

March 2006

STANDING BY THE WILL OF THE PEOPLE

WHY THE SDLP REJECTS THE “COMPREHENSIVE AGREEMENT”

A Better Way to a Better Ireland

INTRODUCTION

On 8 December 2004 the two Governments published a document "*Proposals by the British and Irish Governments for a Comprehensive Agreement.*"

Its first page states –

"The documents presented here constitute the proposed agreement which the British and Irish Government sent to Sinn Féin and the DUP."

The SDLP was only given sight of the so-called Comprehensive Agreement at 10 am on 8 December – by which stage it had already been given to the press.

The DUP in response stated that "*this has been a truly remarkable achievement by the DUP ... We have made massive progress and delivered what we believe to be a fair deal for the people of Northern Ireland.*" (Peter Robinson, 10 December 2004).

Sinn Féin also signed up to the so-called Comprehensive Agreement's provisions on institutional matters. In a letter to the Taoiseach dated 7 December 2004 Gerry Adams wrote: "*I can confirm to you that I believe Sinn Féin can say yes to the political package contained in the proposals of the two governments.*" On 20 December he added that it was "*a remarkable achievement*".

However, the SDLP cannot give its support to a number of the provisions of the so-called Comprehensive Agreement on institutional matters because they, for example:

- give the DUP new vetoes over the appointment of nationalist ministers and their decisions;
- risk creating deadlock in government;
- undermine the executive authority of ministers;
- threaten the SDLP with automatic exclusion;
- deny the SDLP the equal place in the Executive promised by the Good Friday Agreement;
- fail to provide for a single extra area of North South cooperation or implementation;
- leave the DUP's commitment to cooperate on North South in profound doubt; and
- undermine the workability of the North South agenda.

Worse, these changes were to be provided for in new British legislation at Westminster – at which point the DUP, who have negotiated over 100 side deals with the British Government, would have got further changes.

Meanwhile, during the review the SDLP put forward positive proposals for collectivity, accountability and efficiency, as well as for North South. The DUP were allowed to ignore them.

The Good Friday Agreement was approved by the people of Ireland, North and South, nationalist and unionist, in 1998. For the reasons outlined in this document, we believe that the so-called Comprehensive Agreement undermines the Good Friday Agreement's fundamentals and the will of the Irish people.

We call on the Governments and all parties – especially those who negotiated the Comprehensive Agreement, the DUP and Sinn Féin - to return to the Good Friday Agreement and safeguard its provisions. We believe that any issues

that need to be addressed can be done once we have restoration. They should not be allowed to become preconditions for restoration.

1. *The Comprehensive Agreement was accompanied by over 100 secret understandings, side deals and side letters given to the DUP*

On 10 December, two days after the so-called Comprehensive Agreement was published, Peter Robinson stated in a widely covered press release that:

“The Comprehensive Agreement is merely the core of the proposals which we have accepted but is also augmented by over a hundred clarificatory answers, notes and letters.”

Alarmed by this, the SDLP demanded publication of these side letters, notes and answers at a meeting with the two Governments on 15 December. We made this demand public in a press release issued on the same day. But the British Government has kept them secret to this day.

Not alarmed it seems by any of this, Gerry Adams still maintained in an article in the Irish News on 20 December that the Comprehensive Agreement was “*a remarkable achievement.*”

The SDLP calls on the British Government to publish these side deals, notes and answers.

We also call on Sinn Fein to clarify whether they are in receipt of these and in agreement with them.

2. *The review leading to the Comprehensive Agreement was aborted*

Changes to the Good Friday Agreement (GFA) can only be made by a review. On 8 December the Taoiseach stated that the review had concluded. In fact, as the first page of the so-called Comprehensive Agreement (CA) made clear, there had never been consultation with all parties on the Government’s proposals.

The review was aborted. It never concluded and therefore the Comprehensive Agreement should not have any status.

3. *The Comprehensive Agreement provides for a Shadow Assembly*

The SDLP is concerned that the Comprehensive Agreement, agreed by the DUP and Sinn Féin, provides for a Shadow Assembly.

The Comprehensive Agreement states that:

“To allow the parties to prepare adequately for the re-establishment of the political institutions, the British Government will also introduce legislation in December to allow the formation of a shadow Assembly.”¹

¹ Paragraph 6 of the statement of the two Governments in the Comprehensive Agreement.

The Comprehensive Agreement sets out deadlines as follows:

- “December (2004) Emergency legislation to enable a Shadow Assembly.
- “January (2005) Shadow Assembly established.
- “February (2005) Suspension lifted.
- “March (2005) FMDFM and Executive confirmed.”²

But the DUP statement in the Comprehensive Agreement – which was approved by the two Governments - only committed that party to sit in the Executive with all other parties -

“following confirmation in reports from the IMC and the IICD that IRA paramilitary activity of all kinds has ended.”

Therefore, until the DUP were satisfied on this, the Shadow Assembly would have continued. Had the Comprehensive Agreement been implemented following IRA decommissioning last September, we would it seems still have a Shadow Assembly now, because the DUP would not be satisfied with January’s IMC report or with the last IICD report.

The fact is that the Comprehensive Agreement would have left us with a Shadow Assembly for as long as the DUP liked.³

4. *The Comprehensive Agreement provides for government by mandarins*

The Comprehensive Agreement also provides for government by mandarins, that is to say permanent secretaries.

As already stated, the timetable in the Comprehensive Agreement states as follows:

- “December (2004) Emergency legislation to enable a Shadow Assembly.
- January (2005) Shadow Assembly established.
- “February (2005) Suspension lifted.
- “March (2005) FMDFM and Executive confirmed.”⁴

The DUP confirmed to the SDLP that they had an understanding with the British Government – perhaps one of the over a hundred that they had – that the law establishing the Shadow Assembly would also provide that in the period between the lifting of suspension and the confirmation of FM/DFM and the Executive, government would be by civil service mandarins.

² Annex A, CA.

³ See, however, point 4 below on government by mandarins.

⁴ Annex A, CA.

Again, the DUP in their statement – approved by the Governments – in the Comprehensive Agreement only committed to sit in the Executive with all other parties -

“following confirmation in reports from the IMC and the IICD that IRA paramilitary activity of all kinds has ended.”

Therefore, if the British Government went ahead and lifted suspension as they planned, we would have been left with indefinite government by civil service mandarins until the DUP agreed to form the Executive – because the DUP are not satisfied with either the IMC or IICD reports.

Therefore, the Comprehensive Agreement threatens indefinite government by civil service mandarins.

5. *The Comprehensive Agreement allows the DUP vetoes on nationalist decisions and threatens gridlock*

Annex B, Strand 1, paragraphs 3 and 7 provide for -

- a legal duty to follow the ministerial code, and
- a power to be put in that code that ministers' decisions could be vetoed if they do not have cross-community support.

Therefore under the Comprehensive Agreement, a minister cannot proceed with a decision if a majority of unionist or nationalist ministers objects to it.

This is contrary to the GFA. That is clear from:

- Paragraph 24 of the Good Friday Agreement which states that:

“Ministers will have full executive authority in their respective areas of responsibility, within any broad programme agreed by the Executive Committee and endorsed by the Assembly a whole.”

- The wording of paragraph 3 of the Comprehensive Agreement itself which expressly provides that the new legal duty on ministers, including on cross community voting, is -

*“**notwithstanding** their executive authority in their areas of responsibility as defined in the Agreement.”*

Why does this matter?

Under the GFA, the following could be vetoed in the Assembly if it did not have cross-community support:

- legislation;
- budgets; and
- the Programme for Government.

That is appropriate since these are all vital matters.

But going further and allowing ordinary decisions of ministers at the executive to be vetoed –

- **risks gridlock. For example, it could mean that no decision is taken because each side vetoes the other.** Just think what would have happened over maternity services in Belfast if these veto powers existed when that controversy arose. The DUP could have vetoed SF plans for maternity services to be at the Royal - and SF could have vetoed DUP plans for maternity services at City Hospital. The result? Gridlock and bad government.
- opens up the possibility of **endless tit for tat vetoes;**
- **disproportionately advantages the DUP** – since they are likely to have most ministers. Also, the DUP have shown their like of veto powers and will not hesitate to use them to undermine the decisions of nationalist minister and uphold the status quo.

But was there not a requirement of cross-community voting in the ministerial code?

Yes. But that code was not legally binding. If a minister breached the old ministerial code, the Assembly could vote to exclude him. Or under changes introduced by the Governments, which the SDLP disagreed with, the matter could be brought to the IMC.

These were things which could only be used sparingly. By contrast these new veto powers could be used day in day out.

6. *The Comprehensive Agreement allows SF and DUP to erode the authority of other parties in government*

The Comprehensive Agreement provides that the Executive will be a forum for:

“agreement on any issue... which the First Minister and Deputy First Minister agree should be brought to the Executive.”⁵

The Good Friday Agreement lists areas where the Executive has competence – for example where a matter is cross cutting – that is to say it affects more than one Department. But paragraph 4 of the Comprehensive Agreement goes way beyond this and allows the First Minister and Deputy First Minister to require *any* matter to have Executive approval.

In this way, a DUP First Minister and SF Deputy First Minister together could undermine the authority of any other minister – thereby undermining power-sharing. Gerry Adams has made clear that this proposal – which could be used to oppress smaller parties in government and undermine true power sharing - was made by Sinn Féin.⁶

⁵ Paragraph 4 of Annex B, Strand 1.

⁶ “This change, proposed by Sinn Fein, allows the First and Deputy First Minister, by agreement between them, to review a ministerial decision in the Executive.” Gerry Adams, Irish News, 20 December 2004.

The SDLP demands the equal place in government promised by the Good Friday Agreement – not the second class status threatened by the Comprehensive Agreement.

7. The Assembly referral system could lead to gridlock and disproportionately favours the DUP

The Comprehensive Agreement means that if any 30 Assembly members sign a petition, a matter has to be referred back to the Executive for decision, provided that the Presiding Officer (i.e. the Speaker), certifies that it is a matter of public importance.⁷

The SDLP has a number of concerns regarding this procedure:

- it appears that the minister cannot proceed with the decision in the interim. But **some decisions need to be taken urgently** – (eg on Foot and Mouth). This is all the more important since it may be some time before an Executive meeting to consider the decision can be arranged;
- the Presiding Officer is obliged to determine whether the Assembly petition is on an issue of public importance. **As the previous Presiding Officer has made clear, this leaves him in an invidious position;**
- **it disproportionately advantages the DUP** who will be the only party to get 30 signatures alone;
- it is unclear whether the minister's decision would be vetoed automatically if it were outside the Executive's remit.

8. Abolition of joint election of First Minister and Deputy First Minister

Under the Good Friday Agreement, the First Minister and Deputy First Minister were elected together jointly by a majority of nationalists and a majority of unionists, as well as a majority overall in the Assembly.

The Comprehensive Agreement makes clear that the joint election will be abolished. This is because the DUP do not want to have to vote a Sinn Fein Deputy First Minister into office.⁸

The SDLP has a number of objections:

- first, if the First Minister and Deputy First Minister cannot be elected together, it **does not augur well for how they will work together** thereafter;
- second, the joint leadership was important symbolically to signify sharing. **The abolition of the joint election undermines sharing – at a time when sharing was never more important;**
- third, **the rot will not stop there.** Peter Robinson has admitted that it is not just the joint election that the DUP has problems with – it is also joint questions and joint appearances. In other words, the DUP plans

⁷ Paragraph 6 of Annex B, Strand 1, CA.

⁸ Paragraph 9, Annex B, Strand 1, CA.

to undermine the joint leadership envisaged by the GFA. Such an approach should be challenged, not indulged.

9. *The Comprehensive Agreement undermines inclusion and provides for a SF/DUP voluntary coalition*

At the heart of the inclusion provisions of the Good Friday Agreement are respect for mandate and respect for difference.

That's why under the GFA, all parties were entitled to take their seats in government in accordance with their electoral mandate alone once they had taken the pledge of office.

So, for example, the DUP and Sinn Fein were both able to take their seats despite not having voted in favour of Seamus Mallon and David Trimble when elected First Minister and Deputy First Minister.⁹

The Comprehensive Agreement undermines this.¹⁰ It requires the new Executive to be voted in by the Assembly by a majority of nationalists, a majority of unionists and a majority overall. The only reason for this vote is to act as a substitute for the joint election of the First Minister and Deputy First Minister.

When we questioned this, we were told that it was reasonable to require parties in government to vote in favour of the heads of the government. But that is not the hallmark of inclusive government. It is in fact the hallmark of voluntary coalition. And that is what the Comprehensive Agreement in fact provides for.

This is because the Comprehensive Agreement also provides that any party that does not vote in favour will see its ministers *automatically excluded* from office.¹¹ This is totally contrary to the Agreement. It means that even if a party abstains, for example:

- as a protest to the abolition of the joint election of the First Minister or Deputy First Minister;
- because it does not want to be complicit in wider changes to the Agreement; or
- because it does not have confidence in SF and the DUP as First Minister and Deputy First Minister

then that party will automatically be excluded. For that reason, the SDLP will be automatically excluded – and other parties that may adopt a similar stance will also be excluded.

Therefore, what is really being provided for is a voluntary coalition.

⁹ They did not even have to support the Agreement or the policing arrangements.

¹⁰ Paragraph 9, Annex B, Strand 1, CA.

¹¹ Paragraph 9, Annex B, Strand 1, CA.

10. The Comprehensive Agreement provides a veto on who nationalist ministers can be

The introduction of the Executive Declaration in the Comprehensive Agreement also allows for the DUP to veto who nationalist ministers can be.¹²

If the DUP do not like the fact that a nationalist minister got a sensitive portfolio like education or justice, it could refuse to vote in favour of the Executive as a whole. There would then have to be fresh Assembly elections – which might suit the DUP very well.

11. Undermining North/South

The SDLP is concerned that the DUP will use their new vetoes to target North South in particular.

But the damage to North South does not stop there. The DUP have also been able to undermine North South in the following ways:

- **First, the CA does not provide for a single extra area for North South cooperation and implementation.** Given that the DUP refused to participate in the North South Ministerial Council, the SDLP believes that they should have to agree to new areas upfront. We were the only party in the negotiations to adopt this stance. **We urge both Governments to push for the implementation of our policy document “North South Makes Sense.”**
- **Second, the CA provides for a review of North South.**¹³ If it recommends a contraction of North South, the DUP will bank that. If it recommends an expansion, there is no guarantee that the DUP will honour that.
- **Third, the CA does not effectively tackle the ability of unionist ministers to obstruct the work of the North South Ministerial Council.** The GFA provides for cross-community involvement in the NSMC. That means that a nationalist minister and a unionist minister must always attend NSMC meetings. However, where a unionist minister refuses to accompany a nationalist minister with departmental responsibility for the matter being discussed at the NSMC, we do not believe that the nationalist minister should be prevented from doing business in the NSMC. This is because under the Good Friday Agreement the unionist accompanying minister has the right to be *involved* NSMC meetings – not the right to *obstruct* them.¹⁴
- **Fourth, reserved and excepted matters (such as Sellafield and roaming charges) cannot be discussed at the NSMC without the consent of the Assembly.**¹⁵ So for example, if the NSMC wants to discuss roaming charges over the Summer recess, it has to recall the Assembly first. This is totally unnecessary and will make it harder for the NSMC to do its work properly.¹⁶

¹² Paragraph 9, Annex B, Strand 1, CA.

¹³ Para 6, Strand 2, Annex B, CA.

¹⁴ Para 30, Strand 1, GFA. See also para 2 GFA.

¹⁵ Para 4, Strand 2, Annex B, CA.

¹⁶ This proposal was made by the Irish Government to deal with a concern raised in error by Jeffrey Donaldson with the Irish Attorney General and Minister for Justice that paragraph 6 of Strand Two GFA was not implemented by the Northern Ireland Act, 1998. The SDLP pointed out to the Minister for Justice at Leeds Castle that, in fact, paragraph 6 was *explicitly*

The SDLP would also appreciate greater clarity on East West issues. For example we would be happy to see new areas of East West cooperation. We would also be happy to see groups of countries within the British Irish Council taking on work together.

THE SDLP'S BETTER WAY...

The SDLP has a better way forward. During the review we made positive proposals on North South and for greater collectivity and accountability. Some involve changes to the Northern Ireland Act – but **all are consistent with the Good Friday Agreement**.

We put these to the DUP – but they never responded. That proves that it is not efficiency that they are interested in but control.

On collectivity, we proposed:

- putting into legislation an obligation on the Executive to adopt a **Ministerial Code** (but we did not propose making it legally binding since it already had to be followed under the Pledge of Office and, by unilateral action of the Governments, by the IMC);
- Ensuring **early discussion of issues at the Executive** through the code.
- Empowering the committee on standards and privileges to **examine breaches of the Code**.
- Creating **Executive sub-committees** to ensure joined up working.
- Giving the Executive the **power to call persons and papers** to ensure that Ministers cannot withhold information.
- Obliging Ministers in statute to work in good faith to **comply with the Programme for Government**.
- Introducing a civil service code of ethics to **oblige each permanent secretary to notify the Executive secretariat** of any breach of an executive decision.
- Bringing **certain public appointments to the Executive** for approval, and notify other proposed appointments – which could then be challenged.
- Where any measure or proposal for legislation runs aground under the **special equality procedure**, the relevant Minister to bring it back to the Executive.

We also proposed strengthening accountability and efficiency by -

- ensuring that Ministers present their own **departmental spending plans** (post-budget) to the Assembly;
- proposing a new Committee on Departmental running costs;

implemented by s.52(9) of the Northern Ireland Act, 1998. The Irish Government did not contest this. But they proceeded with this defective proposal.

- proposing a new public accounts committee style cross-cutting **committee on performance, efficiency and implementation**;
- better adherence to protocol that key policy **announcements are presented to the Assembly first**;
- a new **protocol to be agreed between Assembly committees and the Executive** to ensure more consistent notification and sounding of committees on new policies and measures.

On North South we proposed new areas for North South cooperation and implementation. We have worked on these proposals further in our recently launched **North South Makes Sense** document.

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