

Beyond 2015: Shaping the future of equality, human rights and social justice (12 and 13 February 2015)

Session 3: Access to justice

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I intend to do two things. First some reflections on some of the things I have heard today from Northern Ireland and some reflections on access to justice.

What I think makes Northern Ireland slightly different from the other two devolved nations is that we don't start with politicians in power who have a relatively supportive view of human rights and equality, it's a very contested political space in Northern Ireland and the debate is sometimes visceral. Having said that, the fact that people are talking about it is really important. It's not always recognisable in terms of international standards and what people in this room would understand as human rights and there may be a degree of false consciousness. But compared to 25 years ago, when the debate would have been relatively cloistered, that is not the case in Northern Ireland today. Where I see another positive is that there is support in some parts of the policy agenda, possibly because of a vibrant civic society.

I worked for the law centre in Northern Ireland and social security was mentioned earlier. Before the end of the year we will have a welfare reform bill. In the last three to five years, there has been a demonisation in the language about social security claimants that those who work in asylum and immigration would recognise. It harks back to the mid-1980s and before that.

We are going to be doing some very interesting and different things in terms of social security. There is no time to go into them but it includes people who will lose benefit because of Employment Support Allowance and how Universal Credit is paid and sanctions. We will know more in the next couple of months and some of it is pretty good if they get it right and I think on some things they possibly will. If you will forgive the sporting metaphor, equality has moved from being a front runner and is now the back marker. Unlike Mo Farah I don't see us speeding to get

back to the pack. Sometimes you might look at things and think what chance have you got of making a positive change. We had just had signed off by the DUP and Sinn Fein an emergency fund for migrants, the money has been given to Red Cross and distributed to a number of community organisations across Northern Ireland. This is the culmination of a campaign started by a small number of voluntary organisations that recognise the state system does not provide access to support for people without status or often those with status.

Asif talked about the importance of getting out and engaging with people on human rights. I have not been in the Commission that long, and I inherited a human rights inquiry into emergency care. It struck a real chord with people in Northern Ireland, we took a participative approach involving a panel chaired by me that went to most of the towns in Northern Ireland and held public hearings. We got an enormous numbers of submissions. Some had positive stories about emergency departments. We will look at trying to design a human rights –based approach. So you can do work that has a real resonance across the community. That is something positive coming from a place where human rights and equality are much contested.

Moving on to my brief, on legal aid we followed an interesting path, we tried to avoid going the England and Wales route. We had an access to justice review at the same time as in England and Wales. Our outcome – plan A say – is not to cut scope, have fixed fees and cut fees. If that does not work we will move to cutting the scope. Sadly, I am not sure the legal profession woke up and smelt the coffee and fought hard enough about cutting fees and we are now into a second review and the danger of moving down the road of cutting the scope of legal aid, which is much more attractive to civil servants. In fairness to a minister who is actually very interested in access to justice, we are looking at things like taking away private family law only after the first hearing and a smaller cutting of scope and a 15% cut in lawyer's fees. Lawyers are about to go on strike as a result of that, which is where they were three years ago, and which failed miserably. One of the reasons was they had no public support. Lawyers were viewed a long way down the pecking order of deserving causes and that is a profession where the inequality of public legal funding is stark. I am a member of the legal profession. I tried to

engage them to do access to justice work to no avail. I am heartened by the work of Legal Action Group, the Law Commission and some of the work that has been done by the organised legal profession in England and Wales and it does seem to be that that message has gone through.

Where do I think is the way forward? None of these things are mutually exclusive, none of them will give you an answer, and we are not going back to large sums of money being back into legal aid. My starting point has always been two fold. First, legal aid expenditure is not just legal services expenditure, it is expenditure in policy. In Northern Ireland we never stepped back and said what do we want to spend legal services money on, what are the priorities? Legal services and legal aid are not just about lawyers; legal services are about advice and we need to look at a much more joined up approach. You have done some of that in England and Wales.

Secondly we need a whole systems review. Very interesting work just been produced by about how the courts work. The courts operate through the assumption that there will be two lawyers appearing in front of a judge. Increasingly, that is not how the courts operate and it was never how tribunals operate. At best and if you were lucky you have a lay adviser and more often you are there on your own. So we need to look at user friendly ways of ensuring emotional support is provided, and look at the role of the lawyer and the judge and information and advice services and access to pre-court support, and recognise in some cases there will still need to be lawyers. Prevention is better than cure: we need to look at the quality of decision making in the first place, getting it right the first time makes sense. We need to look at self-help. I am a cynic. When I hear about advice lines and IT providing part of the answer I will happy live with that, when I hear it is the whole answer I won't. It is quite clear that has a role to play but it is not the be-all and end-all. There are groups for whom this will never be the answer. That has got nothing to do with a person's educational literacy: sometimes sign posting someone somewhere else is not the answer. There is plenty of research from the legal services research centre that says if you signpost somebody, about a third people give up immediately. If you hear the answer is just advice lines and IT beware. We need to look at displacement costs – what does it cost to go elsewhere? The

displacement costs need to be properly monitored and evaluated and I don't think we can rely on government to do that.

All of that will not transform the situation we are in today, but it will make a difference. And it is a start.