for improvement in terms of practice. The NIHRC called in general for better partnership between the various criminal justice agencies and made 29 specific recommendations to a variety of these agencies, including that the PSNI and the Public Prosecution Service should ensure that staff are fully aware that an offence can be one which is ‘aggravated by hostility’<sup>139</sup> if it has ‘demonstrated’ racial hostility, even if it has not perhaps been ‘motivated’ thereby. In February, the NIHRC notified the UN’s Committee on the Elimination of Racial Discrimination that sectarianism was on the rise in Northern Ireland and highlighted the Northern Ireland Executive’s delay in producing a new anti-sectarian strategy.<sup>140</sup> Three months later, the Office of the First and Deputy First Minister issued a document entitled ‘Together: Building A United Community’.<sup>141</sup>

<sup>133</sup> Section 1.

<sup>134</sup> Sections 2–3.

<sup>135</sup> See the Enterprise and Regulatory Reform Act 2013, s 97.

<sup>136</sup> ‘Strengthening Protection for All Age’s (April 2013), available at [www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/ExpertPaper\\_FULLAge-GFS\\_ProtectingAllAges-IncCYP\\_v1\\_18413.pdf](http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/ExpertPaper_FULLAge-GFS_ProtectingAllAges-IncCYP_v1_18413.pdf).

<sup>137</sup> Sections 2 and 5(1)(a).

<sup>138</sup> *Racist Hate Crime: Human Rights and the Criminal Justice System in Northern Ireland* (NIHRC, 2013).

<sup>139</sup> As required by the Criminal Justice (No 2) (NI) Order 2004, Art 2(3).

<sup>140</sup> See the NIHRC’s Annual Statement for 2013, above n 1, 12.

<sup>141</sup> Available at [www.ofmdfmi.gov.uk/together-building-a-united-community-strategy.pdf](http://www.ofmdfmi.gov.uk/together-building-a-united-community-strategy.pdf).

This set out a strategy aimed at improving community relations and creating a new Equality and Good Relations Commission; judging by past experience, both developments could be some time in the making.

In *Re Tadas Lapas's Application*, Treacy J found that the Northern Ireland Prison Service had unlawfully discriminated against a Lithuanian prisoner (and also violated its public law duty) by not providing him with access to offending behaviour programmes because of his lack of fluency in English.<sup>142</sup>

In *Re Brewster's Application*, the Court of Appeal, allowing an appeal against Treacy J's decision, held (by two to one) that it was not discriminatory to deny a pension to the co-habiting partner of a local government worker but to grant it to a spouse of such a worker solely because, prior to the death of the applicant's partner and contrary to regulations, a form had not been submitted naming the applicant as a 'nominated cohabiting partner'.<sup>143</sup> The difference in treatment between married persons and co-habiting persons was found to be proportionate because it had not been shown to be 'manifestly without reasonable foundation', the test applied in respect of state benefits by the European Court of Human Rights in *Stec v UK*<sup>144</sup> and approved by Baroness Hale in *Humphreys v HMRC*.<sup>145</sup>

#### THE RIGHT TO EDUCATION AND OTHER SOCIAL AND ECONOMIC RIGHTS

There were no significant developments concerning the right to education during 2013, although the NIHRC did submit advice to the Minister for Education on whether a particular secondary school should be closed<sup>146</sup> and on the draft Traveller Child in Education Action Framework.<sup>147</sup> Also, a challenge brought against a decision of the Special Educational Needs and Disability Tribunal to allocate a child with Down's syndrome to a particular school was unsuccessful because the Tribunal was found to have acted rationally and in accordance with the child's human rights.<sup>148</sup> Welfare reform was hotly debated, but by the year's end the measures enacted for Great Britain had not been fully replicated in Northern Ireland, mainly due to the opposition of nationalist MLAs. In January 2013, the Assembly's Ad Hoc Committee on Human Rights and Equality issued a report on the implications of the Welfare Reform Bill, which the NIHRC welcomed because it mirrored some of the proposals made by the NIHRC itself.<sup>149</sup> These included the suggestions that lone parents should not be penalised for failing to take up work due to a lack of affordable childcare, that changes to housing benefit entitlement should make allowances for disabled persons who may

<sup>142</sup> [2013] NIQB 118.

<sup>143</sup> [2013] NICA 54.

<sup>144</sup> (2006) 43 EHRR 47.

<sup>145</sup> [2012] UKSC 18, [2012] 1 WLR 1545 (UKSC), a decision about discrimination against men in the allocation of child tax credit.

<sup>146</sup> This related to Dundonald High School, which was eventually reprieved from closure in January 2014.

<sup>147</sup> Available at [www.nihrc.org/uploads/documents/advice-to-government/2013/Traveller%20education%20action%20framework%20%20NIHRC%20Response.pdf](http://www.nihrc.org/uploads/documents/advice-to-government/2013/Traveller%20education%20action%20framework%20%20NIHRC%20Response.pdf).

<sup>148</sup> *Re TCM's Application* [2013] NIQB 3 (Gillen J).

<sup>149</sup> Press release, available at [www.nihrc.org/news/detail/welfare-reform-report-a-positive-step-for-human-rights-protection](http://www.nihrc.org/news/detail/welfare-reform-report-a-positive-step-for-human-rights-protection).

require an additional room to accommodate an overnight carer and that private contractors who are engaged to assess eligibility for benefit payments should be bound by the Human Rights Act 1998.

Not all of the changes to employment law in Great Britain were replicated in Northern Ireland. For instance, the simplified rules on whistleblowing at work were not adopted.<sup>150</sup> Northern Ireland's employment law continues to be out of step with Great Britain in various respects; most notably, the qualification period for bringing an unfair dismissal claim is still one year in Northern Ireland, while elsewhere in the UK it is two years.<sup>151</sup> In 2013, the Department for Employment and Learning issued regulations increasing a qualifying employee's entitlement to parental leave regarding an individual child from 13 weeks to 18 weeks.<sup>152</sup> Later, the Department consulted on proposals to provide parents with greater flexibility over their shared childcare arrangements, but no change had been made by December. The NIHRC reminded the Department that the European Committee of Social Rights had previously concluded that the UK was not in conformity with Article 8(1) of the European Social Charter of 1961 because the standard rates of statutory maternity pay, after the initial six weeks of maternity leave, are inadequate.<sup>153</sup>

*Re JT's Application* is a good example of the High Court quashing a housing association's allocation of social housing because it failed to comply with its own scheme, it contravened the applicant's legitimate expectations, it acted in a way that was apparently biased, it adopted a procedure that was unfair and it violated the applicant's rights under Article 8 of the ECHR to a private and family life.<sup>154</sup>

#### OTHER INTERNATIONAL HUMAN RIGHTS TREATIES

The UK's seventh periodic report to the UN's Human Rights Committee was published in April 2013,<sup>155</sup> but the Committee's Concluding Observations had not been released even by the end of 2014. Likewise, the UK's first periodic report on the Convention on the Rights of Persons with Disabilities was published in July 2013<sup>156</sup> and awaits consideration by the relevant committee. Towards the end of 2013, the UK government submitted its 33rd Report to the European Committee of Social Rights, which oversees adherence to the European Social Charter;<sup>157</sup> this report covers 'labour rights', such as the rights to just conditions of work, to fair remuneration, to organise and to bargain collectively.<sup>158</sup> At the end of the year, the Committee issued its views on

<sup>150</sup> See the Enterprise and Regulatory Reform Act 2013, ss 17–20.

<sup>151</sup> Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012 (SI 989), amending the Employment Rights Act 1996, s 108(3); Employment Rights (NI) Order 1996, Art 140(1).

<sup>152</sup> Parental Leave (EU Directive) (Maternity and Parental Leave) Regs (NI) 2013.

<sup>153</sup> The 2013 Annual Statement (NIHRC, 2013) 38; see above n 1.

<sup>154</sup> [2013] NIQB 89 (Horner J).

<sup>155</sup> For the NIHRC's submission see [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fIFL%2fGBR%2f17845&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fIFL%2fGBR%2f17845&Lang=en).

<sup>156</sup> Available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=GBR&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=GBR&Lang=EN).

<sup>157</sup> The UK has ratified the 1961 version of this Charter, but not the Additional Protocol on Collective Complaints on the revised Social Charter of 1996

<sup>158</sup> Available at [www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/UK33\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Reporting/StateReports/UK33_en.pdf).

the UK's adherence between 2008 and 2011 to Articles 3 and 11–14 of the European Social Charter,<sup>159</sup> the provisions dealing with health, social security and social protection.<sup>160</sup> The only provision which the Committee concluded the UK was breaching was Article 12(1), which guarantees the right to social security. The Committee found that the minimum levels of short- and long-term incapacity benefit, state pension and jobseeker's allowance were all 'manifestly inadequate' because they fell below 40 per cent of the Eurostat 'median equivalised income'. This verdict takes no account of the welfare and state pension reforms announced in 2012, but those reforms are very unlikely to remove the inadequacy.

The UK was not due to submit its next report to the Advisory Committee monitoring compliance with the European Framework Convention on the Protection of National Minorities until May 2014. However, in March 2013, it submitted its 'fourth cycle' report to the Committee of Experts monitoring the European Charter for Regional or Minority Languages.<sup>161</sup> The NIHRC hosted a visit by that Committee and made its own submission to it.<sup>162</sup> The Committee's Evaluation Report was adopted in June 2013 and the Committee of Ministers issued its recommendations in January 2014.<sup>163</sup> Amongst these were the proposals that, as a matter of priority, the UK authorities should (i) adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation providing statutory rights for the Irish speakers, (ii) strengthen support for the work done by the Ulster Scots Agency and take measures to establish the teaching of Ulster Scots, and (iii) ensure that the present cuts in public spending do not have a disproportionate effect on the protection and promotion of minority languages.

<sup>159</sup> The UK, unlike Ireland, has not ratified the Revised European Social Charter dating from 1996.

<sup>160</sup> Article 3 guarantees the right to safe and healthy working conditions; Art 11 the right to protection of health; Art 12 the right to social security; Art 13 the right to social and medical assistance; and Art 14 the right to benefit from social welfare services.

<sup>161</sup> Available at [www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR4\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/PeriodicalReports/UKPR4_en.pdf).

<sup>162</sup> NIHRC press release, 'Committee of Experts Visit Belfast', 31 October 2013.

<sup>163</sup> Both are available at [www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML4\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UKECRML4_en.pdf).