



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**Rt Hon Harriet Harman QC MP  
Chair**

Joint Committee on Human Rights  
House of Parliament  
London  
SW1A 0AA

By email to: [jchr@parliament.uk](mailto:jchr@parliament.uk)

22 June 2022

Dear Harriet,

**Re: Inquiry on Human Rights Ombudsperson**

As the Joint Committee is aware, the Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(1) of the Northern Ireland (NI) Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights in NI. The NIHRC is also mandated, under section 78A(1) to monitor the implementation of Article 2(1) of the Protocol on Ireland/NI of the European Union (EU) Withdrawal Agreement (Protocol Article 2), to ensure there is no diminution of rights protected in the 'Rights, Safeguards and Equality of Opportunity' chapter of the Belfast (Good Friday) Agreement 1998 as a result of the United Kingdom's withdrawal from the European Union. In fulfilling these statutory functions, I am writing in response to the call for evidence in the inquiry on introducing a Human Rights Ombudsperson, which is exploring whether such an office should be created, and whether this would improve how people enforce their rights out of court.

The UK has in place a system whereby the courts can consider substantive human rights issues through the Human Rights Act 1998. The NIHRC has been clear in its consideration of the proposed reform of the Human Rights Act that this process should be strengthened, not eroded, with a view to improving how human rights are enforced.

In addition, Protocol Article 2 is given effect through the NI Act<sup>1</sup> and Section 7A of the EU (Withdrawal) Act 2018, which gives effect to all the rights, obligations and remedies arising under the UK-EU Withdrawal Agreement in UK law without the need for further enactment. The UK Government has recognised that Protocol Article 2 has direct effect and that individuals can invoke their rights in UK Courts and this has been confirmed by the NI High Court.<sup>2</sup> Pursuant to Protocol Article 2, there can be no diminution of those ECHR rights which were underpinned by EU law prior to 1 January 2021.<sup>3</sup> In its consideration of the proposed reform of the Human Rights Act, the NIHRC has also raised concerns that changes to how the ECHR is claimed or enforced in NI law and available remedies, could constitute a diminution of human rights and equality protections in Protocol Article 2.

Regarding the procedural process, there is a failure to consider human rights and we agree with the Joint Committee that more can be done to deliver an individual's right to an effective remedy without having to unnecessarily go through the arduous, expensive and intimidating process of going to court. Yet, we are of the view that the creation of a Human Rights Ombudsman is not the right approach nor the best use of resources to address the gaps that exist. The NIHRC is of the strong view that the creation of such an institution has no procedural benefit and would only create a complex and confusing system of human rights protection that would be difficult to navigate and monitor in practice.

The focus should be on strengthening the existing system in a way that makes the right to an effective remedy as clear and accessible as possible and to reflect the different legal frameworks for human rights across the UK. For example, in Protocol Article 2(2) the UK Government committed to continue to facilitate the work of the NIHRC in upholding human rights and equality standards.<sup>4</sup> The NIHRC has specific statutory responsibilities in relation to oversight of Protocol Article 2 and ensuring that human rights are safeguarded in NI following UK withdrawal from the EU.

Instead of creating a new institution, we encourage the Joint Committee to look at the institutions and mechanisms that exist, with a view to considering if there are ways to better support or expand their powers to fill the void. Taking our Commission as an example, sections 69(5) and 69(7) of the Northern Ireland Act mandate us to conduct investigations as we consider "necessary or expedient", to give assistance to individuals and to bring proceedings involving law or practice relating to the protection of human rights. It would not be too much of a stretch, subject to the necessary resources being provided, to amend our mandate to deliver the enforcement void that an Ombudsman would seek to fill. This approach is supported by the Paris Principles, which enables a national

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<sup>1</sup> Section 6, NI Act 1998 provides that the NI Assembly is prohibited from making any law which is incompatible with Protocol Article 2; and Section 24 provides that all acts of the NI Ministers and Departments should be compatible with Protocol Article 2.

<sup>2</sup> NI Office, 'UK Government Commitment to "No Diminution of Rights, Safeguards and Equality of Opportunity" in Northern Ireland: What does it Mean and How will it be Implemented?' (NIO, 2020), at para 29; *Re SPUC Pro-Life Limited* [2022] NIQB, at para 77.

<sup>3</sup> NI Human Rights Commission, 'Response to the consultation on Human Rights Act Reform: a Modern Bill of Rights' (NIHRC, 2022).

<sup>4</sup> The UK Government also committed to facilitating the work of the Equality Commission for NI and of the Joint Committee of the NIHRC and Irish Human Rights and Equality Committee.

human rights institution to be “authorised to hear and consider complaints and petitions concerning individual situations” and to make “recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights”.<sup>5</sup> The National Human Rights Commission, India provides a successful example within a Common Law system where this has been achieved. This is a quasi-judicial national human rights institution with the ability to address procedural human rights issues.

Existing Ombudsman institutions can also help. It is our view that, rather than establishing a new institution, there should be a requirement that human rights are a core consideration when an existing Ombudsman is making decisions or formulating recommendations on maladministration. The International Ombudsman Institute states that “Ombudsman institutions form an integral part of good governance and make an important contribution to transparent public administration, the protection and promotion of human rights and the rule of law”<sup>6</sup> and “encourages all Ombudsman institutions to call upon their governments to protect and promote human rights irrespective of their mandate”.<sup>7</sup>

Furthermore, it is our view that the resources required to establish and maintain a new Ombudsman would be better placed nurturing the good working relationships between national human rights institutions and existing Ombudsmen to ensure this proposed requirement is implemented effectively. This is supported by the International Ombudsman Institute, which “encourages increased cooperation between Ombudsman and national human rights institutions at national level”.<sup>8</sup> The NIHRC has a good working relationship with the Ombudsman institutions that operate within NI, such as the NI Public Services Ombudsman, Prisoner Ombudsman for NI and Police Ombudsman for NI. In recent years, we have worked closely with the NI Public Services Ombudsman and the Police Ombudsman for NI in particular, which consequently have embedded a human rights based approach into their investigation processes. As an example, we worked with the NI Public Services Ombudsman to support the development of a Human Rights Manual, a guidance document for staff to ensure a human rights based approach in the investigation of complaints of maladministration.<sup>9</sup> On request, we have also provided human rights advice for specific investigations. This work has been globally recognised as best practice.<sup>10</sup>

Nevertheless, I stress the need for adequate resources to be made available and ring-fenced on a long-term basis to enable such additional functions to be implemented effectively. Our Commission is significantly under-resourced for our

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<sup>5</sup> UN General Assembly, ‘Principles Related to the Status of National Human Rights Institutions (the Paris Principles)’, 20 December 1993.

<sup>6</sup> International Ombudsman Institute, ‘Dublin Declaration’, 27 May 2021, at 1.

<sup>7</sup> International Ombudsman Institute, ‘Bangkok Declaration’, 15 November 2016, at 2.

<sup>8</sup> International Ombudsman Institute, ‘Wellington Declaration’, 13 November 2012, at 3.

<sup>9</sup> NI Human Rights Commission, ‘Human Rights Manual’ (NIPSO, 2016). Available at:

<https://niopa.qub.ac.uk/bitstream/NIOPA/5583/1/NIPSO-Human-Rights-Manual.pdf>

<sup>10</sup> ‘Human Rights – A 21<sup>st</sup> Century Approach to the Work of Ombudsmen’, NI Public Services Ombudsman and NI Human Rights Commission Conference, 10 May 2016.

existing mandate, with this set to deteriorate further. With effect from the 1 April 2022, we have been subject to a 5 per cent reduction in 2022/2023 and thereafter a flat cash settlement for 2023/2024 and 2024/2025 of £1,605,391. In recent weeks it has also been communicated to us that we need to plan a further 5 per cent contingency to meet any unexpected costs that may arise during the current three-year fiscal cycle. As the Joint Committee is aware, this has been announced whilst the UK faces projected inflation of 10 per cent by the end of the year. No additional resource has been made available to the NIHRC to meet inflationary costs and, consequently, our budget will be put under even greater pressure. The negative impacts on our operations have been instant, including the suspension of planned recruitment to vacant and business-critical staff posts across policy and research, engagement and communications and administrative functions. The NIHRC is further concerned that this funding crisis could impact on its ability to oversee the proper implementation of Protocol Article 2. In its October 2021 interim report on the NIHRC's accreditation, the Global Alliance for National Human Rights Institution Sub-Accreditation Committee emphasised that "to function effectively, a National Human Rights Institution must be provided with an appropriate level of funding".<sup>11</sup> It "regards both the current and prospective funding position... as very serious and time sensitive, and strongly recommends that an improved and sustainable position is reached".<sup>12</sup>

The Commission is very willing to provide any further information or evidence if required, please do not hesitate to get in touch.

Yours sincerely,



**Alyson Kilpatrick BL**  
**Chief Commissioner**

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<sup>11</sup> Global Alliance for National Human Rights Institutions, 'Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation' (GANHRI, 2021), at 28.

<sup>12</sup> Ibid, at 29.