Press Summary

7 May 2026

In the matter of an application by Martina Dillon, John McEvoy, Brigid Hughes and Lynda McManus for Judicial Review (Respondents); In the matter of an application by Martina Dillon, John McEvoy, Brigid Hughes and Lynda McManus for Judicial Review (Appellants) No 2

[2026] UKSC 15

On appeal from: [2024] NICA 59

Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Lloyd-Jones, Lord Hamblen and Lord Stephens

Background to the Appeal

This appeal concerns an application for judicial review of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 ("the **2023 Act**") brought by Martina Dillon, John McEvoy, Brigid Hughes and Lynda McManus ("the **applicants**"). The applicants argue that various provisions of the 2023 Act undermine rights previously guaranteed by EU law and now protected by article 2(1) of the Windsor Framework, which forms part of the EU-UK Withdrawal Agreement. They also claim that certain provisions of the 2023 Act are incompatible with the European Convention on Human Rights ("the **Convention**"), as given effect in UK domestic law by the Human Rights Act 1998 ("the **Human Rights Act**").

The 2023 Act responds to the legacy of "the Troubles", a period of conflict in Northern Ireland that began in the late 1960s and continued until the Belfast (or Good Friday) Agreement of 10 April 1998. More than 3,500 people were killed during the Troubles, with approximately 40,000 injured. Around 1,200 killings remain unsolved. The 2023 Act establishes an Independent Commission for Reconciliation and Information Recovery ("**ICRIR**"), whose functions include carrying out reviews of deaths and serious injuries caused by conduct forming part of the Troubles. The 2023 Act also introduces a conditional immunity scheme, allowing those who cooperate with the ICRIR to receive immunity from prosecution for Troubles-related offences. Inquisitorial reviews by the ICRIR have replaced police investigations, investigations

by the Police Ombudsman, inquests and civil claims relating to Troubles-related conduct, and the 2023 Act has brought existing investigations, inquests and claims to an end.

The applicants have each suffered as a result of crimes committed during the Troubles. They are all directly affected by the 2023 Act, as follows:

- Martina Dillon's husband, Seamus Dillon, was shot and killed on 27 December 1997 by a loyalist paramilitary group. There was evidence of collusion by state authorities, but the inquest into Mr Dillon's death was ended by the 2023 Act.
- John McEvoy narrowly escaped death and sustained serious psychiatric injuries following an attack by loyalist paramilitary gunmen on 19 November 1992. The 2023 Act has ended the Police Ombudsman and police investigations into his case, despite the possibility of state collusion in the attack.
- Brigid Hughes' husband, Anthony Hughes, was shot and killed by members of the security forces on 8 May 1987. The 2023 Act has ended the inquest into Mr Hughes' death.
- Lynda McManus is the daughter of James McManus who was severely injured in a sectarian gun attack perpetrated by loyalist paramilitaries on 5 February 1992. A Police Ombudsman report found collusive behaviour by the police in the attack. Ms McManus brought a civil claim on behalf of her father's estate, but the 2023 Act has prevented her claim from proceeding.

The applicants challenged provisions of the 2023 Act including:

- The provisions which establish the conditional immunity scheme (sections 7(3), 12, 19-22, 39, 41 and 42(1)) ("the **immunity provisions**").
- Sections 8, 43(1) and 43(2). Section 8 provides that material obtained or produced by the ICRIR in the exercise of its functions is inadmissible in civil or coronial proceedings. Section 43(1) prevents Troubles-related civil claims commenced on or after 17 May 2022 from being continued on or after 18 November 2023, the date the section came into force. Section 43(2) prevents Troubles-related civil claims from being commenced on or after 18 November 2023.
- The provisions which govern the conduct of investigations by the ICRIR.

In the High Court in Northern Ireland, the trial judge determined some issues in favour of the applicants and others in favour of the defendant Secretary of State for Northern Ireland. In favour of the applicants, the trial judge declared that the immunity provisions and sections 8 and 43(1) were incompatible with article 2(1) of the Windsor Framework. Article 2(1) requires the UK to ensure that no diminution of rights, safeguards or equality of opportunity, as set out in the part of the Belfast Agreement entitled Rights, Safeguards and Equality of Opportunity ("the **RSEO chapter**"), results from the UK's withdrawal from the EU. The trial judge found that the applicants' EU law rights under articles 11 and 16 of the EU Victims Directive had been diminished by the immunity provisions, and that their rights under the Charter of Fundamental Rights of the EU ("the **Charter**") had been diminished by sections 8 and 43(1) of the 2023 Act. The provisions were therefore disapplied under section 7A of the European Union (Withdrawal) Act 2018 ("the **2018 Act**"), because the Windsor Framework had primacy over them.

The trial judge also declared the immunity provisions and section 8 to be incompatible with articles 2 and 3 of the Convention, which respectively protect the right to life and prohibit torture and inhuman or degrading treatment. In addition, sections 8 and 43(1) were declared to be incompatible with article 6 of the Convention, which holds that, in the determination of their civil rights, everyone is entitled to a fair and public hearing by an independent and impartial tribunal.

In favour of the defendant Secretary of State, the trial judge rejected the applicants' argument that the ICRIR was unable to carry out investigations in a way that was compliant with the

UK's obligations to investigate a death, or an allegation of torture or inhuman and degrading treatment, under articles 2 and 3 of the Convention ("the **article 2/3 investigative obligation**"). The 2023 Act and policy documents published by the ICRIR showed it had the necessary independence from government. In addition, the ICRIR's policies and procedures brought the Commission's obligations to victims and next of kin into compliance with the Convention. Lastly, section 43(2) of the 2023 Act was lawful.

The Court of Appeal in Northern Ireland upheld the trial judge's declarations that the immunity provisions breached article 2(1) of the Windsor Framework and articles 2 and 3 of the Convention. The Court of Appeal also upheld the trial judge's declarations that section 8 was incompatible with articles 2, 3 and 6 of the Convention and that section 43(1) was incompatible with article 6 of the Convention. The Court of Appeal made a further declaration that section 43(2) was incompatible with article 6. However, it reversed the disapplication of sections 8 and 43(1) under article 2(1) of the Windsor Framework because these sections did not diminish the applicants' rights under EU law. The Court of Appeal held that the trial judge had been wrong to equate any breach of the Convention with a corresponding breach of the Charter. The Charter does not provide freestanding justiciable rights; it is, rather, an aid to the interpretation of relevant provisions of EU law.

In addition, the Court of Appeal held that the ICRIR is not presently capable of carrying out an investigation in a way that is compliant with the article 2/3 investigative obligation, because: (a) the deceased's next of kin will not be involved in the investigation to the extent needed to safeguard their legitimate interests, and (b) the ICRIR is not sufficiently independent from the state in relation to the disclosure of documents and information by it to next of kin, victims and the public.

The Secretary of State appeals to the Supreme Court on the question whether the Court of Appeal was correct to disapply the immunity provisions on the basis of a breach of article 2(1) of the Windsor Framework ("the **Windsor Framework ground of appeal**"). The Secretary of State also appeals against the Court of Appeal's findings relating to the ICRIR's ability to carry out investigations compatibly with the article 2/3 investigative obligation ("the **ICRIR: Next of kin involvement and disclosure ground of appeal**"). The Secretary of State does not challenge the declarations that the immunity provisions and sections 8 and 43 are incompatible with the Convention; this ground of appeal was abandoned before the Court of Appeal judgment was handed down after a new Secretary of State was appointed following the 2024 UK general election. The applicants cross-appeal against the Court of Appeal's decision to reverse the disapplication of sections 8 and 43(1), arguing that their EU law rights under the Charter are diminished ("the **Charter ground of appeal**"). The Supreme Court has also been asked to consider arguments put forward by interveners in the appeal, including the Northern Ireland Veterans Movement ("the **Veterans Movement**").

Judgment

The Supreme Court unanimously allows the Secretary of State's appeal on both the Windsor Framework ground of appeal and the ICRIR: Next of kin involvement and disclosure ground of appeal. It dismisses the applicants' cross-appeal on the Charter ground of appeal. The Supreme Court gives a judgment to which all of its members have contributed.

In summary, the Supreme Court concludes that the immunity provisions and sections 8 and 43(1) of the 2023 Act do not breach article 2(1) of the Windsor Framework because the applicants' rights derived from EU law have not been diminished as a result of the UK's withdrawal from the EU. The immunity provisions do not diminish the rights conferred by articles 11 and 16 of the EU Victims Directive in a way that would have been contrary to EU law, had the UK remained in the EU. Sections 8 and 43(1) do not breach articles 2, 4 and 47 of the Charter because the rights the Charter protects are not freestanding. They require an anchor

in EU law which is not present here. It follows that the immunity provisions and sections 8 and 43(1) do not need to be disapplied. In addition, the applicants have been unable to show that ICRIR investigations will breach the article 2/3 investigative obligation in all or almost all cases, which is the standard that must be met when legislation is challenged prospectively.

No appeal was made to the Supreme Court against the lower courts' declarations that the immunity provisions and sections 8, 43(1) and 43(2) of the 2023 Act are incompatible with Convention rights, so those declarations must remain in force. The Court comments (obiter) that it would in any event reject the Veterans Movement's submission that there is an exception to the general rule that breaches of articles 2 and 3 must be punished where an amnesty or immunity is granted with the view to reconciliation following conflict. This is because it is well established that the UK domestic courts should not go further in the application of the Convention than is consistent with the principles established by the European Court of Human Rights ("the **Strasbourg court**"), which has not yet recognised a reconciliation exception.

Reasons for the Judgment

The Windsor Framework ground of appeal

The Windsor Framework ground raises three questions **[110]**. First, does article 2(1) of the Windsor Framework have direct effect? In other words, can article 2(1) be enforced by individuals in the UK domestic courts? Secondly, do the immunity provisions breach article 2(1) of the Windsor Framework? This depends on whether the rights referred to in article 2(1) have been curtailed because of the UK's withdrawal from the EU. Thirdly, if the answers to the first and second questions are "yes", is the Supreme Court required to disapply the immunity provisions?

Does article 2(1) have direct effect?

The Supreme Court's answer to this question is that it may in certain circumstances. The principle of direct effect comes from EU law. Article 2(1) has direct effect if, regard being had to its wording, purpose and nature, it contains a clear and precise obligation that does not depend on further action by the EU or the UK before it can take effect **[112]**. Article 2(1) of the Windsor Framework refers to the rights, safeguards or equality of opportunity "as set out" in the RSEO chapter of the Belfast Agreement. It is therefore necessary to read the RSEO chapter and article 2(1) of the Windsor Framework together to decide whether the test for direct effect is met **[113]**.

The Supreme Court holds that the paragraphs of the RSEO chapter on which the applicants rely cannot have direct effect because they are expressed in too general terms. Paragraph 1 refers to "civil rights", "mutual respect", and "religious liberties". Paragraph 11 identifies the need to "acknowledge and address the suffering of the victims of violence". Paragraph 12 refers to "a right to remember" **[114]**. However, this does not mean that article 2(1) of the Windsor Framework is incapable of having direct effect in any circumstances. First, article 2(1) specifically refers to six EU Directives which all relate to the prohibition of discrimination. Article 2(1) taken with one of those EU Directives might have direct effect. None of those EU Directives applies in this case **[118]**. Secondly, article 2(1) taken with another EU instrument that falls within the rights contained in the RSEO chapter might satisfy the test for direct effect. In this respect the applicants rely on the EU Victims Directive **[125]**.

Are the immunity provisions in breach of article 2(1)?

The Supreme Court's answer to this question is "no". The EU Victims Directive guarantees the right to review a decision to prosecute (article 11) and the right to a decision on compensation (article 16). However, these rights do not fall within paragraphs 1 or 12 of the RSEO chapter, referred to above **[129]–[132]**. Articles 11 and 16 may fall within the subject

matter of paragraph 11 of the RSEO chapter, but it is unnecessary for the Supreme Court to reach a concluded view on this **[133]**. This is because articles 11 and 16 of the EU Victims Directive are concerned with the conduct of prosecutions in individual cases and do not regulate broader policy questions on when prosecutions should be pursued, such as a national policy on immunity for the purposes of post-conflict reconciliation. Therefore, the 2023 Act did not curtail rights conferred by the EU Victims Directive in a way which would have been impermissible had the UK remained in the EU **[134]**–**[136]**.

Is the Supreme Court required to disapply the immunity provisions?

This question does not arise as the immunity provisions are not in breach of article 2(1) of the Windsor Framework **[138]**.

The Charter ground of appeal

The Charter

The Charter is a legal document that sets out the fundamental rights, freedoms and principles that are recognised and protected under EU law. Among the rights that the Charter protects are the right to life (article 2), the right to prohibition of torture and inhuman or degrading treatment or punishment (article 4), and the right to an effective remedy and to a fair trial (article 47).

The applicants argue that sections 8 and 43(1) of the 2023 Act should be disapplied under article 2(1) of the Windsor Framework because they breach the rights protected by articles 2, 4 and 47 of the Charter. However, the Charter explicitly defines and limits its intended field of application. Article 51(1) states that the Charter only applies to EU member states when they are "implementing Union law".

The Supreme Court's decision

The Supreme Court affirms the Court of Appeal's decision on the Charter ground of appeal and rejects the applicants' cross-appeal **[144], [159], [250]**. The Charter was not intended to operate on a freestanding basis. This is supported by the text of the Windsor Framework itself and the "implementing Union law" requirement in article 51(1) of the Charter.

Beginning with the text of the Windsor Framework, article 2(1) only applies to rights "set out" in the RSEO chapter and the only arguable reference to Charter rights is the generalised reference to "civil rights". However, this is not sufficiently apt to "set out" specific and enforceable legal rights such as those contained in the Charter **[148]**.

Turning to article 51(1) of the Charter, the settled case law of both the Court of Justice of the EU and the UK domestic courts show that, to be "implementing Union law", the Charter must be "anchored" in another provision of EU law which the member state is implementing **[149]-[156]**. As article 2(1) of the Windsor Framework does not "implement" EU law since the relevant paragraphs of the RSEO chapter did not "set out" directly effective EU rights nor Charter rights, the necessary "anchor" to a provision of EU law being implemented is absent. Accordingly, article 51 of the Charter is not satisfied and the Charter does not apply **[157]**. The Supreme Court considers that multiple contextual factors support this interpretation **[145]-[147]**.

The ICRIR: Next of kin involvement and disclosure ground of appeal

The Supreme Court allows the Secretary of State's appeal on this ground because the applicants are unable to show that ICRIR investigations will breach the article 2/3 investigative obligation in all or almost all cases **[231]**.

The applicants challenge the 2023 Act's compliance with the article 2/3 investigative obligation in the abstract, rather than challenging a review carried out by the ICRIR in an individual case. For such an "ab ante", or prospective, challenge to succeed, the applicants must

establish that the 2023 Act will give rise to a failure to comply with one or more elements of the article 2/3 investigative obligation so that there will be no effective investigation in all or almost all cases **[160]-[162]**. This is a high hurdle which is not met in this case **[195]-[198]**, **[207], [217]**, **[220]**, **[224]**.

In determining the ab ante challenge, the Supreme Court is required to assess the scheme of the 2023 Act against the article 2/3 investigative obligation **[178]-[180]**, **[196]**. The outer bounds of the article 2/3 investigative obligation require the state to conduct promptly some form of official investigation when an individual is killed by the use of force, or when there is a reasonable suspicion that a person has been subjected to torture or inhuman or degrading treatment **[184]**. The Convention provides minimum standards, not the best possible practice **[190].** The requirements of effectiveness and accessibility to the family may well be influenced by the passage of time **[191]**.

The Supreme Court rejects the applicants' arguments that the article 2/3 investigative obligation is not met for the following reasons. First, the applicants contend that the 2023 Act does not provide for legal aid to be made available to the next of kin or victims for the purposes of representation during a review by the ICRIR of a Troubles-related death or allegation of torture. But it does not follow from this that there will be a breach of the article 2/3 investigation in all or almost all cases **[192]**, **[197]**. The Strasbourg court case law shows that whether and the extent to which legal aid for representation is required for article 2/3 investigations will depend on the facts and context of each particular case **[193]**. Furthermore, it will rarely be possible to determine whether the next of kin or victims are sufficiently involved in ICRIR reviews, and whether there has been an effective investigation, until the investigation has been completed **[195]-[198]**.

Secondly, the applicants argue that, without an ability to question witnesses in the inquisitorial system of the 2023 Act, they will not be involved in ICRIR reviews to the extent necessary to protect their legitimate interests **[199]-[200]**. However, they cannot show that there will be a failure to comply with the element of next of kin or victim involvement "in all or almost all cases", for reasons including that an inquisitorial system can satisfy the article 2/3 investigative obligation **[200]-[207].**

Thirdly, the applicants claim that the Secretary of State's powers to prohibit disclosure by the ICRIR mean that the ICRIR will lack independence in disclosing sensitive information to the next of kin, victims and the public. However, the applicants cannot meet the test of "in all or almost all cases" in relation to disclosure either **[217]**. Although the Secretary of State can decide whether the disclosure of information would risk prejudicing or would prejudice the national security interests of the UK, this power is not unrestrained, nor is it the "final say" **[215]**. The Secretary of State's powers do not mean that the ICRIR will lack independence in disclosing sensitive information to the next of kin, victims and the public, nor that this will result in there being an ineffective investigation, in all or almost all cases **[217]-[230]**.

The intervention by the Veterans Movement

The Veterans Movement is an unincorporated association of veterans' groups who oppose the prosecution of those who served in the UK forces in Northern Ireland during the Troubles **[30]**. In their intervention, they argue that the trial judge and the Court of Appeal applied the wrong test when finding that the immunity provisions would breach articles 2 and 3 of the Convention. They submit that there is (or it is possible that there is) a "reconciliation exception" to the general rule that breaches of articles 2 and 3 must be punished, which applies where an amnesty or immunity is granted with the view to reconciliation following conflict. The Veterans Movement argued that the immunity provisions fall within this exception, and so do not breach articles 2 and 3 **[232]-[234]**.

This ground of appeal was abandoned by the Secretary of State before the Court of Appeal's judgment was delivered. The Veterans Movement as an intervener cannot reactivate an appeal which the Secretary of State abandoned. Therefore, the Supreme Court cannot overturn the Court of Appeal decision on this point. The Supreme Court nonetheless considers it appropriate to express its view on whether the Strasbourg court and domestic courts have previously recognised a reconciliation exception **[237]**. The Supreme Court finds that the Strasbourg court has not decided that there is a reconciliation exception (though it has not ruled out the possibility that such an exception may exist) **[238]-[246]**. The domestic courts should follow and keep pace with the decisions of the Strasbourg court, no more and no less. As the Strasbourg court has not established that there is a reconciliation exception, the domestic courts should not go further by applying such an exception to the circumstances in Northern Ireland. Therefore, the general rule that breaches of articles 2 and 3 must be punished continues to apply **[247]-[248]**.

References in square brackets are to paragraphs in the judgment.