COVID-19 PUBLIC INQUIRY

Module 2C

CLOSING SUBMISSION ON BEHALF OF DISABILITY ACTION (NORTHERN IRELAND)

INTRODUCTION

1. RECOGNITION: There are basic civil rights of Disabled people that are not yet properly recognised in the Northern Ireland ('NI') political system. PART [A] below addresses some of the broader context to that problem and the resulting exposure of Disabled people during the NI pandemic response.[1]

2. RESILIENCE: For all its significant value in achieving non-violence, the current political and constitutional settlement in NI had damaging implications for the resilience of state and society in the face of the pandemic. PART [B] posits five reasons for the vulnerability of the system based on its functioning in relation to (1) EMERGENCY, (2) CONSTITUTION, (3) GOVERNMENT, (4) POLITICS and (5) FOUR NATION COMPARISON.[2]

PART A: CONTEXT

3. DISABLED PEOPLE'S ORGANISATIONS ('DPOS'): Disability Action is the largest DPO in NI, representing 300 organisations who are majority led, directed, governed, and staffed by Disabled people.[3] DPOs are to be distinguished from charities and other organisations that represent Disabled people, rather than enabling Disabled people to represent themselves. States are obliged under the UN Convention on the Rights of Persons with Disabilities ('UNCRPD') to "*actively involve and closely consult*" with Disabled people and their representative organisations on all matters of law and policy that affect them, including emergency planning.[4] The rights under the UNCRPD aim to normalise Disabled people's "*full and effective participation and inclusion in society*" and to ensure that Disabled people are "*involved and participate fully*" in the monitoring of compliance with their human rights.[5]

4. REPRESENTATION: The UNCRPD model of representative democracy, where elected representatives engage more dynamically with Disabled people, derives from the original Disability rights demand of "*Nothing About Us Without Us!".* A 2002 UN study attributed the

[1] For the DPO introduction on these matters, see DPO M2 Opening 26.09.23 [pp 1-13 §§1.1-2.12]
[2] For DPO general submissions on future resilience, see DPO M2B Closing 05.04.20 [pp 12-20 §§20-40]
[3] Toman [INQ000400520/1 §2]
[4] UNCRPD Art. 11 [M2/INQ000279959] UNCRPD Gen Comment No. 7 [M2/INQ000279951 §78] UNCRPD UK Country Report (2017) [M2/INQ000182691/4 §§28-29] DPO M2 Opening 26.09.23 [pp 9-12 §§2.6-2.9]
[5] UNCRPD Art. 4(3) and Article 3(d) [M2/INQ000279959]

core problem faced by Disabled people in their "*invisibility*" to governments which, despite professed values to the contrary, continued to disregard or minimise the legal protections of Disabled people.[6] The corrective to the longstanding problem of Disabled people being denied involvement in decision-making about matters relating to or affecting their lives, with decisions made on their behalf without consultation, lies in part in consulting with representative organisations run *by* Disabled people not *for* them.[7] That is now a right under Art 4(3) and other provisions of the UNCRPD cited above but it reflects a broader value of "*Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity*" expressed in Article 3(d).[8]

5. VULNERABILITY: DPOs take issue with that feature of pandemic policy, however well intentioned, which focused on the 'vulnerable' without consulting Disabled people, because in practice it enabled Disabled people to be lost, even when decision makers believed that they were being seen.[9] That is a societal problem beyond NI. 'Normal' personhood is assumed to be independent and self-sufficient.[10] Disabled people are treated as "other", charitable objects and recipients of a narrow concept of care either from insecure and low paid workers, or from the family unit, with consequential disproportionate reliance on women.[11] This notion of vulnerability is often highly transactional.[12] Hence in pandemic crisis *all* the Four Nation governments, including NI, focused on getting benefits paid, setting up telephone lines, sending letters to people who were on lists, and creating hit and miss food parcel distribution.

6. RESPONSIVENESS: The DPO critique of 'the vulnerable' label is not simply that it reinforces the attitude that the 'problem' of Disabled people locates in their individual impairments. It is that the designation of 'vulnerable' detracts from the legal and ethical requirement for governments to create systems that are more responsive to the plurality of the human condition and the value of relationships. It blocks recognition that we are all vulnerable at times, but it is systems that make some of us more vulnerable than others.[13] These ideas, however, were only just beginning to enter Four Nation policy making at the outset of the Covid-19 pandemic and were particularly underdeveloped in NI.

---

[6] Quinn G. and Degener T. (2002) *The current use and future potential of United Nations human rights instruments in the context of disability* [INQ000396787/33-36 §1.3]
[7] UNCRPD Gen Comment No. 7 [M2/INQ000279951/3 §§3-5, 11, 13-14, 15, 18-20, 27, 42, 48, 78]
[8] UNCRPD Art 3(d) [M2/INQ000279959]
[9] Toman [T1/157/10-12]
[10] DPO M2 Opening 26.09.23 [p. 4 §§1.7-1.8]
[11] Gordon-Bouvier E. *Vulnerable Bodies and invisible work* (2021) Int. Journal of Discrimination and Law, Vol. 21(3) 212-229
[12] Quinn G. and Degener T. (2002) [INQ000396787/35 §1.3(e)]
[13] DPO M2 Opening 26.09.23 [p. 5 §§1.9-1.10] J Herring. *Shielding the Vulnerable* [INQ000396853/12-13] Fineman M. (2008) *The vulnerable subject.* Yale Journal of Law & Feminism 20(1): 8-40, pp 5-6. 17-18

7. COMMUNITY: The civil rights situation of Disabled people in NI's community-based politics has its own unique characteristics. This is a place where the moral convictions of politicians are strong and the connection to their constituencies is particularly embedded.[14] When Ministers directly focused on the predicaments of people during the pandemic they revealed themselves as politicians steeped in human communities and stories.[15]

8. PUZZLE: The DPO mention those features because it is a puzzle that in a place of such orientation towards its communities, NI failed to deal more effectively with this crisis, but was also particularly unable to be more inclusive in its recognition and protection of Disabled people. DPO counsel asked both Michelle O'Neill and Arlene Foster why that was so.[16] Both accepted that government had to be more "*strategic*" about Disabled people's needs and more "*structured*" in its engagement with Disabled people and DPOs.[17] As to what prevented that occurring during the pandemic, in the following sections the DPO offers its answer.

PART B: RESILENCE

[1]. EMERGENCY

9. STATE: A basic function of government should be the ability to respond to emergency. Yet, as the Inquiry now knows, there were systemic flaws in disaster management across the UK. The Civil Contingency Act 2004 ('CCA') creates only superficial duties on local government and blue light responders, but no duties on central government, and no mechanism to audit local readiness.[18] Planners must only "*have regard*" to the voluntary and community sector as opposed to enrolling them into emergency co-partnership.[19] The UK's weak resilience system left the state unconscionably unprepared for a pandemic. One of its overriding weaknesses was its tendency to focus on "*technocratic processes and products*" rather than people, communities, and collaboration.[20] Prior to the pandemic, critics had called for a "*human centred approach*", in keeping with both best practice advocated in international guidance on Disaster Management,[21] and with the state's obligations under the UNCRPD to take "*all necessary measures*" with regard to emergency planning for Disabled people.[22] All emergencies, but especially public health ones, expose

[14] O'Neill [T10/123/17-23] Foster [T11/149/25-150/8] Poots [T7/70/13-71/1]
[15] O'Neill [T10/83/13-17] Poots [T7/105/1-16] Foster [T11/150/8-19] Long [T7/55/15-22]
[16] O'Neill [T10/196/12-199/14] Forster [T11/148/21-151/14]
[17] Foster [T11/151/5-14] O'Neill [T10/197/17-19]
[18] DPO M2 Closing 15.01.24 [INQ000399541/3 §7]
[19] CCA 2004 (Contingency Planning) Regulations 2005 ('CCR 2005') Reg 23. *Cf*. Alexander & Mann [M1/T3/126/14-20] Adamson [M1/INQ000182613/10 §43] [M1/T21/118/12-119/10] [M1/T21/125/18-126/20]
[20] Alexander and Mann [INQ000203349/28 §§55-56] Adamson [M1/T21/129/6-131/6] and Adamson [M1/INQ000182613/15 §§57(b), 67]. *Cf.* MacNamara [M2/INQ000273841/18 §32(iv)] [40 §74(vii)]
[21] Sendai Framework (March 2015) §19(d)
[22] UNCRPD Art 11 [see fn. 4] DANI (2012) *How does Northern Ireland measure up?* [INQ000396790/119] DPO M2C Opening 19.04.24[p. 8 §3.8] Toman [M1/INQ000148464/6 §17]

Disabled people; and so the focus of planning and response must be on *no one left behind*.[23] But these revisions to UK civil contingency doctrine and practice had not embedded prior to this unplanned for pandemic; and it was thus inevitable that Disabled people would get left behind.

10. STORMONT: The NI legal civil contingency framework is even lighter and less developed than the rest of the UK. Under the CCA, only the PSNI, Maritime and Coastguard Agency and the telecommunications providers are statutory responders.[24] Unlike in Scotland and Wales, neither the health infrastructure nor local government are subject to enforceable duties.[25] The power that resides in Ministers of the Crown to make binding regulations on Schedule 1 responders has no broad effect in NI, such that there are either regulatory gaps or non-binding guidance documents.[26] Unlike anywhere else in the UK, a Minister of the Crown cannot direct a local authority, or other emergency responder under Part I CCA to perform a function or order an action.[27] Not only is there no auditing of emergency readiness, but there are no performance standards against which emergency responders must assess themselves.[28] Local Government has general emergency planning powers (not duties) under separate legislation, but not in a way that mirrors the CCA structure as regards local resilience forums, community risk registers or mandated due regard of the voluntary sector.[29] In relation to civil contingencies arrangements, the relationship is officially described as "*one of co-ordination and partnership rather than formal accountability*".[30]

11. FRAMEWORK: At the start of the pandemic the NI emergency response system therefore resided in a non-statutory Civil Contingency Framework last updated in 2011 that neither compelled planning, nor checked it.[31] Its reference to equality duties was minimal, assuming that "*emergencies are not discriminatory*" but that different groups might experience the public sector response to an emergency in different ways (e.g. evacuation facilities might not be accessible to Disabled people), such that "*where appropriate, consultation should include groups likely to have an interest*".[32] While the framework held

[23] UNCRPD Gen. Comment No. 5 CRPD/C/GC/5 §79 DPO and M2 Closing 15.01.24 [INQ000399541/4 §8]
[24] *Cf*. CCA 2004 Sch. 1 and 2: see Allen [INQ000286845/4 §15] [18 §§56-7]
[25] *Cf*. CCA 2004 Sch. 1 Para. 1 (E Local Authorities) Para. 9 (SSHSC E, S and W) Para. 13 (S Local Authorities) Para. 17 (S Health Boards) Para. 18A (W Local Authorities) Para. 18C (W NHS Trust) Para. 18D (W Local Health Boards)
[26] *Cf*. CCA 2004 s. 2(5)
[27] *Cf*. CCA 2004 ss 5-7
[28] McMahon [M1/T16/17/11-20/16] *Cf*. CSS National Resilience Standards (2018) which only since August 2021 are "*where possible*" and "*as appropriate*" to be considered "*best practice*" [INQ000147502/20, 23]
[29] Allen [INQ000177812/9 §3.5] [INQ000286845/4 §15]
[30] McMahon [M1/INQ000187620/36 §149]
[31] NI Civil Contingencies Framework [INQ000086932/2 §6]
[32] Ibid [INQ000086932/60 §§119-120]

"*wide consultation with stakeholders*" in the creation of emergency plans to be "*good practice*", it did not mandate how this should be done, and it did not contemplate DPOs, or other such representative organisations being involved.[33] The M1 evidence was that neither the community nor voluntary sector was involved in any pre-pandemic central planning or co-ordination in any way, with such matters to be delegated to the Department of Communities ('DfC') and Local Government.[34] But under this regime, DfC had no civil contingency duties and did not plan beyond basic business continuity,[35] and Local Government had no developed civil contingency framework at all and as of 2020 was in a state of developing its capabilities. As of then, local authorities predominantly focussed on flooding; had voluntary sector relationships that were broadly faith and community based, with no mention of DPOs; they had no responsibility for the care sector; and tended to deliver emergency services organised by Departments rather than initiating their own.[36]

12. EXPLANATION: Exploration of the reasons why NI has a far less exacting civil contingency regime than the rest of the UK is critical. Nonetheless, aside from alluding to constitutional reasons and the need for NI-specific adaptions, the civil contingency documents and witnesses do not elaborate on the ethnonationalist dimension to the issue.[37] In all other Four Nations to which the CCA substantially applies, the principal planning and response roles are apportioned to local authorities under statutory duties. In contrast, the 11 NI local councils have far less powers than other parts of the UK. At the same time, both the UK Parliament and NI Assembly have hitherto stopped short of overly empowering the Executive Office ('TEO') or other Departments due to the risk of communal discord (see Section [2])) below). TEO describes its role (in the context of functioning power sharing arrangements) only as *"one of liaison and co-ordination (with UK and Northern Ireland Departments) rather than one of direction*"[38] and none of the other Departments are statutory responders with enforceable duties, even for the purposes of planning. Moreover for 45% of the years since 1998 there has been no centre of government in the ordinary sense, with NI relying on remote NIO or NICS bureaucracy that cannot make new policy and is bound to be less focused on local constituencies that are themselves governed under a suboptimum civil contingency regime.[39] Thus, in times of emergency NI really operates under the worst of both worlds, with a weak centre and weak locality.

[33] Ibid [INQ000086932/65 §§128-130]
[34] McMahon [M1/INQ000187620/33 §130] Toman [M1/INQ000148464/6 §17]
[35] See Paragraphs 31-32 below
[36] Allen [INQ000177812/7 §2.1] [12 §6.1] [15 §8.4] [INQ000286845/18 §§56-58] [27 §§93, 95]
[37] NI Civil Contingencies Framework [INQ00086932/12 §13] McMahon [M1/T16/38/6-42/3] Building Resilience [INQ000147502/16 §4.1]
[38] McMahon [M1/INQ000187620/41 §166]
[39] McMahon [M1/T16/13/1-15/2]

13. CAPABILITIES: This underdevelopment of civil contingency law combined with shortcomings in institutional capability. The civil contingency function was based in an understaffed, under skilled and ultimately undervalued Civil Contingency Policy Branch in TEO ('CCPB').[40] Due to staff shortages throughout 2019 CCPB could not review the lessons learned reports into major emergencies such as Grenfell Tower and Manchester Arena, or participate in Winter and Summer Resilience Network meetings, being the only UK devolved administration not to do so.[41] In November 2019 the CCPB was reported as "*not fit for purpose*", giving rise to Christopher Stewart's application for a more in depth review in January 2020.[42] Bernie Rooney and latterly Karen Pearson discovered that CCPB had failed to implement resource capacity recommendations to prepare for Brexit.[43] In late January 2020 the CCPB was aware that overall capability to respond to the non-health aspects of a pandemic was 18 months behind the rest of the UK at a time when CCPB was facing "*a critical lack of resources*".[44] In February and March 2020 the number of on-site CCPB staff was between one and four.[45] It was therefore wrong for Stewart to tell the Executive Committee on 16 March that the NI civil contingency system was "*tried and tested*",[46] not least because it encouraged false assurance.[47]

14. SURGE: The NI Central Crisis Management Arrangements Protocol('NICCMA') were designed to deal with an "*anticipated…likely…serious impact*" on the whole of NI government and to "...*provide strategic co-ordination of the response ... or recovery"* across departments with "*cross-departmental co-ordination … provided by TEO*". NICCMA could be activated by TEO or at the request of a lead department responding to the emergency.[48] NICCMA logically should have activated when COBRA started to convene in the UK in January 2020. The delay in standing up NICCMA for several weeks points to manifest weakness at the centre of the NI state. Neither Stewart nor David Sterling wanted to split limited staff between the task of cajoling departments to properly plan and standing up the various NICCMA features.[49] Until the activation of NICCMA on 16 March, the CCPB

[40] Stewart [INQ000411508/10 §§42, 44-49] [T3/8/20-10/16] Rooney [INQ000468508/9 §§39-40, 69-71, 128, 149, 159, 162, 165] Harbinson [INQ000400031/4 §§11-16] *Cf*. Gray [T12/25/9-27/11]
[41] Rooney [INQ000468508/18 §80] CCCP Email 15.11.19 [INQ000183627/2-3] Table [INQ000469480/5-6]
[42] Rooney-Stewart Email 20.11.19 [INQ000183597/1] Stewart *Strategic Review of CCA across NI* 25.02.20 [INQ000205712/1] [9 §§23-25] Rooney Email 20.01.20 [INQ000183601]
[43] Rooney [INQ000468508/9 §§39, 70, 72, 75, 102, 172] Pearson [INQ000438173/20 §§83, 139]
[44] Update on Pandemic Influenza 22.01.24 [INQ000092712/1-2 §3] Rooney-Stewart Memo 23.01.20 [INQ000183632] Rooney [INQ000468508/21 §§95, 234] *Cf*. Sterling [INQ000449440/34 §104]
[45] Stewart [T3/10/17-15/20]
[46] Stewart *Emergency Response to COVID-19* 16.03.20 [INQ00086933/2 §4]: see also, e.g. Command and Control Briefing 13.04.20 [INQ000255342/5] Briefing to Minister Lyons [22.06.20] [INQ000277610/1] Foster [INQ000205274/3 §7] McMahon [M1/INQ000187620/56 §223-224]
[47] Foster [T11/47/3-48/23]
[48] NICCMA [INQ000092739 §§1-4, 9, 12-13, 19, 22-23, 36] Sterling [T2/93/21-102/11]
[49] Sterling [T2/98/11-99/10] [T101/19-102/11] [T2/110/17-113/3] [T2/116/8-118/20] Stewart [T3/70/1-71/1] Rooney-Stewart Email 04.03.20 [INQ000218494]

laboured to extract skeletal plans from departments, which for instance under the sections dealing with the "*communities*" focussed on welfare financial payments to the "*most vulnerable in society*" and the consequence of personnel shortages.[50] The first major NI documents purporting to plan were not generated by TEO until 19 March and by the DH until 30 March. Neither of them mentioned Disabled people.

15. YELLOWHAMMER: Upon entering her role on 16 March, Karen Pearson therefore had little option but to take the Operation Yellowhammer No-Deal Brexit planning and apply it to a whole society humanitarian covid crisis.[51] The NI state lacked adequate planning around Disabled people and other disproportionately at-risk groups in part because these foundational Executive Office steps, including Pearson's Executive Paper of 19 March 2020, were not sufficiently focussed on those matters, despite Pearson's professed aim in an email of 17 March to be "*person centric*" and focussed on "*supporting vulnerable citizens*".[52] Instead the final paper and presentation used the far more amorphous heading of "*Societal and Community Wellbeing*" with concerns about utilities, supply chains, available staff and risks to public order.[53] In keeping with its origins in responding to a No-Deal crisis centred on trade and international relations, Yellowhammer planning focussed on the movement of people and things; precisely the emphasis on technocracy over human centredness that critics of UK Civil Contingency doctrine had begun to warn against.[54]

16. CONSEQUENCES: For Disabled people Yellowhammer was a bad fit for Covid and the suggestion that its cross-sectoral dimensions assisted NI are overly sanguine.[55] The TEO's emphasis on "*sectoral engagement*", which it regarded as "*vital*"[56] was predominantly concerned with business continuity. For Disabled people it meant consultation with traditional charities, predisposed to focus on Disabled people solely through the prism of their clinical vulnerability. Pearson foreshadowed the importance of "*two-way conversation*" and "*stakeholder networks*" in her initial thinking,[57] but this translated into narrow encounters. The single dedicated ministerial meeting during the first six months of the pandemic with "Equality Groups" was with a group of local charities concerned with shielding. That was on 15 July 2020, and attendees included the British Heart Foundation, MacMillan Cancer Trust, and Action on Mental Health.[58] Likewise, the stakeholders brought

[50] Non-Health Sectoral Resilience 13.03.20 [INQ000023226/18-19] Sterling [T2/152/18-154/12] Stewart [T3/58/21-69/1] Rooney-Stewart 08.03.20 [INQ000325143/2] Stewart-Sterling 17.03.20 [INQ000308457/7]
[51] Pearson [INQ000438173/38 §§159-164, 363] McCormick [INQ000421759/17 §49]
[52] Pearson-Sterling et al Email 17.03.20 [INQ000208070/3 and 5]
[53] Planning Framework Paper [INQ000023228/1 §3] Executive Strategy and Plan [INQ000258405/8]
[54] *Cf.* Paragraph 9 above
[55] *Cf.* Stewart [INQ000411508/3 §14] Pearson [INQ000438173/37 §155] [T4/18/7-15] [T4/20/3-6] [T4/21/1-4] [T4/21/5-7]: see also Alexander and Mann [M1/INQ000203349/13 §12(d)]
[56] Pearson [INQ000438174/57 §§222-227]
[57] Pearson-Sterling et al Email 17.03.20 [INQ000208070/5 §§2.1-2.3]
[58] Pearson [INQ000438174 /117 §453] FMDFM Ministerial Meeting Note 15.07.20 [INQ000279400]

together by the Executive Covid Taskforce ('ECT') after January 2021 combined the business sector, faith leaders, and somewhat random groupings around sport, marching bands, transport, and freight.[59] The only meeting with Disability Action in the entire period was with junior ministers in January 2022 and concerned facemasks.[60] Arlene Foster said that government was not "*strategic*" enough in its commitment to Disabled people; and Michelle O'Neill said that engagement with Disabled people was not sufficiently "*structured*". The flaws in the civil contingency system clearly contributed to both those failings.

[2]. CONSTITUTION

17. MACHINERY: Looking at these shortfalls only through the narrow lens of civil contingency reveals just part of the problem. The second reason why Covid decision making floundered for Disabled people in NI lies in the deliberate design of its constitutional arrangements that have produced peace but are yet to produce good government.[61] The root limitation of power sharing is that it amounts to power splitting.[62] In contrast to the rest of the UK, the system has deliberately designed out the authority of the centre. As opposed to collective accountability via an Executive, there is a set of autonomous departmental Ministers and Permanent Secretaries who are unilaterally accountable to the Assembly.[63] The FM and DFM can order a cross-cutting matter to be determined by the Executive Committee, but they must agree, or the individual Minister must refer it.[64] The default position is autonomous departmental decision making. The HOCS acts as a critical mediator,[65] but has no hard power to co-ordinate government, or authority over staff placement, and therefore operates in stark contrast to the role played by the UK Cabinet Secretary.[66]

18. FRAGMENTATION: In theory, standing up NICCMA was NI's best chance of achieving central co-ordination of a pandemic response,[67] but the deliberately fragmented system undoubtedly hindered the activation of NICCMA. The DOH could abdicate responsibility to TEO for wider planning that it had no power over, and TEO delayed taking that responsibility because it lacked power and necessary resources to impose its will on other

[59] Pearson [INQ000438173/74 §346]
[60] Pearson [INQ000438173/73 §§340-341] [INQ000438174/193 §747] Note 20.01.22 [INQ000279305]
[61] Sterling [INQ000449440/25 §79]
[62] IFG (2019) *Governing without ministers: NI since the fall of the power-sharing executive* pp 42-45
[63] O'Connor & Gray [INQ000472398/10 §§26-27 Pearson [INQ000438174/10 §14] [12 §§20-23] Gray [INQ000449439/7 §§27-39] [T12/11/10-15/22] Pyper [INQ000411509/20 §93]
[64] NIA 1998 s. 20(3) and (4) and Ministerial Code para. 2.4 and *MFI v Safe Electricity A&T Ltd* [2022] NICA 61 §§10-24: see also Pearson [INQ000438174/12 §22] Sterling [T2/68/18-70/1]
[65] Sterling [T2/78/9-79/9] Pyper [INQ000411509/5§20] O'Connor & Gray [INQ000472398/21 §§81-82]
[66] Pearson [INQ000438174/13 §§24-26] Sterling [T2/65/7-15] [T2/66/12-68/1] Pyper [T3/173/14-177/3] [178/2-18] Brady [T4/107/8-108/24] Gray [INQ000449439 §7] O'Connor [T9/203/24-205/8]
[67] O'Connor & Gray [T9/203/10-23] [T9/205/17-206/1] [T9/212/13-213/18]

departments.[68] Between August and December 2020 NI also had no HOCS to act as mediator, contributing to the fragility of the system going into the November 2020 executive meetings that failed to agree upon an effective circuit breaker.[69] In a pandemic emergency the constitutional design of the post-conflict settlement produced chronic fragmentation, disjointed thinking, and multiple points of failure.[70]

19. RESPONSIBILITY: The pandemic showed a political system that is fundamentally weak at its centre. The HOCS lacked hard authority to forge the civil service into a singular joined up endeavour. It is telling that senior political and civil service witnesses would contemplate an enhanced form of NICCMA with additional powers in future,[71] but the sensitivity arises as to how a HOCS could be granted cross-departmental authority without being answerable to a political chain of command in an elected Minister for the Civil Service, for which NI presently has no agreed constitutional candidate.[72] Adding to the lack of singular authority within NICS bureaucracy is the fact the FM and DFM lead political forces within government, but they do not lead government. In practice, their lack of power allows them to enjoy a strange form of political irresponsibility, because by reference to the Belfast Agreement, they can always absolve themselves by the fact that government is horizontal and fragmented, not hierarchical and centralised.[73]

20. DISABLED PEOPLE: The NI government structure was simply not one that would serve socially marginalised groups during an emergency, and especially Disabled people. Nuala Toman's evidence was that Disabled people during the pandemic "*were largely invisible amongst public decision making and our voice went unheard".*[74] She described how *"the challenges [of] cross-departmental working through the enforced five-party coalition were such that disabled people fell through the cracks and were largely unaddressed and unacknowledged within decision-making processes*."[75] Constitutional fragmentation meant the DfC worked on distribution of basic essentials with organisations funded by them, but core funding for organisations that might help distribute essentials to Disabled people came out of the DOH.[76] The result was that organisations closest to the shielding population often

[68] NICCMA [INQ000092739/3 §3]: for DOH, see Pengelly [T5/34/10-36/15] [T5/39/16-40/6] [T5/40/15-22] [T5/41/9-42/2] [T45/2-10] Swann [T9/39/15-43/23] and for TEO, see Fn. 64-66 above and Fn. 73 below
[69] Pearson [INQ000438173/23 §99] Pyper [INQ000411509/5 §23] [T3/183/6-16] McCormick [INQ000421759/32 §§96-123] Brady [T4/109/13-110/12]
[70] DPO M2C Opening 19.04.24 [pp 2-4 §§2.2-2.6]: in general, the NI arrangements render government unstable, governance damaged, resilience compromised, and Disabled people peripheral
[71] Pyper [T3/177/4-19] O'Neill [T10/31/10-19] Brady [INQ000421714/2 §7] [T4/161/11-164/4]
[72] *Cf*. Cabinet Manual [M2/INQ000182315/29 §3.6] (re PM viz UK Civil Service) *Cf.* Gray [T12/13/13-15/2]
[73] E.g. O'Neill [T10/29/4-32/1] [T10/41/8-18] [T10/65/17-67/8] [T10/152/2-23] Foster [T11/21/2-23/16] [T11/25/10-17] [T11/26/16-21] [T11/52/8-53/6] [T11/53/13-55/9] [T11/82/17-83/3]
[74] Toman [T1/157/10-12]
[75] Toman [T1/160/1-16]
[76] Toman [T1/158/17-159/3]

sat outside of the emergency response led by DfC. Fragmentation also explained NI's extraordinary deficiency in collecting, distributing, and analysing data, as no part of government led on it. This left NI unable to publish Disability related data until December 2021; before then the notion that the virus did not discriminate was too able to prevail.[77] Invisibility of Disabled people included government failure to properly comprehend the collapse of care services, isolation of those with special education needs and their families, harm to physical and mental health, emotional anxiety, insecure access to basic amenities, and digital and information exclusion.[78] The opportunities for engagement with government for DPOs during the pandemic in order to correct these problems was extraordinarily limited.[79]

21. HUMAN GEOGRAPHY: For Disabled people one of the basic failures of both strategy and engagement was the absence of structures to link the various departments and their pipelines better with people at the local level. DPO have described such integration as key to collective resilience across the UK.[80] However, community pipelines in NI continue to have a segregated rigidity about them based on religion, location, and culture.[81] References to stakeholder engagement in statements therefore must be read with care, especially where these are oblique or obtusely neutral.[82] They tend not to reflect on the politics of NI human geography, nor recognise that various types of community organisation might dominate over others.[83] Aside from the need for structural change, one of the further obstacles to collective resilience in NI is that it has historically distorted mapping of its human geography. As Professors O'Connor and Gray advise, it is important for policy framers and decision makers not to be 'colour-blind' about the problem.[84]

22. DEMOCRACY: Ultimately the visibility problems of Disabled people in NI are aggravated by the constitution.[85] For Disabled people there is no Government Department, or Programme for Government that has ever lived long enough to take responsibility for their interests and their rights. For only 7 years since 1998 has there been an agreed programme for

[77] DPO M2C Opening 19.04.24 [p. 13 §3.16] Toman [T1/160/20-161/14] [T1/163/1-164/23]
[78] Toman [T1/165/4-166/8] [T1/166/15-167/12] [T1/167/19-168/11] [T1/168/14-170/25] DPO M2C Opening 19.04.24 [p. 13 §3.17]
[79] Toman [T1/171/1-172/18]
[80] Toman [T1/172/2-18] *Cf* DPO M2B Closing 05.04.20 [pp 18-19 §§37-38]
[81] McIlveen [INQ000434103 §60] Foster [INQ000418976 §199] Ní Chuilín [INQ000436131 §§136, 169] Hargey [INQ000446235 §§75, 176] Kearney [INQ000436132 §173] Pyper [INQ000411509 §§124]
[82] E.g. Wall [INQ000251519/36 §9.5.1] (noting only that NI has a different "*makeup*" to its voluntary and community sector from other UK jurisdictions) Lyons [INQ000417070/25 §111]) (commenting that NI was likely to have "*fared well*" during Covid due to "*a high level of community infrastructure, significant numbers of representative organisations and lobby groups, and comparatively easy access to decision makers*")
[83] O'Brennan (2023) *Stuck between the EU 'rock' and UK 'hard place'?* [INQ000396806/10]
[84] O'Connor & Gray [INQ000472398/55 §257] citing Scott A. Bollens, *On Narrow Ground: Urban Policy and Ethnic Conflict in Jerusalem and Belfast (*2000)
[85] DPO M2C Opening 19.04.24 [pp 14-15 §§4.1-4.2]

government (PfG) as required by section 20 of the NI Act 1998, and the last version dates to 2011.[86] The result has been policy stasis and lack of social reform in a rapidly changing world.[87] For Disabled people it has caused them to be perennially left behind. Most recently the DfC promised a disability strategy for December 2021. That was never produced due to the collapse of power sharing by early 2022.[88] One of the many manifestations of what Sterling has termed "*lowest common denominator*" government, is that in forced coalition the parties will find it hard to agree; and that one of the means to do so is to trade.[89] With the continuing rigid nature of community infrastructures, what is achieved in mandated coalition is the institutionalisation of that rigidity at the top, with consequential lack of opportunity for others. This inescapably diminishes the prospects of Disabled people securing policy change.

[3]. GOVERNMENT

The Executive Office

23. BLINDSPOT: TEO's predicament throughout the pandemic was not just lack of power over the rest of government, but a more profound deficit of strategic awareness. By comparison with all other UK administrations, NI did not achieve a whole government strategy at any time in the first two pandemic phases, despite advice that it was needed,[90] and its taskforce apparatus was established at the point of recovery in 2021, rather than a year earlier as occurred in Westminster. Within TEO, Toman's critique that Disabled people were largely invisible during Covid decision making and their voices unheard is a literal statement of events. In decision makers' minds they thought they were supporting the vulnerable because of the existence of standard welfare steps, but in the absence of rigorous and evidence-based equality impact assessments and effective engagement with impacted groups, they could not see otherwise.[91] It is a step towards change that political and civil service establishment were emphatic in their evidence that oversight of Disabled people and other marginalised groups was a key failing.[92] But there can be no excuse that this was due to the pressures of time and uniqueness of the crisis. During 2020 organisations in other parts of the UK and Northern Ireland produced key reports on the disproportionate

[86] Gray [INQ000449439/8 §§30-36] Sterling [T2/76/2-77/13]
[87] Sterling [INQ000449440/27 §85] [134 §390]
[88] Hargey [T6/220/3-221/24]
[89] Sterling [T2/80/7-81/11]
[90] May-Sterling 17.03.20 [10.16] [INQ000308439/2] Pearson-Sterling 17.03.20 [23.02] [INQ000308450/1] Sterling [INQ000449440/70 §205]
[91] O'Neill [T10/145/1-8] [T10/198/1-21] Pyper [T3/201/7-202/9] *Cf.* Brady 03.02.22 [INQ000438371/7-12]
[92] Pyper [T3/215/7-14] Pearson [T4/93/16-94/3] Brady [T4/110/23-111/11] [INQ000421714/3 §§13, 28] O'Neill [T10/144/4-20] [T10/146/3-12] [T10/195/16-196/3] [T10/197/3-16] Foster [T11/131/19-132/3]

impact of the pandemic and countermeasures on Disabled people.[93] Those reports simply did not register at TEO level and made no impact at all on any cross-government strategy.[94]

24. ABSENCE: The establishment of an Executive Recovery Taskforce ('ERT') ought to have provided correction, but Disabled people were not mentioned at all in its *Moving Forward* Strategy published in March 2021,[95] and disability is mentioned only once in its *Covid Recovery Plan* of July 2021,[96] under an aim to improve skills to advance employment. The window for consultation on the plan was 1 week, a single DPO was spoken to, and what they asked for was not reflected in the outcome.[97] While the revised Civil Contingency Framework contained a dedicated section on "*vulnerable people*", with a specific aim to correlate a list of "*partner organisations*", the document makes no mention of Disabled people, or DPOs, suggesting that NI Government as of that date did not know what a DPO was.[98] The Inquiry has spent time establishing how cross-government strategy was delayed in starting; for Disabled people during the pandemic, *it never began.*

Department of Health

25. AUTONOMY: In the rest of the UK, the need to take immediate steps to locate planning at the centre of the executive and integrate health department leadership into a whole society government response was taken as axiomatic, but in Northern Ireland it was a problem.[99] It is difficult to understand the tensions between the DOH and the rest of Government without understanding the extent to which the power splitting dimensions of the constitutional arrangements compromise ordinary principles of good public administration and civil contingency response.

26. WORK AROUND: As Professor O'Connor put it, in NI "*we never work through the normal structures, whenever there's a difficult issue, we try and work around them*."[100] It remains a reasonable apprehension in NI that if you allow Executive Committee control over decision making, it will likely run aground due to political disagreement. Hoarding power in the Health Department therefore operated as the least bad choice to make Covid political decision making viable. For that reason, Naomi Long was loathe to demand that Minister Swann referred matters to the Executive Committee, even when it came to the society wide threat

[93] E.g. May 2020: CO Disability Unit, *The Impact of Covid-19 on disabled people* [INQ000272134] June 2020: *ONS The impact of Covid-19 on disabled people (mortality and social impacts)* [M2/INQ000308703] [M2/INQ000089755] Sept 2020: DANI *The impact of COVID-19 on disabled people in NI* [INQ000396804] Dec 2020: WESC *Unequal impact? Coronavirus, disability, and access to services* [M2/INQ000176311]
[94] Pyper [T3/212/19-215/14]
[95] TEO *Moving Forward: The Executive Pathway out of Restrictions* 02.03.2021 [INQ000104467]
[96] TEO *Building Forward: Consolidated Covid 19 Recovery Plan* 01.07.2021 [INQ000279232/10]
[97] Toman [INQ000400520/23 §§103-104] Pyper [T3/215/21-217/9] *Cf.* [INQ000411509/34 §§153-157]
[98] TEO *Building Resilience Together* 01.08.21 [INQ000147502/45-48 §8.1]
[99] O'Connor & Gray [T9/211/5-18]
[100] O'Connor & Gray [T9/214/7-9]

arising in the care home system. She held that view because the dysfunctionality of the Executive Committee was apt to harm and misgovern people, whereas individual departments (and she gave her own DoJ example of preventing any Covid deaths in prisons) might at least offer more.[101]

27. CONSEQUENCE: That was an extraordinarily vulnerable basis to meet a whole-society pandemic. The outcome was that the DOH, as Robin Swann accepted, left its nation in a state of serious risk because it did not ring the alarm bell early or loud enough to prompt Ministerial colleagues to stand up whole society preparedness.[102] Moreover, given the constitutional arrangements as they were, it was difficult for civil contingency planners to tell DOH what to do, even if the problems, for instance as regards care homes, seemed obvious.[103] Not only was there lack of communication with other departments and TEO,[104] but within the Department itself. Robin Swann was not aware of advice given by his own officials in February 2020 regarding standing up of NICCMA, or of the content of letters sent out from the DOH signed off by the CMO.[105]

28. DEPENDENCY: By the time Jenny Pyper became HOCS both the FM and DFM were determined to reset the relationship between TEO and the DOH.[106] But before then civil servants in TEO were particularly dependent on the influence and stamina of the CMO (who they saw it as imperative to support) because of his capacity in the first wave to bind the various political factions.[107] That caused them to overlook that the CMO was institutionally aligned with the DOH; he did not have expertise to advise on broader social consequences, and there was no proper distinction between expert advice and democratically accountable decision making. When the Cabinet Office in early March urgently sought information from each of the DAs on planning for potential impact of NPIs, the CMO effectively vetoed co-operation, with no objection from Sterling or Stewart.[108] The power of the DOH and its CMO made for a brittle decision-making consensus. The DFM in the first wave was left asking how it was possible to get greater control of a pivotal but problematic DOH.[109] The criticising pendulum then swung to the FM and her Ministers by the time of the second wave with arguably disastrous consequences.[110]

---

[101] Long [T7/34/8-36/11]
[102] Swann [T9/103/11-104/23] [T9/112/1-113/17] [T9/128/9-24]
[103] E.g. Rooney-Stewart 08.03.20 [INQ000325143/2]: see also Pearson [INQ000438173/7 §25]
[104] Swann [T9/80/10-19] [T9/120/25-121/25] [T9/140/24-144/5]
[105] Swann [T9/76/8-18] [T9/84/24-85/12] [T9/106/9-107/17]
[106] Pyper-FMDFM Meeting Note 01.12.20 [INQ000391436]
[107] E.g. Stewart-Sterling 11.03.20 [22:18] [INQ000308457/4] Stewart-Rooney 09.03.20 [NQ000325143/2]
[108] CO Email 06.03.20 [INQ000309229/9] (and McBride replies) Stewart-Sterling 07.03.20 [20:55] 08.03.20 [18:14] [INQ000308457/2-3] Sterling-Stewart Email [INQ000398439/1 §3]
[109] Sterling-Widdis-Pearson 26.03.20 [INQ000287536/2] Sterling-Stewart 07.05.20 [11:27] [INQ000308457/22]
[110] Poots [INQ000426982/17 §§68, 71] Weir [INQ000408058/15 §§31-32, 74]

29. CAPACITY: The isolation of the DOH within the NI government landscape was even more problematic because the capacity of the department and the wider health infrastructure was so run down, particularly with regards to inequalities and public health. Although duties to reduce health inequalities were assigned to the Public Health Agency ('PHA'), NHS Trusts and the DOH,[111] government policy to mitigate the issue in accordance with Marmot and Bambra's concept of 'syndemic' was minimal prior to 2020.[112] Whereas Public Health Wales was ahead of its own Health Department in terms of identifying risks and need for broader planning, the PHA was a weak organisation in terms of its leadership and resources.[113] All aspects of data collection and analysis in NI were suboptimum prior to the pandemic, and profoundly so as regards Disabled people, but the hard edge of data incapacity fell upon PHA. It was designated to record covid mortality but was simply not set up to deliver accurate counting. [114] During the pandemic response, neither the PHA nor the DOH sufficiently focussed on Disabled people or broader categories of social vulnerability. In theory the PHA, governed by its statutory duty to reduce health inequalities should have done it, but admitted it had not.[115] The DOH, despite responsibility for the care system and a range of equality duties, looked to the DfC to plan for wider impact on Disabled people.[116]

Department for Communities

30. DEFAULT LEAD: Of all the gaps in NI fragmented governance, the one that most impacted Disabled people during the pandemic arose from the division of roles between the DOH and DfC. The DfC went into 2020 with core responsibility for social inclusion policy and strategy on disability and was otherwise responsible for ensuring that appropriate legislative protections were in place for Disabled people. This included keeping under review the operation of NIA s. 75, but with neither power nor duty to ensure the compliance of other departments or advise them.[117] Under the Civil Contingency Framework TEO looked to the DfC to operationally respond to "*contingencies involving vulnerable people or groups*" rather than leading on the issue itself, which the department accepted in its Covid Action Plan first referred to in meetings on 31 March 2020.[118]

---

[111] Health and Social Care (Reform) Act (NI) 2009 ss. 13(2)(b) 21, 23(a)
[112] DPO M2 Opening 26.09.23 [p. 6 §1.11] Bambra and Marmot [INQ000195843/75 §181]: ref to Marmot Review, see Bengoa Report [INQ000185456/14-16] Delivery Together (2016) [INQ000185457/8-9] but this never became a PFG; focus largely behavioural not socio-economic, May [INQ000421321/174 §§432-3]
[113] McLean [T3/97/20-101/7] *Cf*. DPO M2B Closing 05.04.20 [p. 6 §12]
[114] M2C Opening 19.04.20 [p.13 §3.16] McLean [INQ000437430/69 §§232-235] Rapid Review July 2020 [INQ000001196/20 §§9.4-9.8]
[115] McLean [INQ000437430/4 §§10, 25] [T3/165/13-167/25] [T3/168/21-169/2]
[116] Swann [INQ000412903/33 §§90-91] McBride [INQ000421704/272 §598]
[117] Executive Paper *A New Decade, A New Approach* ('NDNA') [INQ000391422/27 §§4.6.2.6] Wall [INQ000251519/31 §§7.1.3-7.1.4] [T6/171/5-18]
[118] McMahon [M1/INQ000187620/33 §130] Wall [INQ000251519/17 §§2.10.1-2] (re. [INQ00001386/5])

31. REACTIVE: The new Minister for Communities came into government in January 2020, with no PfG or ministerial experience and with massive challenges regarding housing, the roll out of Universal Credit, public sector disputes and 3 years of no government.[119] Deirdre Hargey disputed discussion on the civil service WhatsApp messages that as of 11 March, she had "*shown no interest in covid up to now*"[120] but at the very least it suggests she and her Permanent Secretary were not aligned. Although Minister Hargey drew attention to the steps taken to support Disabled people, she admitted that these were insufficient without proper consultation with DPOs.[121] As elsewhere in the UK, the essence of the measures were the rudiments of business continuity - paying benefits on time and setting up help lines.[122] The two DfC Ministers did not raise the position of Disabled people under the pandemic response in the Executive Committee, or the Assembly, at any time. In part this was a structural problem. There was no single DfC officer or unit with overriding responsibility for the needs of Disabled people.[123] But it was also a cultural problem; the department is yet to steep itself in the language and methods of Disabled people's rights. At its most basic, the DfC never had a Covid Disability Strategy and the various initiatives that the DfC led focused on the generic category of the 'vulnerable'.[124]

32. ENGAGEMENT: The problem is illustrated by the DfC's claim that it practiced sufficient engagement with vulnerable groups. Hargey's initiative to expand the Emergency Leadership Group beyond established stakeholders did not lead to the inclusion of Disability Action or other DPOs, even though they knew of the organisation, its work, and staff.[125] Instead, it met with a range of faith groups as well as community organisations reflecting political and religious geography.[126] The DfC did not consult with DPOs at all on the risks posed by the virus or the NPIs, let alone on the design of any mitigating measures, and the answers given by the Minister in oral evidence also betrayed a lack of understanding as to how fuller engagement might work. She mentioned two disability related organisations, The Now Project and Inspire Wellbeing. Neither of those groups are DPOs. They are also organisations working only within one aspect of disability – learning disability and mental health.[127] In answer to questions from CTI, she cited DfC's work with Advice NI as an example of co-production. Advice NI is a general charity providing advice

[119] Hargey [T6/168/24-169/21] [INQ000446235/1 §§3, 7]
[120] Sterling-Stewart 11.03.20 [19:39] [INQ000308457/4] *Cf.* Hargey [T6/174/21-176/6]
[121] Hargey [T6/195/15-196/9] [T6/219/19-220/4] Ní Chuilín [T6/197/17-198/5]
[122] Business Continuity Plan 01.12.19 [INQ000101364/8 §1.3] CCPB 13.03.20 [INQ000023226/18-19] Hargey [T6/178/20-180/3] MIG Commission Disabled People (May 2020) [INQ000272946/3-4]
[123] Wall [INQ000251519/6 §§1.7.1-1.9.1],
[124] E.g. VCS Meeting 31.03.20 [INQ000101353/3] Wall [INQ000251519/34 §§9.3, 12.1.1-12.2]
[125] Hargey [T6/187/25-188/15] Wall [INQ000251519/31 §7.1.5]
[126] Toman [M1/INQ000148464/6 §§18-19]: see paragraph 21 above
[127] Hargey [T6/195/6-18] [T6/219/7-18] *Cf.* UNCRPD Gen Comment No. 7 [M2/INQ000279951/3 §13]

on Benefits, Debt, Tax Credits and related matters. It is effectively a CAB-equivalent, plainly not a substitute for meaningful, structured consultation with Disabled people.[128]

[4]. POLITICS

33. PROBLEM: The deeper flaws in the Covid emergency response lie in the state of post-conflict politics and political institutions, and Disabled people were failed by both. In NI historic party-political narratives and perspectives are still dominant. The absence of collective responsibility means that individual Ministers are reluctant to confront difficult choices,[129] and political positions are shaped by traditional ethno-nationalist divisions. The parlous state of the Health Service outlined in the Bengoa report of 2016 has financial causes, but is also due to a party-political reluctance to sanction the rationalisation of services, because the location of where they would be rationalised (e.g. a single cancer centre of NI) remains a ethno-communalist issue.[130] Similarly, in June 2020 the TEO was found to have unlawfully delayed a scheme for victims payments to compensate people disabled due to a "Troubles-related incident" because of improper purposes relating to the scheme's potential exclusion of those injured as result of Troubles related criminal activity or because of desire to pressurise the UK to pay for the scheme.[131] Herein lies an anomaly, because on a personal level NI politicians are likely to have connections to Disabled people, and would strongly deny exclusion of Disabled people's significance. Yet especially during times of crisis political leadership in NI can retreat to narrow identity-based positions, at the expense of available evidence, and with little restraint in leaking or making public declarations against government choices in show of solidarity to their core constituencies.[132] At key moments within the Covid crisis this came to the fore, especially at points in time when vitally important policy was under consideration.[133] There are two very clear examples.

34. SCHOOL CLOSURE: First, it was a folly for Sinn Féin to call for the closure of schools in the North, suddenly and without any consultation because the South had done so.[134] It was at a point when they had no access to the advice upon which the ROI had based its decision and no one in NI had begun to think about who would look after the children, including those with special needs. Also emptying the schools, especially into overpopulated socially

[128] Hargey [T6/188/18-189/10] *Cf*. UNCRPD Gen Comment No. 7 [M2/INQ000279951/3 §14]
[129] Sterling [T2/74/20-75/15]
[130] Bengoa Report [INQ000185456/38, 63, 69-70] O'Connor & Gray [INQ000472398/24 §§95-104. 314-315] Delivery Together (2016) [INQ000185457/6] (accepting need for reorganisation) *Cf*. Weir [T6/10/3-12]
[131] *Re McNern and Turley* [2020] NIQB 57 [p.8§§20-21, 25-26]
[132] O'Connor & Gray [T9/201/17-202/24] [T9/217/23-220/8] Sterling [T2/72/14-74/18] Sterling Email 26.03.20 [INQ000287536/2] (on SF Ministers' "*growing fear of being held corporately responsible*") Pearson [T4/61/7-63/4] [T4/84/4-11]
[133] O'Connor & Gray [INQ000472398/58 §278] Pearson [INQ000438174/56 §218] Sterling-May Email 31.03.20 [15:03:48] [INQ000309200/1]
[134] NIO Covid-19 Sitrep (No 1) 12.03.12 (announced 6pm on 11.03.20) [INQ000083097/1]

deprived residential settings, without closure of other sectors, furlough schemes, or wider planning, could contribute to spreading the virus.[135] It was not right for O'Neill to take unilateral action as DFM within less than 24 hours of publicly adopting a united front with the FM on matters that affected hundreds of thousands of children, parents, and carers and their surrounding communities, when she knew that her own government was not ready.[136] The DFM's actions were seemingly triggered by a number of factors: Sinn Féin's immediate constituencies, including families in border towns, the stance of the clergy;[137] sudden anxiety of being perceived as a coalition hostage to Westminster and Stormont delays;[138] and a default preference for a one Island approach in circumstances where there was no notice or sharing of planning, risk assessments, or any expert advice between NI and ROI.[139]

35. CIRCUIT BREAKER: Likewise, when the DUP used a cross-community vote[140], a mechanism introduced to protect sectarian minority rights, to defeat the proposed two week extension of the circuit breaker that would have protected all communities, they did so contrary to a crescendo of advice from SAGE and the CMO.[141] and on the basis of anecdote and empathy towards hairdressers and café owners, citing NI's smallness and its continuing attachment to family life.[142] The St Andrews Agreement 2006 originated the power under the Ministerial Code "*to ensure that all sections of the community could participate and work together successfully in the operation of these institutions and that all sections of the community were protected*".[143] Naomi Long thought that use of the mechanism in this context was an abuse of that power.[144] Arlene Foster conceded it was a "*blunt tool*", which might need to be reformed, but Sinn Féin had used it in the past, and it was a feature of mandatory coalition even if it had the effect of sectarianizing the issue.[145] Civil servants

---

[135] O'Neill [T10/79/2-90/7] EC Minutes 10.03.20 [INQ000065695/4] ("DE - *Close too early – knock on effect – parents have to stay home – takes people out of workplace e.g. nurses/doctors*") Weir [T6/27/19-29/5] [34/10-35/22] [58/16-60/15] [64/12-65/7] [65/25-66/7]
[136] O'Neill [T10/92/12-108/17]
[137] O'Neill [T10/83/13-17] [T10/93/9-11]
[138] O'Neill [T10/13/5-25] Sterling-Stewart 14.03.20 [13.23] [INQ000308457/6]
[139] O'Neill [INQ000436641/12 §41] Sterling [INQ000449440/49 §§146,148-149]: for broader debate on the issue see O'Neill [INQ000183409/9 §36] Murphy [INQ000437470/35 §§140-153] *Cf*. McBride [INQ000421704/313 §§710-733] Young [INQ000409589/36 §§100-110] Swann [INQ000412903/72 §§227-228, 232-235; 239] McLean [INQ000437430/87 §§275-278] Foster [INQ000418976/24 §§80, 82, 85, 161] Pearson [INQ000438173/70 §§321-331] McCormick [INQ000421759/48 §146]: also Nolan et al *The Politics of Covid-19 on the Island of Ireland* [INQ000137387/6-7, 9-10, 19-23]
[140] Pearson [INQ000438174/18 §§45-46]
[141] TEO -CMO Meeting 7.10.20 [INQ000304331/1] EC Meeting Notes 11.10.20 [INQ000286275/3]; EC Paper 13.10.20 [INQ000212923/4 §15] CSA Note I09.11.20 [INQ000276538/2 §9]
[142] Foster [T11/126/2-129/17] Poots [T7/104/19-105/16]
[143] St Andrews Agreement 2006, Annex A §§1-2
[144] Long [T7/4/10-7/7]
[145] Foster [T11/122/24-124/12] [T11/125/9-17] Weir [T6/86/4-101/4] [INQ000408058/30 §72] Poots [T7/102/15-103/18] [INQ000426982/35 §152] [INQ00041707/26 §119]

thought its use at the time not to be within the spirit of the legislation.[146] Yet the broad terms of the power, which provides for a means to resolve "*significant and controversial matters*", make it difficult to place fetters on its use, even when misused for admitted collateral party political purposes.[147] Introduced as a DUP precondition for return to power-sharing at St Andrews, the cross community voting mechanism now stands as a means to frustrate good government in times of emergency.[148]

36. CONSEQUENCE: In both these disputes, Disabled people were not considered, let alone served, by the politics. Institutionally, the multiple tensions of forced coalition allowed for heart breaking irresponsibility in political leadership. TEO and the Executive Committee in the first wave effectively abdicated decision making to a CMO ensconced in an overheating Department of Health.[149] In the second wave, the Executive Committee and its voting process failed to protect the DOH when it really mattered.[150] NI's fortune in being able to lock down at an earlier point in the spread of the virus in the first wave gave way to avoidable high rates of mortality in the second wave.[151] This was the nadir of the peace process. Elderly people who survived the Troubles died. Disabled people, who do not enjoy proper enfranchisement under this political system, died and otherwise suffered.

[5]. COMPARISON

37. COMPARABILITY: Finally, the NI Covid state failed its Disabled people because by comparison with the other parts of the UK, government in NI was the least focused on Disabled peoples' issues. NI Ministers and civil servants need to feel the embarrassment of comparison and be acutely aware that the jurisdiction is currently manifestly insular as regards disability inclusiveness, awareness, policy, and politics. In WALES Government officials contacted DPOs by mid-March 2020 to seek planning advice. Regular fortnightly meetings between DPOs and the Minister for Social Justice started by early April 2020.[152] Welsh Government then sponsored a DPO led inquiry into the impact of Covid measures and thereafter established a Disability Taskforce to lead on recovery and a whole society disability strategy.[153] In SCOTLAND, a strong tradition of social engagement with Disabled people faltered in the first weeks of Covid, but regular meetings with DPOs started with

[146] McCormick [INQ000421759/40 §127] [INQ000381035/1] Pearson [T4/81/3-82/25]: McBride-Pearson 10.11.20 [INQ000417025/9]
[147] *Cf*. Pledge of Office [INQ000215120/5 §1.4 (ca)]
[148] O'Connor & Gray [INQ000472398/8 §§12-14] NI (St Andrews Agreement) Act 2006 ss 5-7 [INQ000415925/6-9] inserting ss 20(4) and 28A into the NI Act 1998 and adding to the Pledge of Office *Cf*. *Padfield v Minister of Agriculture* [1968] AC 997, 1030B-D and *DOJ v Bell* [2017] NICA 69 §19(h) and §32
[149] O'Connor & Gray [T9/208/16-210/19]
[150] O'Connor & Gray [T9/214/1-215/25]
[151] ILT [INQ000472397/4] Foster [T11/12/18-13/23] McBride [T8/157/20-/159/12] Swann [T9/176/16-177/20]
[152] Davies [M2B/INQ000410946/6 §§18, 24-26]
[153] Davies [M2B/INQ000410946 §§36, 48, 66, 79-80] Foster [M2B/INQ000274189 §§2-13, 59, 70, 92]

Ministers and civil servants in May 2020 and went on for several months.[154] The Scottish Social Renewal Advisory Board contained two major figures in the Scottish DPO movement, as well as Ministers and senior civil servants. It reported as early as January 2021, and made several recommendations to enhance Disabled peoples' rights and inclusive government.[155] In ENGLAND, which the DPOs have criticised, senior Ministers dedicated meetings on the impact of Covid on Disabled people in May, October, November and December 2020.[156] In NI the issue did not cause the Executive Committee, or even a special plenary meeting of Ministers, to meet once.

CONCLUSION

38. PRESENT: It is essential for the NI political establishment to appreciate that for all its commitment to community, its connection to its communities has not properly extended to its Disabled ones; and that the ultimate answer to why it did not do better is that it did not yet know how. NI needs to be shaken out of its complacency. It is not yet truly working together in a state of social partnership with all its people.

39. CHANGE: The DPO have asked the Inquiry in all its modules to consider how a new and broader ethics of care must become more mainstreamed into state and society after Covid. In addition to the recommendations already suggested by DPO[157] things can be different in NI on the following basis: (1) There must be clear focal points in government that secure the implementation of Disabled people's rights, and there needs to be a dedicated minister and lead department focused on Disabled people.[158] (2) However, the formation and delivery of policy relies on integration across government, as well as between centre and locality.[159] (3) In NI that can only be sustainably achieved through constitutional reform, which at the very least must (a) create discrete power for the HOCS to coordinate matters relating to civil contingency across government and subject to the direction of TEO, with the oversight of the Executive Committee and (b) in cross-cutting matters relating to emergency planning and response the mechanism of the cross-community vote must not apply save in relation to the strict protection of minority nationalist and loyalist rights. (4) Civil Contingency law must be placed on a statutory footing which mandates core features of central and local government planning and response preparedness, and which includes dedicated duties to (a) closely consult and actively involve the DPOs in the formation of planning and responses that will affect them (b) conduct ongoing equality impact

[154] Elder-Woodward [M2A/INQ000371664/10 §§48-53, 58-70] Macdonald [M2A/INQ000340113 §§29-31]
[155] SRAB [INQ000182792/8-9,11, 31-32, 42-44, 48-54, 62-64] M2A DPO Closing 23.02.24 [p. 17 §34]
[156] Bell [M2/INQ000198850/25-28 §§60-65]
[157] DPO M2B Closing 05.04.20 [pp 12-20 §§21-40]
[158] DPO M2B Closing 05.04.20 [p. 13 §24]
[159] *Cf*. DPO M2B Closing 05.04.24 [pp 13-14 §§25-26] UNCRPD Art. 31(1) [M2/INQ000279959]

assessment to identify and mitigate the adverse impact of policy to ensure real compliance with NI Act 1998 s. 75[160] (c) consider and mitigate the extent to which the legacy of divisions in NI society act as a barrier to engagement with communities, including Disabled people, who are not represented through segregated faith and ethnonationalist community organisations. (5) There must be recognition that the post-conflict constitutional settlement has arrested the development of other human rights aside from political ones.[161] (6) As a feature of the commitment to engage in the method of co-production and co-design contained in NDNA and otherwise mandated as essential to the rights of Disabled people, especially in times of emergency, there must be (a) training on the method, (b) protocols, and structures to facilitate its practice, and (c) sufficient status and funding of DPOs and other such representatives groups to enable their effective participation.[162] (7) In accordance with the Belfast Agreement and reiterated in the St Andrews Agreement and the NDNA, NI must supplement the Human Rights Act by creating its own nation's Bill of Rights, which should incorporate Disabled People's rights under international law.[163]

40. COST: Until NI has the capacity for better lateral and vertical government which normalises disability rights into all its functioning, it is destined as a state to be stuck with barriers and attitudes that work against Disabled people, as exemplified during the pandemic response. For Nuala Toman, who described Covid as a particular moment of enhanced invisibility and exclusion for Disabled people, it was "*sad*" but needed to be said, "*that the legacy of political dysfunction and all of the challenges… in terms of decision-making meant that we simply didn't have a voice, that our needs were so low on the agenda that we simply were not heard*".[164] NI is post-violence, but is not post-conflict. Given the fragility of the government system that the pandemic has exposed, the change that the DPO seek is for everyone.

DANNY FRIEDMAN KC — **SHAMIK DUTTA**

ANITA DAVIES — **CHARLOTTE HAWORTH HIRD**

ROBBIE STERN — **CALEB SIMPSON**

MATRIX CHAMBERS — **BHATT MURPHY**

06 JUNE 2024

[160] *Cf.* Toman [T1/163/25-164/23] [T1/173/8-14] [INQ000400520/22 §§99-100, 106(i)]
[161] McGahey *Irish Times* 20.10.21 [INQ000396789] Toman [INQ000400520/5 §15]
[162] Toman [INQ000400520/25 §107-114] *NDNA* [INQ000391422/26 §§4.5-4.6] DPO M2B Closing 05.04.24 [pp 14-1 6 §§28-30]
[163] Belfast Agreement [INQ000104471/5 §2, p. 9 §5(b) and (c), p. 10 §11, p. 12 §26(a)] St Andrews Agreement [Annex B §§1-2] *NDNA* [INQ000391422/37 §§5.26-5.29] Expert Advisory Panel (2021) [INQ000396798/13-14] DANI Progress Report (2022) [INQ000142173/129-130] DPO M2 Closing [INQ000399541 p.35 §56] DPO M2A Closing [pp 18-19 §§35-37] DPO M2B Closing [pp 16-17 §§31-33]
[164] Toman [T1/173/1-8]