

Submitted as evidence to the Working Group on Unification Referendums on the Island of Ireland, based at the UCL Constitution Unit – 30 January 2020

Dear Mr Kelly,

Mr Neil Faris has drawn my attention to Mr Alan Whysall's Report entitled "A Northern Ireland Border Poll." I hope that my brief submission set out below will be taken into account notwithstanding that I was unable to meet the deadline Of 24 January.

I am a retired barrister. In the late 1960s I became involved in Northern Ireland politics in the vain hope that a political solution could be found to quell the growing threat of disorder. In due course I became an Honorary Secretary of the Ulster Unionist Council, vice-chair of South Belfast Constituency Association of the Ulster Unionist Party and chair of its Stranmillis Belfast branch. In 1985 I left politics due to family and work commitments and also because I took the view that the Anglo-Irish Agreement of that year had eliminated any prospect of the political parties in Northern Ireland reaching an agreement that would bring an end to the violence.

In this I was mistaken, and I enthusiastically supported the Good Friday/Belfast Agreement ("the Agreement") and readily accepted nomination as the representative of the unionist interest on the Independent Commission on Policing in Northern Ireland established by the Agreement. The recommendations of the Commission were unanimous and I believe that what emerged – the Police service of Northern Ireland (PSNI) – has contributed greatly to the ongoing peace process.

Turning to Mr Whysall's report, I do not believe that he has addressed or fully addressed a number of very important issues. Some of these are discussed by Seamus Mallon (whose life in a mixed community gave him a profound understanding of and empathy with "the other side" and enabled him to make an immense contribution to securing peace) in chapter 13 of his book "Seamus Mallon: A Shared Home Place" (Dublin 2019) under the heading "Parallel Consent, Generosity and Other Ideas." The core of Mr Mallon's thinking is his statement (in chapter 12) that he had increasingly come to the view "...that the [Agreement] metric of 50 per cent plus for [Irish] unity will not give us the kind of agreed Ireland we seek" and he goes on to observe that if Northern Ireland were to be incorporated into the Republic of Ireland on the basis of 50% plus one in favour of unity it "...would prove ungovernable if a large proportion of its new unionist inhabitants were opposed to its very existence."

Mr Mallon's views as to the governability of Northern Ireland are valid. Even in the unlikely event that mainstream unionism were to acquiesce in Northern Ireland being detached from the United Kingdom, it would be naïve to assume that this would extend to loyalist factions that might never become reconciled to a united Ireland and whose reactions might well be violent. This, in turn, could quite possibly ignite civil disorder from republican elements and give rise to a situation in which control would be far beyond the resources of PSNI. At this stage support for the civil power could not lawfully be provided by the government of the United Kingdom as it would no longer have jurisdiction over Northern Ireland. The deployment of An Garda Síochána and the Irish armed forces in what is now Northern Ireland would be more likely to inflame the situation than cool it, given that loyalist violence would be likely to break out in numerous parts of the Province.

Turning to opinion polls, Brexit has illustrated by default the vital importance of the implications of the outcome of a referendum being comprehensively and accurately explained to the electorate and it being provided with all of the facts necessary to enable it to make a fully informed decision. There is no suggestion of any such provision being made when it comes to opinion polls and therefore their value in terms of predicting the outcome of an actual border poll are doubtful, to say the least, and cannot, therefore, be taken to be authoritative.

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Finally, I would suggest that although there are many people in Northern Ireland with close links with Scotland there is no evidence whatsoever that the arguments in favour of Scottish independence, the Scottish referendum or the possibility of another have or have had any demonstrable bearing whatsoever on the reunification of Ireland or why or how it might be achieved.

Yours truly,

Peter Smith CBE QC