



Northern
Ireland
Office

UK Government Response to the Independent Review of the Northern Ireland Human Rights Commission 2022

19 September 2023

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1 | Introduction

The Northern Ireland Human Rights Commission (NIHRC or “the Commission”) is a non-departmental public body sponsored by the Northern Ireland Office (NIO), with responsibilities set out under the Belfast (Good Friday) Agreement. Although sponsored by the UK Government (UKG), the NIHRC operates independently and in compliance with UN General Assembly resolution 48/134 (the ‘Paris Principles’) on National Human Rights Institutions (NHRI).

The NIHRC’s duties and powers to protect and promote human rights are set out in legislation, primarily in the Northern Ireland Act 1998. This has subsequently been enhanced by the Justice and Security Act 2007 on issues relating to legal and investigation powers. The NIHRC has also been issued with mandates around the rights of people with disabilities and more recently the role of the Dedicated Mechanism to monitor Article 2 of the Windsor Framework.

In May 2022, the UK Government and the NIHRC agreed in principle to an independent review of the NIHRC.

This document is the formal response of the UK Government to the report of the independent review of the NIHRC, hereafter “the Review”. While public bodies operate at arm's length from the Government, it is only right that they are subject to regular review to ensure that they continue to deliver their functions and duties efficiently, effectively and in line with good governance. This Review was conducted under the Cabinet Office’s [public bodies review programme](#).

As agreed by the NIO and the NIHRC, the Review focussed on the NIHRC’s delivery of statutory functions; efficiency; effectiveness; and value for money, with a specific focus on the organisation’s budget and whether or not it enables the NIHRC to discharge its statutory duties successfully. The Review was completed in December 2022, and the Executive Summary and Recommendations have been published alongside this response.

The main findings of the Review were that the budget of the NIHRC is currently inadequate and restricting its ability to deliver its statutory duties and; that the organisation could better manage its operations in some areas to improve efficiency and effectiveness.

The Review made 10 recommendations to the Government, alongside a package of suggested reforms to enable the NIHRC to make its current funding go further while

maintaining its operational and functional independence, and recommendations to the NIHRC to improve its efficiency and performance as an organisation.

The Government has carefully considered the findings and recommendations of the Review and has accepted the majority of the recommendations made. Where the Government has accepted recommendations, it will take, or already has taken, immediate action to act on the Review's recommendations.

This document sets out the Government's response in detail to each of the recommendations made. The Government's response mirrors the structure of the Review and so covers; economic model and sustainability, form and effectiveness and future function.

2 | Response to the findings

2.1 | Economic model and sustainability

Recommendation 1 - budget uplift.

Recommendation to Government

The Review recommended to the Government that the NIHRC's budget should be increased for the 2023/2024 financial year. It stated that a "*budget uplift for next year will keep the organisation stable, enable some funding to be made available for education and training to deliver on this statutory duty, and send a clear message that the Government is committed to the NIHRC's statutory mandate*".

The Government has accepted this recommendation and provided an exceptional uplift to the core budget of the NIHRC. The uplift represents the amount put forward by the NIHRC in a business case to the Government. The Secretary of State for Northern Ireland ("the Secretary of State") and the Chief Commissioner of the NIHRC agreed that this was a reasonable figure to allow the NIHRC to fulfil their statutory obligations in the short term, ahead of a more detailed consideration of the NIHRC's budget as part of the next Spending Review.

Next Steps: UKG has confirmed to the NIHRC that it will receive an exceptional uplift to its 2023/2024 budget. There is no further action relating to recommendation 1, but for longer term consideration of the budget, see recommendations 2 and 3.

Recommendation 2 - comprehensive budget review to establish a baseline budget.

Recommendation to Government

The Review stated that "*the Government should consider following the example set in the 2012 Comprehensive Budget Review of the Equality and Human Rights Commission (EHRC)*", noting that the review provided "*a minimum budget baseline figure which continues to act as the EHRC's baseline today*".

The Government supports this recommendation in principle, pending agreement on the specific Terms of Reference and design of the review. Such a review would likely inform, and make recommendations for the next Spending Round.

Next Steps: The NIO and NIHRC will work together on Terms of Reference for a budget review alongside His Majesty's Treasury (HM Treasury). Once agreement is reached, the expectation is that this review will need to be completed in time to inform the next Spending Round in 2025.

Recommendation 3: NIHRC permitted to use Dedicated Mechanism funding more flexibly.

Recommendation to Government

Article 2 of the Windsor Framework commits the UK Government to ensuring that there is no diminution of rights, safeguards and equality of opportunity protections as set out in Chapter 6 of the Belfast (Good Friday) Agreement, as a result of the UK leaving the EU.

The EU (Withdrawal Agreement) Act 2020 conferred powers on the NIHRC and Equality Commission for Northern Ireland to undertake new statutory functions, as part of a "dedicated mechanism", to monitor and enforce the Article 2 commitment. In 2020 the NIHRC took on extra roles and responsibilities as part of the Dedicated Mechanism (DM), and was allocated a ringfenced budget by the UK Government to do so. The Review recommends that the ring fencing of the DM budget should end, with the NIHRC provided with greater freedom to use this funding across the organisation.

As set out above, the Government has agreed, in principle, to a budget review, pending agreement on the Terms of Reference and design, which could consider the ring fenced arrangements that currently exist within the NIHRC's overall budget for work on the DM.

Next steps: Consideration of how best to determine if removing ring-fencing of the NIHRC's funding for the DM will be factored into the design of the Terms of Reference for a budget review already committed to above.

Recommendation 4: a more strategic approach to litigation.

Recommendation to the NIHRC

The Review recommends that the NIHRC develop a more strategic approach to litigation, which includes frequent reassessment of its role in legal proceedings - including considering whether or not any other organisation could play its role, closer engagement with other similar bodies in Northern Ireland to ensure no duplication of

resources and use of in-house resources as standard, with decisions to seek outside legal assistance made on a case by case basis.

The Secretary of State and the Chief Commissioner have already met to discuss this recommendation, and the Secretary of State is satisfied that the NIHRC is taking swift action to follow this recommendation.

The NIHRC will review and publish its matrix for supporting or initiating legal proceedings. This document will be consulted every time legal intervention is being considered by the board of Commissioners. The criteria for legal actions will remain in accordance with sections 70(2) and 78D(2) of the Northern Ireland Act 1998, and in line with the Review recommendation, the matrix for decision making will include the following considerations:

- Is another body better placed to assist the applicant?
- Will the case progress in the absence of the Commission's support?
- Has the Commission assisted another case raising the same point of law?
- Does the issue fall within the Commission's Strategic Plan?
- Is it a strategic use of the Commission's funds to assist?
- Is there any other action in relation to the application that is strategically appropriate for the Commission to take?
- Is it practicable for the Commission to take the required action in view of the time and resources available?

The Commission further accepts that it should continue to identify the different levels of intervention that it could be involved in on legal cases, and that this includes ranges of associated costs and liabilities.

In the context of implementing recommendation 2 of the Review, the Commission will set out criteria for progression between different levels of legal intervention. This will be added to the decision making matrix and continue to be consulted every time legal intervention is being considered.

The Commission will review its legal decision making matrix annually.

Next Steps: There are no further steps for the Government, this is a recommendation for the NIHRC, which it has accepted.

Recommendation 5: Government to explore options for legal indemnity for certain NIHRC litigation, particularly defensive action.

Recommendation to Government

The Review recommends that the NIHRC should be protected against spiralling costs when a case, for which its involvement is vital and could progress areas of human rights law, could put other NIHRC duties at risk. The Review recommends that the Government explore introducing a scheme to indemnify the NIHRC against the risk of high costs for defensive cases, or other cases where the NIHRC involvement is vital but costs are prohibitive.

The Government does not accept this recommendation. When a similar request, which is mentioned by the Review, was made to the Government Equalities Office (GEO) concerning the Equality and Human Rights Commission (EHRC), it was strongly rejected on the basis that it would be:

“unique across public sector regulators and enforcement bodies – could create moral hazard, where risks are not realistically assessed because of the assumption that losses resulting from bad decisions will be underwritten. It could also result in issues around the propriety of public expenditure, particularly in cases brought against other public sector authorities and/or where Government was supporting the respondent. Since the Government has not in the past agreed with the EHRC’s definition of a “strategically important case”, it also cannot be assumed that there would be an agreed basis for providing an obligation to indemnify.”¹

Further, as the NIHRC is not regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown the NIO is unable to provide cover under the Government’s indemnity arrangements.

Next Steps: the Government will continue to work with the NIHRC to ensure a smooth independent process for litigation.

¹ Government response to The Women and Equalities Committee’s Tenth Report of Session 2017–19, *Enforcing the Equality Act: the law and the role of Equality and Human Rights Commission* (HC 1470), published on 17 July 2019. Available online at <https://publications.parliament.uk/pa/cm201919/cmselect/cmwomeq/96/9602.htm>

2.2 | Form

Recommendation 6: Explore a new pay policy for the NIHRC.

Recommendation to the NIO and the NIHRC

The Review set out that the NIO should work with the NIHRC and other Government departments to explore the benefits of a change to the NIHRC's pay policy, which the Review assessed may address the NIHRC's issues in relation to recruitment and retention of staff.

The NIHRC is entitled to submit a business case to the NIO on pay changes in support of recruitment and retention of staff. This business case should be fully costed, provide a compelling rationale for change, and have the support of the employees of the NIHRC. If submitted the Government will then consider that business case.

Next Steps: It will be for the NIHRC to assess and submit a suitable business case to the NIO for consideration on this matter, if it is minded to do so. If submitted the NIO will consider it.

Recommendation 7: Consideration of revised sponsorship arrangements.

Recommendation to Government

The Review notes that, although it is beyond its remit to conclusively say that a different sponsorship relationship for the NIHRC is appropriate, this issue was consistently raised by stakeholders. The Review therefore recommended that the Government establish a workstream to explore the sponsorship arrangements of the NIHRC. In particular, it has suggested the Government could consider whether a different model could allow improved independence or efficiency.

The Secretary of State noted this recommendation with interest and has asked his officials to provide further information on how revised sponsorship arrangements could be brought forward.

Next Steps: The Government has accepted this recommendation and established a workstream to consider the options for revised sponsorship arrangements. This work is now underway.

2.3 | Effectiveness and future function

Recommendation 8: Improved financial governance processes between the NIO and the NIHRC.

Recommendation to the NIHRC and the NIO

The Review recommends that the NIO and the NIHRC must improve their financial governance processes to facilitate a transparent relationship and early identification of problems.

The Government and the NIHRC have both accepted this recommendation and the Government has already taken steps to improve its processes in the short term. The Secretary of State has discussed this recommendation with the Chief Commissioner, and there is agreement that immediate improvements can be made to current processes.

Next Steps: Improved processes have been implemented by the NIO, with more regular and formalised engagement between the finance functions of the NIO and NIHRC, including expediting moving the NIHRC onto the same IT platforms for the purposes of financial monitoring. The steps taken to improve the overall relationship between the NIO and the NIHRC also create more opportunities for the discussion of financial issues, for example, there are more regular meetings between the Secretary of State and the Chief Commissioner. The Secretary of State continues to discuss this recommendation with the Chief Commissioner, including the changes which must be made to the NIHRC's financial reporting.

Recommendation 9: Improved NIHRC performance management and governance.

Recommendation to the NIHRC

The Review recommends that the NIHRC should improve its performance management and governance structure. In particular, the NIHRC should put in place better Key Performance Indicators and metrics in its business plan to effectively monitor performance.

The Government strongly supports this recommendation and the Secretary of State has discussed it with the Chief Commissioner. The NIHRC have accepted this recommendation and are already acting to resolve the issues highlighted.

Next Steps: This is a recommendation for the NIHRC to progress and the Government will continue to work with the NIHRC on developing Key Performance Indicators. There is no further action for the Government to take.

Recommendation 10: joint actions to improve relationships.

Recommendation to the NIHRC and the NIO

The Review recommends that the NIO and the NIHRC must improve their relationship with more regular engagement leading to better cooperation.

The Government accepts this recommendation and will work closely with the NIHRC to implement the changes recommended. This process has already commenced, with the Secretary of State and officials at all levels meeting with the NIHRC more often.

Next Steps: The NIO and the NIHRC recognised that there were areas of the relationship that could be improved to enable more fruitful and strategic discussions. More regular, and formal meetings at all levels have now been initiated. The Secretary of State and the Chief Commissioner have both committed to fully implementing this recommendation effective immediately.

Annex A: Recommendation Implementation Checklist

<i>Recommendation</i>	<i>Owner</i>	<i>Government Response</i>
Recommendation 1: Budget uplift	UK Government	<p>The Government accepts this recommendation and has provided an exceptional uplift to the core budget of the NIHRC. The uplift represents the amount put forward by the NIHRC in a business case to the Government. The Secretary of State for Northern Ireland (“the Secretary of State”) and the Chief Commissioner of the NIHRC agreed that this was a reasonable figure to allow the NIHRC to fulfil their statutory obligations in the short term, ahead of a more detailed consideration of the NIHRC’s budget as part of the next Spending Review, subject to certain conditions.</p> <p>Next Steps: UKG has confirmed to the NIHRC that it will receive an exceptional uplift to its 2023/2024 budget. There is no further action relating to recommendation 1, but for longer term consideration of budget, see recommendations 2 and 3.</p>
Recommendation 2: comprehensive budget review to establish a baseline budget.	UK Government	<p>The Government accepts this recommendation, subject to agreement on a Terms of Reference and the design of such a review.</p>

		<p>Next Steps: The NIO and NIHRC will work together on Terms of Reference for a budget review alongside His Majesty’s Treasury (HM Treasury). Once agreement is reached, the expectation is that this review will need to be completed in time to inform the next Spending Round in 2025.</p>
<p>Recommendation 3: NIHRC permitted to use Dedicated Mechanism funding more flexibly.</p>	<p>UK Government</p>	<p>As set out above, the Government is open to exploring this as part of a wider Budget review of the NIHRC.</p> <p>Next steps: The inclusion of this consideration will be factored into the process for agreeing the Terms of Reference for a comprehensive review of the NIHRC Budget.</p>
<p>Recommendation 4: a more strategic approach to litigation.</p>	<p>NIHRC</p>	<p>The Government fully supports the NIHRC in acting to follow this recommendation, which has been accepted.</p> <p>Next Steps: This is a recommendation for the NIHRC, which they have accepted and started to act upon.</p>
<p>Recommendation 5: Government to explore options for legal indemnity for certain NIHRC litigation, particularly defensive action.</p>	<p>UK Government</p>	<p>The Government does not accept this recommendation.</p> <p>Next Steps: the Government will continue to work with the NIHRC to ensure a smooth independent process for litigation.</p>

<p>Recommendation 6: Explore a new pay policy for the NIHRC.</p>	<p>NIO and NIHRC</p>	<p>The Government will consider this recommendation more fully when the NIHRC comes forward with a proposal(s).</p> <p>Next Steps: The NIHRC will submit a business case on this issue to the NIO. NIO stands ready to consider any business case it receives on this from the NIHRC.</p>
<p>Recommendation 7: Consideration of revised sponsorship arrangements.</p>	<p>UK Government</p>	<p>The Secretary of State noted this recommendation with interest and has asked his officials to work with the NIHRC to provide further information.</p> <p>Next Steps: The recommended consideration is underway. The issues under consideration are complex and the Government will endeavour to provide an update on this by the end of 2024.</p>
<p>Recommendation 8: Improved financial governance processes between the NIO and the NIHRC.</p>	<p>NIO and NIHRC</p>	<p>The Government and the NIHRC have both accepted this recommendation.</p> <p>Next Steps: <u>Improved processes have been implemented by the NIO</u>, and steps taken to improve the overall relationship between the NIO and the NIHRC.</p>
<p>Recommendation 9: Improved NIHRC performance management and governance.</p>	<p>NIHRC</p>	<p>The Government strongly supports this recommendation. The NIHRC have accepted this recommendation and are already acting to resolve the issues highlighted.</p> <p>Next Steps: This is a recommendation for the NIHRC. Government will support and work with the NIHRC to ensure its implementation.</p>

Recommendation 10: joint actions to improve relationship.	NIO and NIHRC	The Government accepts this recommendation and has already taken steps to implement it, with the Secretary of State and officials at all levels meeting more often. Next Steps: The Secretary of State and the Chief Commissioner have both committed to implementing this recommendation by <u>summer 2023</u> .
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