

COVID-19 PUBLIC INQUIRY

Module 2C

OPENING SUBMISSIONS OF DISABLED PEOPLE'S ORGANISATIONS: DISABILITY ACTION (NORTHERN IRELAND)

INTRODUCTION

- 1.1. APPROACH: Further to the DPO's approach in previous modules, this opening submission considers the Northern Ireland ('NI') Government's Covid response through the prism of [A] CONTEXT and [B] GOVERNMENT, with particular focus on nine ways in which government is generally prone to overlook and fail to act upon issues affecting Disabled people, and all the more so during emergency. Those areas are (1) SYSTEM, (2) PLANNING, (3) MACHINERY, (4) EXPERTISE, (5) RECOGNITION, (6) ENGAGEMENT, (7) DATA, (8) PROTECTION and (9) REDISTRIBUTION.
- 1.2. DISABLED PEOPLE: Disabled people in NI make up 1 in 4 of the population on the 2021 census. This figure is higher than in England due to the significant population of older people (23%).¹ There is also a higher rate of mental illness and suicide, in part attributable to the traumas of still recent history.² Despite the integral relevance of Disabled people to the fabric of society, NI relied on the UK to count deaths of Disabled people during the Covid-19 pandemic, as it lacked real time data on the subject.³ In England mortality figures for Disabled people were published in June 2020. NI had to wait until December 2021 to discover that between March and September 2020 Disabled people were 40% more likely to die of non-Covid causes, and 48% more likely to die of Covid than non-disabled peers.⁴
- 1.3. COMPARABILITY: On age standardised mortality rates, NI fared slightly better than other parts of the UK,⁵ but it did so in considerably different circumstances. That some 5000 people died in a jurisdiction of 1.5 million,⁶ where funding and infrastructure for advanced government should have enabled a sophisticated level of population surveillance and service delivery, should still be regarded as failure. Further, if overall Covid fatality was lower, this

¹ Lynch [INQ000267978/6 §16] NISRA 2021 Census p.6 §2.2

² Gray & O'Connor [Health Section: Draft p. 9 §19] *DANI Impact of Covid 19 in Disabled People* (September 2020) ('Impact Report') [INQ000396804/39]; *Mental health in Northern Ireland* [INQ000396845]

³ Young [INQ000409589/23 §63]

⁴ NISRA 21.12.21 [INQ000396813/3]

⁵ Diamond [M2/INQ000271436/14-15 §§45-48] (ASMR) Hale [M2/INQ000257925/30 §56.1] (per capita)

⁶ NISRA 29.11.22 [INQ000438343/2]

was apparently achieved by more stringent counter-measures, with consequential high non-covid mortality and adverse social impact, especially for Disabled people.

PART [A]: CONTEXT

- 2.1. DEVOLUTION: The situation of Disabled people during the pandemic cannot be understood without comprehending the devolved political landscape of NI.⁷ The distinct features as they apply to this Inquiry include: (a) the multiple suspensions of devolved power for nearly 45% of the years since 1998,⁸ including 2017-2020 and 2022-2024, (b) the greater epidemiological connection with the Republic of Ireland ('ROI') than with the rest of the British Isles, (c) the joint health and administrative structures both within NI (combining health and care services), and (d) NI's architecture and culture of human rights that is tied to its existence and wellbeing as a post-conflict society. All of these factors impacted on the content and manner of government decision making to be considered in this Module.
- 2.2. GOVERNMENT WAS UNSTABLE: Prior to 2020 the people of NI had not been politically governed for three years. When power sharing collapsed in 2017, rather than reverting to direct rule from Westminster, the UK Government elected to leave the jurisdiction to be *administratively* governed without Ministers via its Civil Service (NICS).⁹ Decision making was prohibited on any matters that were not made clear by the Program for Government ('PfG'), which was last agreed in 2012 and had expired in 2016.¹⁰ Budgeting was on a strictly annual basis. For the Department of Finance ('DoF') "*much needed clarity and strategic direction for the future*" could not be achieved.¹¹
- 2.3. GOVERNANCE WAS DAMAGED: If governance is to be regarded as capacity and competency to make and deliver government decisions, then damage was done. The Head of the Civil Service ('HOCS'), Sir David Sterling describes the cost as two-fold. Firstly, negotiations to bring back power sharing took up considerable "*bandwidth*". Secondly, governing without ministers inescapably led to "*decay and stagnation*", particularly in the health service, where the need for change had been identified but none could be made.¹² His "*blunt truth*" is that NI "*endured nearly three years of sub-optimal government*", which caused "*paralysis in*

⁷ Toman [INQ000400520/4 §14] Gray & O'Connor [Main Draft] [p.1] [Political Landscape: Draft p. 1 §1]

⁸ February-May 2000, October 2002-May 2007, January 2017-January 2020, February 2022-February 2024

⁹ *Re Buick* [2018] NICA 26 §§ 50-58 and *Re JR80* [2019] NICA 58 §§6-13

¹⁰ Sterling [INQ000449440/10 §24]

¹¹ DOF 08.03.18 [INQ000396805/3] Swann [INQ000412903/16 §§38-40]

¹² Sterling [M1/INQ000185350/6 §§22] [INQ000449440/11 §25]

policy making” and “*blunted the effective delivery of public services*”.¹³ The NICBFFJ has pointed to a “*vacuum in governance*” as an essential feature of pre-pandemic NI.¹⁴ For Disabled people in NI, that vacuum meant that various initiatives to achieve greater equality and human rights have remained stuck, with each collapse of government effectively requiring the work to be started again.¹⁵

2.4. RESILIENCE WAS COMPROMISED: In May 2020, the Health Minister Robin Swann made a powerful speech reflecting how the political system in NI had to look with humility at how it had undermined state capacity to cope with the pandemic.¹⁶ Other witnesses make the same point,¹⁷ highlighting the required transformation of the health and social care sector as advised by the Bengoa Report (2016) which the DOH, then under Michelle O’Neill, had committed to pursuing before power-sharing collapsed.¹⁸ It was well known by 2020 that delays in medical services were the worst in the UK.¹⁹ Social Care was likewise regarded as at “*breaking point*”.²⁰ A 2017 review (*Power to People*) recommended complete overhaul of the system and legislation, but by March 2020 nothing was done. These are weaknesses that should have been factored into resilience planning but were not.²¹

2.5. DISABLED PEOPLE WERE PERIPHERAL: Across the UK Disabled people faced pre-pandemic structural discrimination from both state and wider society.²² In NI the equality of opportunity for Disabled people was compromised by their overall lesser enjoyment of a range of metrics across health, education, income, and employment, as well as regards safety and stigmatisation.²³ These included Disabled people being more likely to live in poverty, including 57% of Disabled children compared to 37% of non-Disabled children; people with learning disabilities being at risk of poorer outcomes, including health and life expectancy;

¹³ Sterling [M1/INQ000185350/12 §47] IFG (2019) *Governing without ministers: Northern Ireland since the fall of the power-sharing executive* p. 31 cited by Gray and O’Connor [Main Draft] [p. 21 §84]

¹⁴ Doherty [INQ000148480/5 §§19, 21, 23]

¹⁵ Toman [INQ000400520/7 §§27-33]

¹⁶ Swann [INQ000412903/16 §§36-37] [INQ000185381/7]

¹⁷ Swann [M1/INQ000192270/15 §§45-46] [INQ000412903/19 §§42-43, 45-47] O’Neill [INQ000436641/4 §§12, 15-16] Foster [INQ000418976/5 §15] Sterling [INQ000449440/26 §§82-4]: see also Doherty [INQ000148480/8 §§30-33] Long [INQ000436642/7 §§16-17] and McBride [INQ000421704/24 §§58-59]

¹⁸ *System Not Structures – Changing Health and Social Care: Expert Panel Report* (‘Bengoa Report’) [INQ000185456] Health & Wellbeing 2026 Delivery Together (‘Delivery Together’) (2016) [INQ000185457]

¹⁹ e.g. O’Neill [M1/INQ000183409/9 §33] Ní Chuilín [INQ000436131/3 §14] Hargey [INQ000446235/3 §9]

²⁰ DANI Impact Report [INQ000396804/9] Gray & O’Connor [Health Section: Draft p. 17 §44] *Power to People Proposals to reboot adult care & support in N.I.* (2017) [Proposals §§1-16 pp 89-91]

²¹ Lynch [INQ000267978/11 §§31-33]

²² DPO M2 Opening 26.09.23 §§1.7-1.11

²³ Disability Strategy and Expert Advisory Panel: Report and Recommendations (Dec. 2020) (‘Disability Strategy Report’) [INQ000396798/27 §§2.7, 3.3, 5.3 and 5.4] DANI Progress Report Towards Implementation of the UNCRPD on Northern Ireland (2022) (‘Progress Report’) [INQ000396796/6-7]

lack of access to suitable housing, with 8 out of 10 Disabled people believing housing to be inaccessible to them; lack of access to health services, including mental health services, set against the high rates of suicide, and markedly so amongst Disabled people with intellectual and psychosocial impairments; and information and digital exclusion, in conjunction with physical and transport exclusion.²⁴

2.6. HUMAN RIGHTS ARE ESSENTIAL: Post-conflict transition politics in NI has complicated the equality and human rights protections of Disabled people. On the one hand human rights are integral to the peace process. The Good Friday Agreement (‘GFA’) commits to “*the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity*”. Those commitments are realised in Part VII of the Northern Ireland Act 1998 and the Human Rights Act 1998. Their fundamental constitutional status was re-emphasised in the ‘no-diminution’ principle contained in Article 2 of the NI Protocol. On the other hand, NI does not enjoy a truly progressive human rights culture. Legacy gaps in legislative and policy protection of Disabled people include that full protections of the Equality Act 2010 have not been replicated under devolution.²⁵ Although the Equality Commission of NI (‘ECNI’) and NI Human Rights Commission (‘NIHRC’) strongly advocate for the implementation of the United Nations Convention on the Rights of Persons with Disabilities (‘UNCRPD’), the Convention is hardly recognised or implemented in NI. Unlike Scotland and Wales, NI has no Implementation Strategy for the UNCRPD.²⁶ Moreover, the social model of disability (ascribing disability to social forces, rather than individual medical deficit), has become a standard aspect of Welsh and Scottish Government. In contrast, the social model and its potential to combine with human rights protection of Disabled people is barely recognised at all in NI.²⁷

PART [B]: GOVERNMENT

[1]. SYSTEM

3.1. GOVERNMENT: The renewed Ministerial Government system going into the pandemic was not sufficiently robust or integrated to deal with a crisis of this kind. At the most basic level

²⁴ Toman [INQ000400520/5 §§19-24]

²⁵ DANI Progress Report [INQ000396796/19-20] Disability Strategy Report [INQ000396798/67-71] NIHRC Annual Statement (2021) [INQ000184720/44 and 59] Toman [INQ000400520/6 §§25-26] McGahey [INQ000228441/3 §§7, 105(a)]: see also UNCRPD UK Country Report (2017) [M2 INQ000182691/2 §§16-17]

²⁶ Cf. Toman [INQ000400520/10 §§36-39]

²⁷ Toman [INQ000400520/3 §9] Quinn G. and Degener T. (2002) *The current use and future potential of United Nations human rights instruments in the context of disability* [INQ000396787/11-38 Exec. Summary and Ch. 1] Lawson A. and Beckett E. (2021) *The social and human rights models of disability: towards a complementarity thesis*, *The International Journal of Human Rights*, 25:2, 348-379 [INQ000396801]

Ministers only entered Government in the middle of January 2020, at which point the in-box of the previous three years and the ideological sensitivities of Executive power sharing had to be grappled with anew.²⁸ Five out of ten Ministers had not held office before.²⁹ Robin Swann took up the health portfolio as his first ministerial post.³⁰

- 3.2. GOVERNANCE: There were also deeper structural challenges. On cross-cutting issues NI's mandatory Executive coalition was blighted by what Sterling describes as its institutional incapability to agree anything other than "*lowest common denominator policies*".³¹ Interviews conducted by the Institute for Government in 2019 likewise made repeated reference to an "*immature*" political system, "*with ministers focusing on short-term political point-scoring rather than making difficult long-term choices*".³² This tendency towards lowest common denominator governance, combined with the competing constitutional visions of the governing parties, was all too apparent in the covid response. The Inquiry will consider the initial debate over whether NPIs should converge with the ROI by way of the single epidemiological unit rationale, or with the UK by the dictates of economic and administrative union.³³ When NI introduced a circuit breaker in mid-October for 4 weeks, there was further heated dispute about its continuance, which led to the DUP invoking their voting rights to limit any further extension to 1 week.³⁴
- 3.3. BUREAUCRACY: From January 2020, the NICS was thrown back into working with Ministers in complex brokerage roles that required dynamic mediation far more than in any other part of the UK.³⁵ This time consuming endeavour, that diverts from policy formulation, and implementation, was also made more difficult by staffing cuts.³⁶ The publication of the Renewable Heat Incentive ('RHI') Inquiry Report in March 2020 is of interest to this Inquiry, because it seriously brought into question the competency of the NICS to handle "*basic administration and record keeping*" let alone "*novel, technically complex and potentially volatile*" projects, not least due to "*lack of resources, and of people with the*

²⁸ Swann [INQ000452486/2 §3] [INQ000412903/22 §49]: see also Long [INQ000436642/6 §§11-12, 14-15] Hargey [INQ000446235/2 §7]

²⁹ Sterling [INQ000449440/10 §24]

³⁰ Swann [INQ000412903/6 §§5-7]

³¹ Sterling [INQ000449440/12 §29]

³² IFG (2019) *Governing without ministers* p. 6: see also Gray & O'Connor [Main Draft] [p.24 §100]

³³ FMDFM Meeting with HOCS, MOH and CMO 12.03.20 [INQ000232525] O'Neill [INQ000436641/13 §45] Foster [INQ000255838/12 §41] Swann [INQ000412903/26 §§68-69] Pengelly [INQ000421703/52 §114]

³⁴ Swann [INQ000412903/52 §§158-59] Pengelly [INQ000421703/75 §§186-190] McBride [INQ000421704/206 §443] Gray & O'Connor [Political Landscape: Draft p. 2 §§6-8]

³⁵ Gray & O'Connor [Main Draft] [p.19 §§70-72 p. 21 §§81-82]

³⁶ Gray & O'Connor [Main Draft] [p.22 §87 pp 24-25 §§101-102, 104, 109, 111]

specialist skills to ensure that the scheme was robustly designed and monitored". The report further criticised "a 'silo' culture that inhibited co-operation and communication between Departments and departmental bodies", an overemphasis on a culture of delivery without a "sufficiently or effectively questioning attitude". "[T]o the extent that issues that should have been escalated were not, and too often matters were presented in an unduly positive light".³⁷

- 3.4. CIVIL CONTINGENCY: NI suffered from a similar lack of a whole-society management system as the rest of the UK, but in the regular hiatuses of government, there was specific recognition within NICS that the system had degraded. When Christopher Stewart took up his role as head of Civil Contingency Policy Branch ('CCPB') within the Executive Office ('TEO') in 2018, he found that plans and procedures had not changed substantially since 2011. There was a shortage of specialists in the team, and a number of weaknesses revealed as a result of preparing for a No-Deal Brexit.³⁸ Recommendations from Operation Yellowhammer had not been implemented and work on civil contingency mechanisms, including the central operations 'Hub', was disorganised.³⁹ On 25 February 2020, Stewart sent a paper to the Executive Office Board. It detailed that civil contingency arrangements had not been reviewed for twenty years and lacked investment, advising that considerable work was needed to "review, modernise, harmonise, streamline and simplify local arrangements to enhance and improve" overall capability.⁴⁰ The FM did not see the paper and the DFM makes no reference to it.⁴¹ Instead, on 16 March 2020, when it was proposed to activate the NI Civil Contingency Management Arrangements ('NICCMA') Stewart reassured Ministers that NI had "long established, tried and tested civil contingency response arrangements in place".⁴² For her part, the FM apparently knew of no problem with civil contingency planning prior to 2020, she regarded the matter as squarely within the remit of the DOH until Mid-February, and had no sense of any real risk that the health system would be overwhelmed until 16 March, when it was proposed that NICCMA be activated.⁴³
- 3.5. LOCAL READINESS: The systemic weaknesses in civil contingency were equally pronounced at the local level. According to Chief Executive of the Association of Local Authorities Northern Ireland ('ALANI') civil contingency planning was disorganised and in the process

³⁷ The Report of the Independent Public Inquiry into the Non-domestic Renewable Heat Incentive (RHI) Scheme Vol. 3 - Chapter 56 - Summary and Recommendations pp 195-198 §§56.3 (2) (9)-(10) (15) (18) (21)

³⁸ Stewart [INQ000411508/10 §§42, 44-49]

³⁹ Harbinson [INQ000400031/4 §§11-16] Pearson [INQ000438173/20 §§83, 139]

⁴⁰ Stewart *Strategic Review of CCA across NI* 25.02.20 [INQ000205712/1 and /9 §§23-25]

⁴¹ Foster [INQ000418976/17 §§54]

⁴² Stewart *Emergency Response to COVID-19* 16.03.20 [INQ00086933/2 §4]

⁴³ Foster [M1/T18/37/6-38/1] [INQ000255838/6 §20] [INQ000205274/2 §5] [INQ000418976/9 §31]

of being rearranged, with regional resilience team members being recruited in January 2020 and not in post until May 2020.⁴⁴ There was very little involvement by local government in pandemic planning, not least because it has no statutory duty as a first responder under the Civil Contingency legislation.⁴⁵ Any emergency planning at local level appears to have been focused on climate change and flooding.⁴⁶

- 3.6. SURGE-PREPARATION: There was a failure of surge preparedness across all public authorities in circumstances where the virus had not yet manifested itself in the population and the issue remained a DOH responsibility. While the DOH activated its own Emergency Operation Centre on 27 January 2020, the Director of Population Health in the DOH advised on 6 February that NICCMA should not be activated “*unless or until the infection appears in Northern Ireland and impacts are experienced here*”, albeit she did commend an assessment of sector resilience.⁴⁷ On 3 March the FM and DFM were asked to note, without taking action, a Reasonable Worst Case Scenario (RWCS) of an 80% infection rate with a case fatality of those severely affected at 2-3%, and further that “*as the preparations move beyond the health space there is an increasing need for co-ordination of the wider non-health work*”⁴⁸ This chimed with Richard Pengelly’s recollection that (i) in mid-February/early March he was aware from the CMO that the pandemic would pose “*significant challenges*” once it reached NI, and (ii) by 1 April he learned that UK based modelling projected a RWCS of 3000 deaths in NI (in fact it turned out to be 5000).⁴⁹ Notes of the Executive Committee Meeting of 10 March 2020 reflect the DFM’s views that NICCMA should “*kick in*”.⁵⁰ When disquiet arose from the ROI closing schools and banning mass public events on 12 March, that was not enough to immediately activate NICCMA. Indeed, as in other jurisdictions, concern was expressed, especially by Swann, about unduly causing panic and the risk of imposing NPIs too soon.⁵¹

⁴⁴ Allen [INQ000177812/12 §6.1]

⁴⁵ Allen [INQ000177812/8 §§3.3, 4.4, 7.1]

⁴⁶ Allen [INQ000177812/7 §2.14]

⁴⁷ Redmond 06.02.20 [INQ000218470]

⁴⁸ Covid-19 Civil Contingencies Preparedness and Response 03.03.20 [INQ000145786/3 §§3, 5]

⁴⁹ Pengelly [INQ000421703/37 §§76, 79-80]

⁵⁰ EC Meeting H/W Notes 10.03.20 [INQ000065695/2] O’Neill [INQ000436641/11 §36]

⁵¹ Swann 02.03.20 [INQ000103638/4] Swann (FMDFM-HOCS Meeting 12.03.20) [INQ000232525/2] Swann [INQ000412903/27 §69] (EC Meeting 16.03.20) [INQ000065689/7] Cf. Long [INQ000436642/12 §40]

- 3.7. INTER-GOVERNANCE: The capacity for Northern Ireland to prepare itself was compromised by it being situated at multiple and interlocking peripheries.⁵² It was treated peripherally by the UK Government. Both Foster and O'Neill agree, with different interpretations, that they were invited to COBR to be informed, not consulted.⁵³ Experts from NI had late and limited involvement in SAGE (see §3.13 below). NI was also treated peripherally on key occasions by the Irish Government, for instance in the decision to close the schools on 12 March, which TEO only learned of near enough simultaneously with the decision.⁵⁴ Finally, NI was treated as peripheral to the EU, often as a negotiating tool used by others. NI must have been known to be vulnerable in its capacity to handle crises, especially with the additional challenges it faced over power sharing and Brexit, and it is arguable that in the throes of emergency, rather than jointly building resilience around these NI exposures, both Westminster and Irish Governments put themselves first.⁵⁵
- 3.8. NON-ACCOUNTING: The position of Disabled people and other minorities in NI was internally peripheral, because the political culture had not sufficiently yet matured to make it otherwise. Disabled people were not accounted for in emergency planning prior to the pandemic. Article 11 of the UNCRPD requires States, without qualification, to take “*all necessary measures*” with regard to emergency planning. The Article had not registered in any way with devolved Government despite a comprehensive 2011 Disability Action report addressing implementation issues, and advising that because the Article does not include an ‘*on an equal basis with others*’ clause it “*should be read as imposing obligations to take measures for the protection of persons with disabilities in situations of risk which do not necessarily exist for persons without disabilities*”.⁵⁶ The Northern Ireland Office (‘NIO’) and the NICS do not appear to have communicated at all about the findings of the Committee of the UNCRPD in 2017 with regard to non-compliance with the consultation, emergency planning and data collection duties under the Convention.⁵⁷ Aside from DPO having limited funds themselves, both ECNI and NIHRC were compromised in their own capacity to monitor and advocate during the pandemic due to long term funding cuts.⁵⁸

⁵² J. O'Brennan (2023) *Stuck between the EU 'rock' and UK 'hard place'? Northern Ireland as a liminal space after Brexit*, Space and Polity 27(3): 1-19 [INQ000396806/2]

⁵³ Foster [M2/INQ000255838/9 §31] [INQ000418976/48 §153] O'Neill [M2/INQ000273783/1 §§54, 75, 78, 142]

⁵⁴ Swann [INQ000412903/26 §68] Long [INQ000436642/12 §38]

⁵⁵ Foster [M1/T18/34/21-35/5] [M1/T18/36/4-12]

⁵⁶ DANI (2012) *Disability Programmes and Policies: How does Northern Ireland measure up?* [INQ000396790/119]

⁵⁷ UNCRPD UK Country Report (2017) [INQ000182691/2 §§10-11, 28-29 and 64-65]

⁵⁸ McGahey [INQ000228441/42 §105(d)] Russell [INQ000220355/4 §§1.13, 1.18-21]

[2]. PLANNING

- 3.9. DEPENDENCY: In relation to NI's need to plan from scratch Arlene Foster is forthright that it would not have been able to formulate a "*bespoke overarching strategy*" for NPIs independent of the UK. She explains that inability on the basis of size, financial dependency and reliance on scientific advice, as well as the challenges faced by the newly reformed nature of its government.⁵⁹ While others, mainly from Sinn Féin, explored the possibility of greater convergence with ROI measures, the outcome in the first phase is that NI followed Westminster.⁶⁰ For Professor McBride this was atypical devolved Government, for restrictions could only be implemented by the NI Executive, but the "*locus*" of the discussion on those decisions was primarily UK COBR and the UK CMO/CSAs.⁶¹ To adopt the same legal regime as Westminster was also characteristic of the NICS tendency to cut and paste UK statutory language into Stormont provisions.⁶²
- 3.10. STRATEGY: One of the consequences of dependency on UK Government perspective is that the DOH, like the DHSC in England, led on planning. In so doing it produced an Emergency Response Strategy for 30 March which lacked a workstream on social vulnerability. The DOH Strategy was supposed to be a "*single covid response strategy that the whole Executive can buy in to*" and a "*comprehensive and compelling forward strategy*".⁶³ Strategic Aim 7 registered the "*wider health/economic impact of control measures*", but provided minimal further detail, with no mention of anything to do with Disabled people.⁶⁴ An Executive paper from mid-March, with traffic light prioritisation of non-health pandemic impacts and mitigations, contained no traffic light colours in the section on communities and no recognition that Disabled people could suffer adverse damage by the response to the virus, as much as the virus itself.⁶⁵ There was never a cross-cutting workstream on the socially vulnerable, including once the Executive Covid Taskforce was established in 2021.⁶⁶ Ministers agree that despite matters being taken into

⁵⁹ Foster [INQ000418976/19 §§61, 80, 82, 85]

⁶⁰ O'Neill [INQ000273783/22 §§106-107]

⁶¹ McBride [INQ000226184/26 §72]

⁶² Gray & O'Connor [Draft p.16 §§57-61]

⁶³ Sterling 28.03.20 [INQ000309178]

⁶⁴ DOH Emergency Response Strategy 30.03.20 [INQ000023185/5 §7 and /17]

⁶⁵ Executive Paper, Emergency Response to Covid-19 Annex B 13.03.20 [INQ000023226/18-19]

⁶⁶ Foster [INQ000418976/42 §136] Wall [INQ000251519/30 §§7.1, 7.1.5]

account intermittently there was never the sufficient focus on vulnerable groups that there should have been.⁶⁷

[3]. MACHINERY

3.11. SILOISATION: As a matter of constitutional design, NI Government decision making is in departmental silos, creating adverse implications for joined up and accountable governance.⁶⁸ Academics therefore dub the problems arising from compelled power sharing as “*power splitting*”.⁶⁹ Not only does collective responsibility not exist as a principle in NI, but there is a tendency to avoid responsibility for individual departmental decisions that are politically difficult to make. A pertinent example of this from the Inquiry’s perspective is that while Health is a public priority, the dominant parties tend to eschew the Health ministerial portfolio or choose the portfolio as a final option under the D’Hondt GFA departmental allocation system. In essence, unpopular decisions about closing hospitals and staffing cuts are not what the DUP or Sinn Féin want to be held responsible for by their voters.⁷⁰

3.12. CONSEQUENCES: The consequences for Disabled people of this siloisation were significant. The Inquiry has already seen how governments in other parts of the UK were slow to adjust their covid decision making perspective from a public health crisis to a whole-society emergency. In NI the problem was worse, given DOH combined health and social care, and unlike anywhere else, retained operational responsibility for these services. Even in their Inquiry statements Ministers often revert to referring to major cross-cutting matters during the pandemic response, such as data or care homes, as DOH subjects.⁷¹ Foster has accepted that she could not necessarily have knowledge (and by extension accountability) for decisions that were taken in individual Departments, unless they were “*cross-cutting*”.⁷² Key civil servants, like Karen Pearson, who worked out of the TEO CCPB, did not have authority to ensure that actions were followed in other departments.⁷³ This accumulation of pandemic responsibility into the DOH had the consequence for Disabled people that while

⁶⁷ Foster [M1/INQ000205274/12 §§40-42] [INQ000418976/60-61 §§195-196, 198] [INQ000255838/42 §158-159] Hargey [INQ000446235/15 §53] Ní Chuilín [INQ000436131/28 §143] Long [INQ000436642/22 §92] Pearson [INQ000438173/73 §340]

⁶⁸ Sterling [INQ000449440/12 §§30-31] Gray & O’Connor [Main Draft] [pp 28-29 §§125, 127-128] Lewis [INQ000421737/37 §81] Pyper [INQ000411509/20 §§93, 102-4]

⁶⁹ IFG (2019), *Governing without ministers* pp 42-45

⁷⁰ Gray & O’Connor [Main Draft] [p.22 §§91-100]

⁷¹ Foster [INQ000418976/44 §§142, 191] Long [INQ000436642/49 §230]

⁷² Foster [M1/T18/8/25-9/6]

⁷³ Pearson [INQ000438173/7 §25]

planning could notionally recognise non-clinical vulnerability, it was too slow to surge on it because that is not the job of the health department. In a government that had neither adopted, nor learned the discipline of the social model, this meant that government was unlikely to be pre-emptive about decision making with and for Disabled people.

[4]. EXPERTISE

3.13. DEPENDENCY: Expert advice in NI was comparatively weak to the rest of the UK. On a basic capacity level the CMO and CSA (Health) are clear that it was not possible to replicate SAGE.⁷⁴ NI did not have sufficient in-depth expertise and struggled not to be left behind.⁷⁵ It had no general CSA, relying on Professor Young who was attached to the DOH on a part time basis and off work until the end of March 2020.⁷⁶ The FM put necessary dependency on SAGE down to the realities of small state government, which could not afford to work outside of the UK decision making orbit, whereas the structures, data and delivery mechanism of ROI were not available to synchronise with even if NI wanted to.⁷⁷ Conversely, the DFM saw dependency as damaging to a whole-Island response because NI remained hostage to SAGE's Anglocentrism and was not in any event set up to consider NI's differences.⁷⁸ Regardless of its benefits, NI academics had no representation on SAGE, participation was delayed until 29 March 2020 and access to SAGE's raw material of advice was not afforded to the NI Executive in the same way as it was to their UK counterparts.⁷⁹ NI would also make the same mistakes as SAGE, including assuming the risk of behavioural fatigue without evidence.⁸⁰ By both McBride and Young's reckoning, non-medical issues were not looked at as much as health related ones.⁸¹ For Young the broader social scientific consideration of issues especially as they related to NI was also missed.⁸²

[5]. RECOGNITION

3.14. AFTERTHOUGHT: In a very real sense Disabled people were lost in pandemic decision making (including the expert advice it relied upon) as it was grounded in a standard medical

⁷⁴ McBride [INQ000187306/19 §83]

⁷⁵ Young [M1/INQ000185346/5 §16] McBride [INQ000226184/16 §45]

⁷⁶ Young [INQ000409589/12 §§32, 34] [M1/INQ000185346/2 §§7, 13]

⁷⁷ Foster [INQ000418976/24 §§80, 82, 85, 161]

⁷⁸ O'Neill [M1/ INQ000183409/9 §36]

⁷⁹ Young [M1/INQ000185346/4 §15] McBride [INQ000187306/20 §84] Foster [INQ000418976/75 §245]

⁸⁰ Swann [INQ000412903/49 §148] Young [INQ000409589/9 §25]

⁸¹ McBride [INQ000226184/28 §81] Young [INQ000409589/17 §50]

⁸² Young [INQ000409589/14 §38]

model, to which other public authorities in the system were apt to adhere.⁸³ This is what Disability Action described as, “*the tension in the approach of protecting vulnerable people during the Covid-19 crisis whilst at the same time removing services for vulnerable people which had a detrimental impact upon their physical and mental health*”.⁸⁴ The DPO’s survey of 404 respondents, including 1300 written submissions, found that the situation after March 2020 served “*to reveal the fragility of independence for disabled people and raise questions about the strength of disability rights in the face of such a crisis*”.⁸⁵ As highlighted in all other modules, within covid policy Disabled people were treated as an afterthought. For Disability Action “*What became very clear, was the feeling of many disabled people that their voices were being lost in the noise or worse simply ignored in the confusion and panic that was unfolding*”⁸⁶

[6]. ENGAGEMENT

3.15. ANOMALY: The isolation of Disabled people was compounded by them being denied basic participation in government decision making. In NI co-production and co-design remain only ideas.⁸⁷ The language entered the policy lexicon in 2018 through the various reports on health and social care that then ran aground with the collapse of power sharing.⁸⁸ A commitment to “*principles and practice of citizen and community engagement and co-design*” was made in the statement ‘A New Decade, A New Approach’.⁸⁹ However, Disability Action report no consultation at all across the first two waves of the pandemic, with contact generally described as “*tokenistic*” and mostly arising after the delayed publication of mortality rates in 2021.⁹⁰ The NIHRC too criticises both the lack of consultation and its often retrospective character.⁹¹ Ministerial and civil service accounts suggest that engagement means little more than speaking to stakeholders.⁹² The anomaly here is that in politics and related religious and cultural identity, NI is a place of extensive community networks, which in their interaction with the State have ultimately delivered

⁸³ DANI Alternative Report on the Implementation of the UNCRPD (February 2022) (Alternative Report) INQ000396807/62]

⁸⁴ DANI Alternative Report (February 2022) [INQ000396807/59-60]

⁸⁵ DANI Impact Report (September 2020) [INQ000396804/36]

⁸⁶ DANI Impact Report (September 2020) [INQ000396804/4]

⁸⁷ Cf. DPO M2B Closing 05.04.24 p. 14 §§28-30

⁸⁸ Bengoa Report (October 2016) [INQ000187990/52] Delivering Together [INQ000185457/19-20] *Power to People* [INQ000191268/48]

⁸⁹ Executive Paper (January 2020), *A New Decade, A New Approach* [INQ000391422/26 §§4.5-4.6]

⁹⁰ Toman [INQ000400520/23 §§99-103] DANI Impact Report [INQ000396804/58-59] Disability Strategy Report [INQ000396798/14 §2.2]

⁹¹ Russell [INQ000220355/10 §§2.6, 2.8 and 2.18-21] NIHRC Annual Statement (2021) [INQ000184720/61]

⁹² Ní Chuilín [INQ000436131/26 §136] McBride [INQ000226184/64 §181]

and maintained peace. However, the nature of the networks are such that they block other networks and voices with the outcome that the dignity and wellbeing of Disabled people, and other minorities, cannot enjoy parity of acknowledgment and participation in the post-conflict political landscape.

[7]. DATA

3.16. ENIGMA: For a nation blighted by profound structural discrimination in its recent past NI is unacceptably bad at collecting data. Decision making in NI suffered from fundamental gaps in health and social care data.⁹³ Deaths were not properly counted in real time.⁹⁴ Local modelling was limited.⁹⁵ Identifying the CEV population was difficult due to IT system challenges.⁹⁶ NI was deficient in its ability to disaggregate data by all 9 of the equality categories, or disaggregate data for other inequalities or specific vulnerabilities.⁹⁷ For ECNI these problems long pre-dated the pandemic, but once it hit any effort at response “*was always going to be a case of too little too late*”.⁹⁸ Correlation and publication of statistics of Disabled people’s covid related deaths took nearly two years, despite the ECNI pressing the issue in April 2020, only to be informed that the NI death registration system did not collect such information and any such analysis would be “*a longer term project*”.⁹⁹ There were then, as now, no published statistics detailing the number of Disabled people resident in care homes in NI.¹⁰⁰ There has been no specific government piece of research investigating the impact of the pandemic on those living with disabilities.¹⁰¹ Improvement in data collection, distribution and analysis is characterised by the ECNI as *of itself* a fundamental issue of equality.¹⁰² It is a post-conflict enigma that NI should be so disinterested in this issue.

[8]. PROTECTION

3.17. CARE: Despite shortcomings in mapping the data, the DPO view is that the cohort of people who especially needed protection during the pandemic were amongst the 12000 residents in 405 care homes and the 5000 persons registered to attend day care services. 50% of those

⁹³ Harbinson [INQ000400031/18 §§42-3]

⁹⁴ Young [INQ000409589/23 §63] Wales [INQ000300700/44 §117]

⁹⁵ Young [INQ000409589/18 §§53, 56, 63, 77]

⁹⁶ McBride [INQ000421704/272 §599]

⁹⁷ McBride [M1/INQ000187306/27 §119]

⁹⁸ McGahey [INQ000228441/15 §38]

⁹⁹ ECNI 15.05.2020 [INQ000212426] McGahey [INQ000228441/11 §29]

¹⁰⁰ Toman [INQ000400520/4 §13] DANI Impact Report [INQ000396804/9]

¹⁰¹ McBride [INQ000421704/292 §653]

¹⁰² McGahey [INQ000228441/39 §§99-101, 105(c)]

were people with a learning disability, 11% were people experiencing mental health challenges, and 7% were physically Disabled people. Also, on average, 22,575 people received domiciliary care.¹⁰³ The system for identifying and protecting these people proved to be overly complex, with damaging delays concerning the sending of shielding letters;¹⁰⁴ access to food;¹⁰⁵ inclusive communication;¹⁰⁶ with similar failure at Executive state level to render the issuing of DNAR notices and withdrawal of social care sufficiently accountable.¹⁰⁷

[9]. REDISTRIBUTION

3.18. STATUS QUO: Notwithstanding Barnet formula constraints NI was able to introduce certain financial measures to support the care sector, for example additional funding for infection control, enhanced sick pay for care home staff on leave due to Covid-19, and a Carers Support Fund for unpaid carers established in April 2021.¹⁰⁸ Changes were also made to ensure continuity of health and disability benefits during the pandemic and reduce limitation periods for statutory sick pay and employment and support allowance. As in England, the Universal Credit allowance was increased albeit that the uplift did not apply to those on legacy benefits in NI, a significant number of whom are disabled. Overall, these financial measures were reactive, piecemeal and not the product of co-design. Hence while funds were released from April 2020 to support community organisations delivering services and support to individuals at a grass roots level, the criteria and method of redistribution are unclear.¹⁰⁹ Without the proper funding of DPO to ensure co-production of policy and pandemic preparation, and the involvement of Disabled people in economic planning, any emergency financial response was bound to be reactive and protect the status quo.¹¹⁰ More specific to NI, the situation was aggravated by DPO not being sufficiently mainstreamed into the community pipelines to which such funding was released.

CONCLUSION

4.1. MISGOVERNMENT: All of the above begs the question of long-term viability of good governance. For the DPO the frequent collapse in power sharing and the consequential

¹⁰³ Toman [INQ000400520/4 §13]

¹⁰⁴ DANI Impact Report [INQ000396804/44]

¹⁰⁵ DANI Impact Report [INQ000396804/6]

¹⁰⁶ DANI Impact Report [INQ000396804/42-3] Toman [INQ000400520/16 §63]

¹⁰⁷ Doherty [INQ000148480/11 §§38-9, 72-3]

¹⁰⁸ Swann [INQ000192270/10 §§30, 32, 37]

¹⁰⁹ Ní Chuilín [INQ000436131/32 §§160-164, 167]

¹¹⁰ Toman [INQ000400520/25 §§108, 113]

hiatus of government has violated the lives and wellbeing of Disabled people. Policy drives that take years to gain traction with any government have incessantly run aground. As of January 2020, increased establishment of Disabled people's rights and inclusion in the PfG was stymied because what program there was dated back to a period of 2012 when it was last agreed. More profoundly, the constitutional politics of NI favours the prioritisation of those politics above anything else. NI's system of government entrenches polarised political identities with the consequences that all other matters are managed and contained rather than producing positive gains.¹¹¹ As a result, as Geraldine McGahey, Chief Commissioner at the ECNI put in 2021, equality protection in NI is comparatively in the "*dark ages*" in part because sectarian disputes have continued to dominate all else.¹¹²

- 4.2. MARGINALISATION: As the UK wide Covid Inquiry arrives in NI, it does so having already seen the extent to which Disabled people were insufficiently planned for and engaged with, in the other three Nations. Across the UK there was a failure of human accounting. However, the DPO open this module with the regrettable reflection that in certain respects the marginalisation of Disabled people in NI means something more than it does elsewhere. This is a place in British and Irish history where preventable lost lives bear profound importance. For all its undeniable value in bringing about peace, the DPO view the post-conflict preoccupation of maintaining the political equality between the power sharing parties as having adversely affected the protection of Disabled people during the course of covid decision making. That does not mean at all that the DPO reject the institutions, or the transition they have delivered, but in the unique and evolving context of post-conflict politics it is important to render the vulnerability of the NI system sufficiently accountable and understood.

DANNY FRIEDMAN KC

ANITA DAVIES

ROBBIE STERN

MATRIX CHAMBERS

SHAMIK DUTTA

CHARLOTTE HAWORTH HIRD

BHATT MURPHY

19 APRIL 2024

¹¹¹ O'Brennan (2023) *Stuck between the EU 'rock' and UK 'hard place'?* [INQ000396806/10]

¹¹² McGahey *Irish Times* 20.10.21 [INQ000396789] Toman [INQ000400520/5 §15]