Reforming the Petition of Concern

From 'Concern' to full Citizenship

Winter 2018/19

nipsa

Protecting Public Services
Supporting Public Servants

Acknowledgment:

With thanks to Dáire Toner for his advice on and verification of the Petition of Concern data included in the booklet.

John McVey, NIPSA Policy and Research

Northern Ireland Public Service Alliance

Headquarters
54 Wellington Park
Belfast
BT9 6DP

Regional Office
30 Great James Street
Derry
BT48 7DB

Introduction

At the 2018 NIPSA Annual Conference a motion calling for the reform of the NI Assembly (NIA) Petition of Concern (PoC) mechanism was passed. The motion referred to the primary intent of the PoC ("to prevent discrimination") but noted that now, far from this original purpose; there had been an "abuse" of the PoC to such an extent that it, in fact, "has been used as a veto to discriminate against sections of society". In this context NIPSA has called for reform of the Petition of Concern mechanism so that it "protects human rights and civil rights and not be used as a discriminatory veto". This booklet examines the issue: in the context of the original purpose of the Petition of Concern, its place within the "architecture" of the Good Friday Agreement/Belfast Agreement (GFA) and explores some current proposals for its reform. It also argues that, from a trade union perspective, the call for the restoration of devolved government within which the PoC would be reformed must also revisit the wider collective protections – including a Bill of Rights – that emerged from the peace process.

Designation and Votes requiring Community support

Prior to the signing of the GFA the ghosts of previous power sharing attempts and failed agreements haunted its talks process. It was always clear, therefore, that for any newly devolved government to succeed, it would have to represent a clear break from the composition and modus operandi of the "old Stormont" (1921-71). That is, while political expression was still going to reflect the electoral dominance of unionism and nationalism, a combination of proportional representation by which an assembly was elected and the new operational structures within it would, it was argued, provide the bulwark against the possibility of single party dominance. This meant that "community designation" (an MLA's self-definition as "Nationalist", "Unionist" or "Other") became a part of the Northern Ireland Act 1998 and the Assembly's Standing Orders, with the most important decisions within the Assembly having to demonstrate "cross-community support". This support was defined within the Act as:

a. The support of a majority of the members voting, a majority of the designated Nationalists voting and a majority of the designated Unionists voting; or

b. The support of 60 per cent of the members voting, 40 per cent of the designated Nationalists voting and 40 per cent of the designated Unionists voting.[1]

The Northern Ireland Act also specified the areas that require such support:

- Changes to the schedule of reserved, transferred or excepted matters (Section 4(3));
- Determination of the number of Ministers and their portfolios (Section 17(5));
- Changes to the Ministerial Code (Section 28A(4));
- Exclusion of Ministers from Office and exclusion of parties from holding Ministerial Office (Section 30);
- Election of Presiding Officer (Section 39(7)) (also Principal Deputy Speaker and Deputy Speakers under Standing Orders);
- Making, amending or repealing Standing Orders (Section 41(2));
- Petitions of Concern (Section 42);
- Resolutions about reduction in remuneration (Section 47A(9));

1 Northern Ireland Act 1998: ***https://www.legislation.gov.uk/ukpga/1998/47/pdfs/ukpga_19980047_en.pdf***

- Resolutions about reduction in financial assistance (Section 51A(8));
- Censure resolutions (Section 51D(5));
- Financial Acts of the Assembly (Section 63(3)) and
- Draft budgets (Section 64).[2]

The procedural requirements of the Petition of Concern itself are set out in Standing Orders (SO) 28 (Petitions of Concern, Voting), SO 35 (dealing with an Equality Committee and public legislation) and SO 60 (Ad-hoc Committee and Committee matters). SO 28 states:

> **(1) A Petition of Concern in respect of any matter shall be in the form of a notice signed by at least 30 members presented to the Speaker. No vote may be held on a matter which is the subject of a Petition of Concern until at least one day after the Petition of Concern has been presented.**
>
> **(2) Other than in exceptional circumstances, a Petition of Concern shall be submitted at least one hour before the vote is due to occur. Where no notice of the vote was signalled or such other conditions apply that delay the presentation of a Petition of Concern the Speaker shall determine whether the Petition is time-barred or not.**[3]

The Agreement therefore, in its Strand One elements ("Democratic Institutions in Northern Ireland"), set out – "safeguards to ensure that all sections of the community can participate and work together successfully in the operation of these institutions and that all sections of the community are protected"[4] before referring to: how the committee system should operate fairly. This protection was to be supported by "the European Convention on Human Rights (ECHR) and any Bill of Rights for Northern Ireland supplementing it, which neither the Assembly nor public bodies can infringe, together with a Human Rights Commission; arrangements to provide that key decisions and legislation are proofed to ensure that they do not infringe the ECHR and any Bill of Rights for Northern Ireland."[5]

From safeguard to "farce"

While this was the original purpose and legislative framework within which the Petition of Concern safeguard was to operate, how could its subsequent use and the publicity around what it has been used for degenerate to such an extent that it has said to have been "played like a joker" with its operation displaying "abuse…political chicanery and farce"?[6]

If we look first at frequency of use, Table One illustrates the number of times the PoC has been deployed/threatened to be deployed between 2007 and 2016.

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2 *http://www.niassembly.gov.uk/globalassets/Documents/Reports/Assem_Exec_Review/10170.pdf* 25/3/14.

3 *http://www.niassembly.gov.uk/globalassets/documents/standing-orders/standing-orders-feb-10-2015.pdf*

4 *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf*

5 Ibid.

6 *https://www.bbc.co.uk/news/uk-northern-ireland-23247074* 9/7/13.

Table One: Petitions of Concern 2007-2016

	No. Petitions of Concern	Party/Parties Involved
Mandate 2007-2011	13	DUP
	13	Sinn Féin and SDLP
	7	DUP and UUP
Sub-Total	**33**	
Mandate 2011-2016	84	DUP
	24	Sinn Féin and SDLP
	2	DUP and UUP
	2	Alliance, SF and Green Party
	2	Green Party, Sinn Féin and SDLP
	1	Alliance, SF, Greens and NI21
	1	DUP and SDLP
Sub-Total	**116**	
Overall Total	**149***	

* Some items were not moved or called either because the mover of the motion knew they would not win following a petition of concern being applied or that the amendment of a bill was not called as it was either mutually exclusive to another amendment or consequential to another amendment which may not have been made.

The overall total of 149 valid PoCs tabled shows that deployment points to multiple uses on a limited number of topics rather than a significant range of issues. In this way between 2011 and 2016 "the majority [84%] of the vetoes related to just 14 pieces of proposed legislation which involved the blocking of multiple amendments."[7] The investigative journalism website "The Detail" further illustrated this dominance of multiple uses, with a breakdown of the top ten issues dealt with by a PoC between 2011-2016.

Table Two: 'Top Ten' Petitions of Concern 2011-2016

Legislation and Motion	Number of Petitions of Concern
Welfare Reform Bill	49
Education Bill	10
Local Government Bill	7
Marriage Equality	5
Criminal Justice Bill	4
Assembly and Executive Reform (Assembly Opposition Bill)	4
Planning Bill	3
Justice Bill	3
Complaints against MLAs	3
A5 Dual Carriageway Project	2

7 *https://www.thedetail.tv/articles/stormont-s-petition-of-concern-used-115-times-in-five-years* 29/9/16.

If not a range of issues then, it appears that specific, long-running, high profile and rancorous debates about issues that concluded with the use of a PoC raised a wider awareness among the public about the issue. In this way the electorate saw the PoC being used to: stop the investigation of alleged misconduct, veto initial proposals to end MLAs "double jobbing" and 'block' Welfare Reform legislation. Most significantly before the current suspension of the institutions, two of the highest profile examples of the deployment of the PoC did not relate to traditionally sectarian issues but to the issues of same-sex marriage, and women's reproductive rights. As a consequence, it is argued, optimism about the Assembly's general competence or potential for genuine, progressive, power-sharing reform has decreased.

A design fault?

Some have argued that what has happened in relation to the PoC is a consequence of the original structural design of the GFA. Consequently, the fallout from "the checks and balances, the vetoes and petitions of concern threaded throughout the complex arrangements, legislated by the NI Act of 1998, [have been shown to be] "good for the peace process, but rotten for good governance."[8] In this way, it is suggested that, while there was an understandable initial prioritisation of "stability" after 1998 (to allow the institutions to bed in and for operational trust among the parties to develop), this carried its own risks. This is due to:

> a kind of natural law of political science that the addition of veto powers in any political system tends to promote "policy stability"; as the number of ideologically distinct "veto players" expands, the "win set" (the policy space in which the preferences of the veto players overlap) tends to shrink and, consequently, so too do the prospects for altering the policy status quo. In a consocational setting, some policy stability is a necessary by-product of a more consensual style of decision-making. But too much policy stability can lead to regime instability; a political system that cannot get the basic things done may collapse altogether."[9]

Standing Orders adrift from original purpose?

If this is what has happened over a longer time period, it raises a key question - was there something within the initial operational toolkit that Standing Orders (SOs) represent that has contributed to the dysfunction of devolved government? In other words, is there a gap between the spirit of the GFA and SOs that has contributed to the inappropriate use of the PoC?

The triggering of a PoC as originally defined by the GFA and NIA should lead to the establishment of a Special Procedure Committee (known in Standing Orders as the Ad Hoc Committee on Conformity with Equality Requirements) to examine whether what has been proposed conforms with "equality requirements" including the ECHR/NI Bill of Rights. The only exception to such an approach should be if the Assembly votes **on a cross community basis** not to do so. In fact with the exception of the Welfare Reform Bill (and this triggered by the Bill Committee) such a process has never taken place.

As the Committee on the Administration of Justice note:

> The scope of 'equality requirements' is linked, but not restricted to, the ECHR/Bill of Rights, that are clearly intended to be scrutiny tools and contain provisions on rights that are

8 *http://scopeni.nicva.org/article/stumbling-backwards-future* 24/11/14.

9 *http://www.niassembly.gov.uk/globalassets/documents/raise/knowledge_exchange/briefing_papers/series3/schwartz200314.pdf* 20/3/14

> to be protected, respected and fulfilled without discrimination. The absence of the NI Bill of Rights does limit the scope of the special procedure and the rights it would be otherwise mandated to consider. For example, if a Petition of Concern was tabled on a housing issue, reliance could be made on Article 8 & 14 ECHR (right to private and family life without discrimination), but not the right to housing (accommodation) that was advised for inclusion in the NI Bill of Rights, unless the Committee also considers other UK human rights treaty obligations. The GFA provisions for 'Parity of Esteem' were also to be incorporated in the Bill of Rights as a duty to ensure equality of treatment for the identity and ethos of the two main communities (without prejudice to the rights of others) and where relevant would require consideration as part of the special committee if enacted.[10]

In this way, lacking both a Bill of Rights and a formal, well-resourced Committee (on a par with Westminster's Joint Committee on Human Rights) the possibility of a PoC being used in a more defined manner is further hindered by how the SOs relating to the procedure have been used. For example, SO35 does not require the 30 MLAs who trigger a PoC to define what their "concern" is or link it to "equality requirements" thus necessitating the establishment of a Special Committee (facilitated by SO 60).[11] While another SO (35) exists to cover whether a "bill, draft bill or proposal for legislation is compatible with equality requirements", these provisions relate to the triggering of the Committee by a motion from Ministers or Committee Chairs. An Assembly review of these matters could not clarify why there were 3 SOs and why none locked the PoC more securely to the very legislation that it was there to facilitate:

> Clear, common, well understood practice is that PoCs trigger a cross community vote on specific motions, amendments or legislative proposals; but do not, however, generate a question to establish [the Special Committee]. However, the [Assembly Review} Committee noted that both the Belfast Agreement and the Northern Ireland Act 1998… appear to require the Assembly to vote on whether a measure can proceed or should be referred to [the Special Committee] every time there is a petition of concern." The note records that having three distinct SOs had always been the case and that "very little information exists to explain or clarify this genesis and no corporate memory has survived in respect of this issue."[12]

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10 CAJ (2018) ***https://s3-eu-west-1.amazonaws.com/caj.org.uk/2018/01/25104406/S469-CAJ-Briefing-Petition-of-Concern-Jan-20181.pdf*** January 2018.

11 SO 60 - Ad Hoc Committee on Conformity with Equality Requirements.
(1)The Assembly may establish an ad hoc committee to examine and report on whether a Bill or proposal for legislation is in conformity with equality requirements (including rights under the European Convention on Human Rights or any Northern Ireland Bill of Rights).
(2) The committee may exercise the power in section 44(1) of the Northern Ireland Act 1998.
(3) The Assembly shall consider all reports of the committee and determine the matter in accordance with the procedures on cross-community support within the meaning of section 4(5) of the Northern Ireland Act 1998.
(4) Where there is a Petition of Concern the Assembly shall vote to determine whether the measure or proposal for legislation may proceed without reference to the above procedure. If this fails to achieve support on a parallel consent basis the procedure as at (1)–(3) above shall be followed. ***http://www.niassembly.gov.uk/globalassets/documents/standing-orders/standing-orders-feb-10-2015.pdf***

12 CAJ (2018) Op. Cit.

Internal proposals for reform

The fact that there was an Assembly Review shows that the political parties themselves recognised that the potential abuse of the PoC was an obvious impediment to effective government. As a consequence, discussion of how the PoC might operate more appropriately has been part of successive talks processes to establish/restore/improve the Assembly from St. Andrews (2006) to Stormont House (2014) and then Fresh Start (2015). The Review quoted above (the Assembly and Executive Review Committee) followed the St. Andrews Agreement and looked at the PoC within its review of "D'Hondt, Community, Designation and Provisions for Opposition". At that time on the question of a deployment of a PoC necessitating a Special Committee being set up, the Review looked at, but failed to reach a consensus on, three options for change:

- **Option A:** amend the NIA to reflect the current Assembly Practice of not voting for the Special Procedure when a Petition of Concern is tabled;
- **Option B:** vote on Special Procedure when a Petition of Concern is tabled on legislation (with various sub-options) and
- **Option C:** vote on Special Procedure whenever a Petition of Concern is tabled;

In 2014 they revisited this discussion and engaged in further detailed work on the issue. This focused on:

- Provisions for voting on an Ad Hoc Committee on Conformity with Equality Requirements prior to the vote on a Petition of Concern.
- The possibility of restricting the use of Petitions of Concern to certain key areas, and mechanisms that might facilitate this.
- Whether the current threshold of 30 signatures required for a Petition of Concern should be adjusted.
- Whether the Petition of Concern mechanism should be replaced with an alternative mechanism, such as a weighted-majority vote.

Again, the Committee failed to reach a consensus on reform either on the proposal to move to votes on a weighted majority basis or on the issue of restricting PoC use to particular areas of Assembly business.[13]

In the Stormont House talks and subsequent agreement[14] the parties agreed to alter "the operation of the Petition of Concern mechanism through a protocol agreed between the parties". The subsequent political crises that led to a further round of talks and the "Fresh Start"[15] proposals put some flesh on the bones of this protocol recognising:

- This Protocol does not remove or mitigate the statutory entitlement conferred on Members of the Legislative Assembly in relation to petitioning the Assembly, but agree that it will only fulfil its intended purpose if adhered to by all signatory parties and operated in the spirit intended.

13 *http://www.niassembly.gov.uk/globalassets/Documents/Reports/Assem_Exec_Review/10170.pdf* 25/3/14.

14 *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf* 23 Dec 2014.

15 *https://www.gov.uk/government/news/a-fresh-start-for-northern-ireland* 17/11/15.

- While the signatory parties acknowledge the voluntary nature of their commitment, they will honour their obligations under this protocol in good faith at all times.
- The signatory parties have agreed to the following principles which will apply to their use of the Petition of Concern mechanism:
- That Petitions of Concern should only be tabled in exceptional circumstances;
- That in order to minimise the incidence of the use of Petitions of Concern, Private Members' motions tabled by members of the signatory parties should be so phrased that they do not bind the Assembly or the Executive by requiring a vote upon the matter under consideration;
- To this end such business should be conducted in the form of 'take note' debates;
- In cases where a tabled Private Members' motion does not comply with the conditions set out at provisions outlined within paragraph 4(ii), other signatory parties will be permitted under the terms of this protocol to table a Petition of Concern on the matter under discussion;
- Where a Petition of Concern is tabled, this should state the ground or grounds upon which it is being tabled and the nature of the detriment which is perceived as arising from an affirmative vote on the matter; and
- The provisions of section 13(3) of the Northern Ireland Act 1998 and of paragraph 60 of Assembly Standing Orders relating to the referral of Bills to the Ad Hoc Committee on Conformity with Equality Requirements will continue to apply.[16]

Finally in terms of Stormont attempting to get its own house in order in relation to the PoC, it should be noted that within the leaked "deal that never was" of February 2018 it was stated that "the Parties reiterate their commitment to the Protocol on the use of Petition of Concern as previously agreed in the Fresh Start Agreement. While it will be for parties to act in good faith and limit the use of Petitions of Concern, an Ad-Hoc Committee of the Assembly will be created to review the ways in which the Petition of Concern might be adapted." [17]

The wider debate on changing the PoC

The final report of evidence from the Assembly Review of the PoC, referred to above, runs to over 200 pages, including legal/academic proposals for reform. A booklet of this size is not the place to summarise the range of opinions offered within it and can only recommend its value as a substantive resource that captures the complexity of the debate around the question of mutual vetoes. It is interesting, however, to look at one succinct contribution to this debate from Dr. Alex Schwartz of Queen's University, Belfast[18] who defines three areas where the PoC could be used. These are issues that involve:

1. Language, culture, and symbols (including the display of flags) which have an obvious ethno-national resonance;
2. The legacy of the conflict in Northern Ireland, including decisions relating to victims;

16 Ibid. p.53.

17 *http://eamonnmallie.com/2018/02/full-draft-agreement-text/* 20 Feb 2018.

18 *http://www.niassembly.gov.uk/globalassets/documents/raise/knowledge_exchange/briefing_papers/series3/schwartz200314.pdf* 20 March 2014.

and survivors, the commemoration of members of the security forces or paramilitary organisations, and truth recovery for conflict-related deaths; and

3. The constitutional structure and institutions set up under the Good Friday Agreement. (This last category would include decisions relating to the North/South Ministerial Council, the Northern Ireland Human Rights Commission, and the structure and procedures of the Assembly itself)."[19]

In dealing with the abuse of the PoC he acknowledges it is not easy "to exhaustively list the various topics to which the procedure might be applied [as]…the boundary between normal 'bread and butter' politics and constitutional politics is nebulous and so it is difficult to precisely anticipate which issues will be injected with ethno-national significance in advance."[20] For this reason he looks to the possible establishment of:

> A statutory tribunal, composed of senior judges, to review the use of the Petition of Concern in cases where some abuse is alleged. There is precedent for this sort of mechanism in Bosnia-Herzegovina, where the Constitutional Court can be called on to scrutinise the use of the "vital national interest" veto. A political, and probably less expensive, alternative would be to empower the Assembly's Presiding Officer to vet and possibly reject a Petition of Concern in cases where some abuse is alleged. To assist the Presiding Officer, guiding criteria (along the lines described above) could be agreed to on a cross-community basis.[21]

This raises the dilemma of who would *own* and *implement* such change? The political 'culture' of the Assembly, whether during its operation or as displayed in the crisis talks to restore it highlights the contradiction of looking for change from those who might benefit most from "no change". Schwartz himself acknowledges as much:

> The two parties with the most power to effect change, the DUP and Sinn Féin, have also both benefited from abusing the veto in the past. If real reform is to occur, they will have to recognize some compelling benefit, to themselves or to the people of Northern Ireland, in reciprocally disarming themselves and learning to live with decisions that they do not necessarily like.[22]
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> There are important trade-offs involved in any veto mechanism and there is no generic design that is appropriate for all divided societies. The addition of a political mechanism for reviewing the Petition of Concern, relying on the putative impartiality of the Presiding Officer, is arguably the simplest and most efficient remedy for curbing the potential abuse of the veto. It is also a remedy which might plausibly win cross-community support – Unionists and Nationalists have previously agreed on a very similar mechanism to curb frivolous challenges to Executive decision-making. That being said, there is no perfect fix.[23]

As if to reinforce this point it is ironic (given the proposal that the Assembly's Presiding Officer be seen

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19 *http://qpol.qub.ac.uk/the-problem-with-petitions-of-concern/* 26 May 2015.

20 Ibid.

21 Ibid.

22 Ibid.

23 *http://www.niassembly.gov.uk/globalassets/documents/raise/knowledge_exchange/briefing_papers/series3/schwartz200314.pdf* 20 March 2014.

as the impartial arbiter of a PoC's validity) that one of the last PoCs deployed before the Assembly collapsed related to a vote of no confidence in the Speaker.

"Call in" and Local Government

The template of how these matters are addressed within the political system seems to be that: a review owned by the political parties takes place; this recognises a particular operational problem that is examined in depth over a considerable period of time and then, in the absence of consensus on a way forward, it is suggested that a voluntary protocol (without the weight or precision of the original legislation that it was/is to inform) should be adhered to. There have been some echoes of this pattern in local government where, during the Review of Public Administration, the debate about the future structures in this layer of government again looked at what protections may be required to prevent crude majoritarian behaviour. At local government level the proposal was for a "call in" mechanism:

> The "Call In" mechanism provides for 'key decisions', when the decision has been "called in" by 15% of representatives, to be reconsidered and only approved if passed by a 'qualified majority' of 80% of councillors. The primary legislation does set out some criteria, namely that the decision in question would 'disproportionately affect adversely a section of inhabitants' of the local government district. The merits of a "call in" have to be determined by a legal opinion. However, the terminology of 'disproportionately adversely affect' neither draws on recognised legal concepts nor is not further elaborated on in the legislation. It was consequently subject to criticism by CAJ and the Environment Committee of the NI Assembly for lacking legal certainty, however the Act does provide for secondary legislation that can qualify its provision and interpretation. The first attempt at such regulations was rejected in a February 2014 via a DUP Petition of Concern in the Assembly. At this stage the concerns were that a draft still lacked legal certainty and a qualified majority still would have been required regardless of the merit of the "Call In".
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> The secondary legislation was therefore redrafted and presented to the Assembly as the draft *Local Government (Standing Orders) Regulations (Northern Ireland) 2016*. These regulations tied the "call in" to circumstances where a legal opinion indicates a risk that the decision is, among other matters, incompatible with the ECHR or the Council's equality scheme insofar as it relates to the equality duty contained in s75(1) of the Northern Ireland Act 1998.
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> This formulation is therefore similar to the original intention of the scrutiny role of the Special Procedure Committee, focusing on equality provisions and the ECHR. Whilst this position from the SDLP minister was supported by all other parties (SF, UUP, Alliance and SDLP itself), it was not supported by the DUP who tabled a Petition of Concern to block it. The DUP told the Assembly their position was in particular based on opposition to equality duties being part of the call in consideration, instead expressing a preference for the less legally certain concept of being 'disproportionately adversely affected' being maintained. There has therefore been no secondary legislation enacted to regulate the "Call In" process.[24]

This "call-in" process does not have a political designation (unionist/nationalist) requirement and

24 CAJ, Op. Cit. p.11.

requires a lower threshold for deployment than the PoC. Some of its supporters point to the fact that local government has not ground to a halt despite the thirty occasions it has been deployed up to mid-December 2017 (leading to 8 changes to the decisions that prompted it; no change on 15 occasions, 6 "still under consideration" and 1 "undisclosed.")[25] Rather than an argument for its wider applicability, however, its operation may be more reflective of the (still) relatively limited powers in local government (i.e. a Council does not have to shape the 'government' of a region as a whole). Furthermore the question of the "call-in" system does not overcome the fact that its imprecision in relation to the equality requirements of the GFA shares the very weakness that has led to the abuse of the PoC. In addition, it is not difficult to envisage a future legal challenge at a local government level that might test the definitions discussed above.

The foundation of change

This brings us back to a question raised by NIPSA's call for reform. Of whom are we now asking for change and what are we expecting? Since devolution, NIPSA has supported the use of PoCs to stop what we regard as a regressive proposals (none more so than those within the Welfare Reform agenda) and opposed its use where it restricts full rights to all citizens. When we look at the issue of reforming the PoC, however, it is clear that this is about more than a "technical fix" on definition.

This points to the fact that amidst all the talks processes, reviews and proposals, a more progressive approach remains the "back to the future" option of adhering to what is actually in legislation. That is:

> The provisions of the GFA and NIA are legally binding. The GFA provides for a review process of the Strand 1 institutions which can lead to changes to the mechanisms where there is agreement to do so...In the absence of consensus on an alternative, rather than overriding the GFA, the only viable course of action is the implementation of what was originally intended and is required by the GFA and NIA for the Petition of Concern, Special Procedure Committee and NI Bill of Rights. This would provide a significant measure of resolution to (but not eliminate) abuse of the Petition of Concern outside its original intentions.[26]

While it is clear that new substantive changes (most notably in relation to Standing Orders amended to strengthen/codify the GFA's equality requirements) are required, the first priority is for the collective ownership of the Good Friday Agreement to be re-claimed. This would mean looking at the original template of the Good Friday Agreement[27]– which sought a broad and inclusive system of government and enhancing it by stressing that rights are not the gift of individual parties and therefore cannot be subject to political horse trading. The peace process was wide-ranging enough to conclude with the GFA having the status of an international treaty between Britain and Ireland lodged at the United Nations. By contrast, if we look at the succession of political crises and the talks processes that have attempted to patch them up, we see a move away from the broad sweep of the Agreement's original intent to ground that has become narrower and narrower. This has led to an Assembly synonymous with maladministration and corruption. While we still await the final report from the Renewable Heat Incentive (RHI) inquiry team, the public are now well aware of the squalid system of government it has exposed.[28]

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25 *https://www.irishnews.com/news/2018/02/07/news/could-council-call-in-resolve-stormont-s-petition-of-concern-debate--1250629/* 7/2/18

26 CAJ, Op. Cit., p.11.

27 *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf*

28 Published evidence from the RHI enquiry is available at ***https://www.rhiinquiry.org/***. The detailed insight into aspects of Stormont's

A broader democracy

Little wonder, within such a tightly controlled system, that what was described as the *'ugly scaffolding'* around the architecture of the institutions, has not been dismantled. This is the product of allowing narrow, electoral party politics to own the development of the democratic process, when the very agreement that produced this settlement was only possible through a prolonged and difficult peace process that looked beyond internal formal party politics. Indeed it could be argued that this process only succeeded by accepting there was no internal solution and by empowering the direct involvement of international "players" as well as wider civic society (including the trade union movement). This pushed forward agendas far broader than those brought to the table by the dominant political parties.

This was reflected in the role (prior to the 1998 advances) of the electorally small but politically significant talks contribution from parties such as the Women's Coalition, Progressive Unionist Party etc. Part of this contribution included the successful argument for the creation of a Civic Forum. This was ultimately outlined in the Good Friday Agreement as follows.

> A consultative Civic Forum will be established. It will comprise representatives of the business, trade union and voluntary sectors, and such other sectors as agreed by the First Minister and the Deputy First Minister. It will act as a consultative mechanism on social, economic and cultural issues. The First Minister and the Deputy First Minister will by agreement provide administrative support for the Civic Forum and establish guidelines for the selection of representatives to the Civic Forum.[29]

Over time this concept has slipped further down the political priority list, mocked as a "talking shop," subject to yet another (unpublished) review, and further diminished in status by the proposal from SF and the DUP in the Fresh Start talks that what was once a Civic Forum would become a small advisory panel. As Wilson comments this lacks "the autonomy and cross sectoral engagement which the forum enjoyed."[30] With a lack of informed, independent scrutiny a key factor in the political dysfunction that led to Stormont's collapse, the Trade Union Movement should take the lead in arguing for a revisiting of the Civic Forum idea: examining its merits and arguing for the strengthening of its resources and power to scrutinise the operation of government.[31] This could be brought to a new talks process – one which involves:

> …more than just the politicians…a more intense and meaningful process of participatory democracy, deploying the skills and interests of society…an engagement process that looks to the future, not the past…a vision for a better, shared, prosperous and inclusive place that draws people back, rather than pushing them away.[32]

This would be the place within which a reformed PoC linked as originally intended to a Bill of Rights could be both advocated/assessed. Such a process offers the best opportunity to re-establish the central place of full citizens' rights within any restored Assembly. It would also challenge the

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realpolitik it provided was extensively covered in the press and wider media – for example – ***https://www.irishtimes.com/news/ireland/irish-news/stormont-politics-a-grubby-world-ex-dup-adviser-tells-rhi-inquiry-1.3625437*** 11/9/18.

29 ***https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf***

30 ***http://cain.ulst.ac.uk/othelem/organ/jrct/Nolan_Wilson_2015_JRCT.pdf***. There has also been some recent discussion of a NI Citizens Assembly that echoes an initiative trialed in the Republic of Ireland. ***https://www.bbc.co.uk/news/uk-northern-ireland-45475317*** 12/9/18.

31 For an analysis of the Civic Forum in the context of "participatory peacebuilding and politics" see Wilson, R. and Nolan, P. (2015) ***http://cain.ulst.ac.uk/othelem/organ/jrct/Nolan_Wilson_2015_JRCT.pdf***

32 ***http://scopeni.nicva.org/article/stumbling-backwards-future*** 24/11/14.

belief that because an individual political party has adopted a very public position in relation to an issue, the Trade Union movement should chose silence or surrender leadership to them for fear that the movement is seen to stray into party politics. It would be nonsense, given the Trade Union movement's role in both the peace process, including advancing the rights issues within and after it, if our lobbying was no more than saying to those that brought us to cyclical crises – "get on with it" – without defining what that "it" has to be. We cannot therefore run away from difficult issues due to the "alleged divisiveness of campaigns for equality and rights."[33]

Conclusion

A year ago the Human Rights Consortium of which NIPSA is a member stated in its manifesto for the Westminster 2017 elections:

> A Bill of Rights for NI was explicitly provided for as part of the GFA. In fact it was listed along with the European Court of Human Rights/Human Rights Act as one of the safeguards to ensure that the Assembly and NI Executive functioned effectively. 19 years on and it is clear that neither have been functioning effectively. A Bill of Rights could ensure that rights and equality frameworks and decision making were placed at the heart of our Government."[34]

At this juncture, the 20th anniversary of the signing of the GFA the Trade Union movement should be driving this rights agenda forward. This would recognise "all the powerful advocacy work going on in Northern Ireland (on: women's rights; equal marriage; language rights; and the rights of victims and survivors, among others). Taken together these promote a serious and radical agenda for reform."[35] We should also, at a time when the wider questions of post-Brexit rights are under discussion, reaffirm our advocacy[36] of the need to re-write our labour laws to reflect the full restoration of collective representation and bargaining rights.

There is much talk currently about the "will of the people". When we assess the latest local crises or calls for change (including on the issue of the PoC), it is important to remember that the only expression of such "will" that did not have a party political label on the ballot paper was the referendum in favour of the GFA. All subsequent elections, particularly after talks/crises and debates filtered through party analyses and "adaptations" of the GFA were about seeking electoral advantage to work this "shared out" rather than "shared" future. The ever-decreasing circle of such narrow electoralism has led us to where we are today. A major, progressive contribution to re-setting course has to involve revisiting the proposed models of inclusivity and reform in the GFA. At the heart of such change must be a Northern Ireland Bill of Rights.

33 *http://qpol.qub.ac.uk/from-civil-rights-to-human-rights/ 28/9/18*.

34 *http://www.humanrightsconsortium.org/rights-based-northern-ireland-election-2017* 23/5/17.

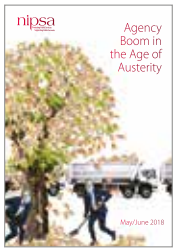
35 *http://qpol.qub.ac.uk/from-civil-rights-to-human-rights/ 28/9/18*.

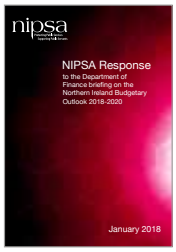
36 *https://nipsa.org.uk/publications/Ref-A5_0757-web.pdf February 2016*.

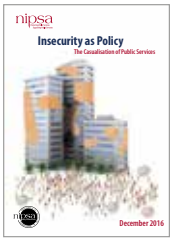
Read the facts…
..fight the myths

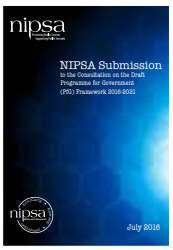
nipsa.org.uk/#publications

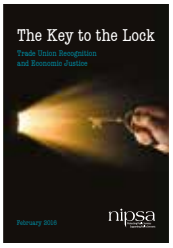
Booklets and accompanying leaflets are available as a PDF download from the NIPSA Website.

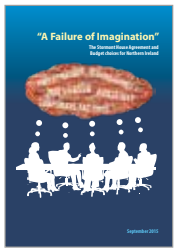


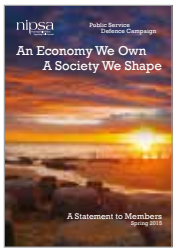


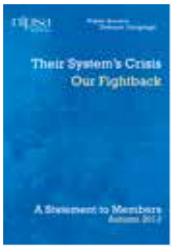


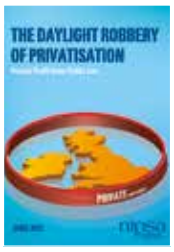












EDUCATE AGITATE ORGANISE
nipsa Policy and Research

028 9066 1831 info@nipsa.org.uk www.nipsa.org.uk

Headquarters
54 Wellington Park, Belfast, BT9 6DP
Tel: 028 9066 1831

Regional Office
30 Great James Street, Derry/Londonderry, BT48 7DB
Tel: 028 7137 4977