

social welfare law quarterly

# frontline



**Workers rights in the recession ● Benefit rates**  
**Immigration detention ● Homelessness and debt**

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71



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Issued by the Northern Ireland Ombudsman, Mr Tom Frawley, 33 Wellington Place, Belfast BT1 6HN

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33 Wellington Place, Belfast. BT1 6HN Tel: (028) 9023 3821 Fax: (028) 9023 4912  
email: [ombudsman@ni-ombudsman.org.uk](mailto:ombudsman@ni-ombudsman.org.uk) web: [www.ni-ombudsman.org.uk](http://www.ni-ombudsman.org.uk)

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**Editor**

Catherine Couvert

**Design & Layout**

Michael W Beggs

**Cover photo**

Geraldine Gallagher

**Printed by**

Impression Print & Design

**Published by**

Law Centre (NI)

**Editorial Panel**

Siobhán Harding  
*Citizens Advice*

Kevin Higgins  
*advice<sup>ni</sup>*

Sharon Geary & Claire Moss  
*Housing Rights Service*

Gráinne McKeever  
*University of Ulster*

Ursula O'Hare and Maura McCallion  
*Law Centre (NI)*

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**Editorial/Advertising**

124 Donegall Street, Belfast, BT1 2GY  
Tel: 028 9024 4401  
Fax: 028 9023 6340  
Textphone: 028 9023 9938

**Email:**

admin.belfast@lawcentreni.org

**Website:** www.lawcentreni.org

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INVESTOR IN PEOPLE



# editorial

## Mental health reform

**M**ental health law reform is entering a crucial phase. DHSSPS has issued a policy consultation document on the legal framework for mental capacity and mental health legislation.

The ministerial foreword to the document highlights the proposed pace of change. The original plan to develop mental health legislation coming into effect in 2011 and capacity legislation in 2014 - has been shelved. Instead, legislation for both will be introduced in 2011. This is a challenging timetable but one that can be met. An outstanding question remains whether one or two pieces of legislation should be enacted. The Law Centre's view is that a single piece of legislation encompassing both mental health and mental capacity is the best way forward. This approach was overwhelmingly endorsed by speakers at a recent seminar which was attended by many of the key figures within the Department tasked with carrying forward the legislation.

A single piece of legislation will help realise the aim of the Bamford review to integrate mental health, learning disability and capacity issues in the development of its vision for the way forward.

The Bamford review was unparalleled in breadth of scope and depth of analysis across a major public policy area. It was a template for other policy reviews in the extent it utilised the experience of those affected directly as well as professional bodies, the voluntary sector and academics.

Progressive mental health and capacity legislation with strong safeguards and protection for people with a mental disorder, learning disability or capacity difficulties is an essential cornerstone for the development of modern mental health services. The Bamford vision went beyond the law, to look at social inclusion, community based services, information and advocacy support and much more. Some of these issues will

be resource intensive. Others will require a change of mindset as much as finance. Developing effective and co-ordinated information about the rights of individuals and their carers, for example, will entail better management of existing resources as much as new finance.

This is a prime motivation behind the Mental Health and Learning Disability Alliance convened by the Law Centre. The Alliance brings together professional practice bodies, equality and human rights commissions alongside user groups and voluntary sector organisations. It aims to ensure that the holistic approach championed by the Bamford review is kept alive.

The consultation document strongly emphasises the importance of human rights and dignity being enshrined in an underlying principles-based approach written into the legislation. This is a very positive start. The Department is travelling in the right direction but the importance of how the journey works out in practice cannot be underestimated. There is still a great deal of crucial detail to be worked through. On past experience, new mental health and capacity legislation is likely to remain in place for a quarter of a century. This alone should ensure the strongest possible response to the consultation and to the draft legislation when it is brought forward later this year.

Les Allamby

## Judicial review success in mental health case

In *X v MHRT [2009] NIQB 2*, the Northern Ireland High Court held that mental health review tribunals do not have the power to delay the discharge of a patient when there is a mandatory duty to direct his or her discharge.

As a result, many patients can expect to be discharged immediately if they are subject to civil powers of detention and the tribunal orders a mandatory discharge.

### Background

Our client, a 25 year old man with severe mental impairment, had been detained in hospital since 2002 under the Mental Health Order (NI) 1986. In February 2008, following a successful judicial review of a tribunal decision upholding his detention (*X v MHRT NIQB 2008*), his case was passed on to a differently constituted tribunal. In April 2008, this tribunal decided that, while he did not satisfy the criteria for continued detention, his discharge would be deferred for six weeks to facilitate the making of suitable aftercare arrangements. At the time of the hearing, the social workers giving evidence on behalf of the detaining authority did not give the tribunal adequate details about aftercare provision.

Our client wished to go on holiday with his family but, because he remained subject to detention, this decision meant that he would miss the planned holiday. With the help of the Law Centre, he challenged the validity of the decision to defer his discharge.

### The legal challenge

We argued that:

- Article 77 (1) of the Mental Health Order (NI) 1986 is mandatory and requires the tribunal to direct discharge if the legal criteria are not met;



Law Centre (NI) mental health legal adviser  
Louise Arthurs. Photo: Michael Beggs

- if Article 77(2) does imply a discretion to defer a mandatory discharge then the discretion is so wide and unfettered as to be unlawful because it conflicts with fundamental principles of humanity and because it is outside the scope and purpose of the legislation;
- a discretionary power to defer a mandatory discharge is incompatible with Article 5 of the Human Rights Act 1998.

### The High Court decision

The High Court held that the decision by the tribunal to direct the discharge of our client on a future date was unlawful.

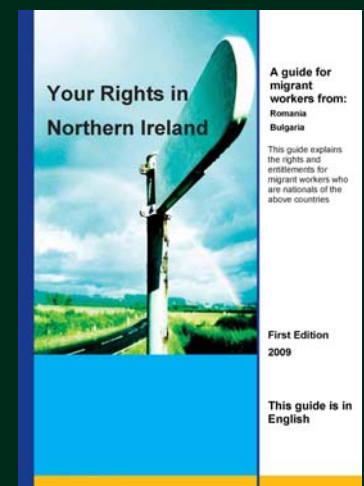
Louise Arthurs, Law Centre (NI)

## Rights guide for A2 workers

The Law Centre and Northern Ireland Human Rights Commission have produced, with help from OFMDFM, a new guide for migrant workers from Bulgaria and Romania. The guide is intended to help migrant workers understand the rights and entitlements they have while in Northern Ireland and to ensure that if they do encounter problems they know where to access the right advice. Closely modelled on the format of other guides in the 'Your Rights in Northern Ireland' series, it covers social security, housing, employment, health care, education, human and civil rights, voting etc.

The guide for A2 workers is currently in English only, but we have started work on Bulgarian and Romanian translations.

Download it, along with our guides for EEA, A8 and work permit employees, from [www.lawcentreni.org](http://www.lawcentreni.org) or [www.nihrc.org](http://www.nihrc.org).



## Advice NI reaches the stars

**A**dvice NI has won a STAR Award for its **E-Quals** online learning project. The STAR Awards are an All-Ireland initiative which aims to give recognition to adult learners and the organisations which support them.

Advice NI's winning project is a training partnership between Advice NI and National Energy Action to build the skills and knowledge of advice workers to give information, advice and guidance to individuals and communities on energy efficiency. The project uses face-to-face learning techniques, mentoring and e-learning. To date 20 adult learners have taken part in the project. They have gone on to become local champions, advising people in Northern Ireland how to become more energy efficient and cope with increasing fuel prices.

Two hundred representatives from different adult learning organisations across Ireland attended the awards ceremony at Dublin Castle on 2 February. Dáil Minister for Lifelong Learning Seán Haughey launched the event and RTE personality Mary Kennedy presented the awards to fourteen organisations. AONTAS, the National Adult Learning Organisation in Ireland, which organises the awards, had received 152 nominations. Bob Stronge, Director of Advice NI said, 'Advice NI is delighted to have its work on the E-Quals programme acknowledged by a STAR award. We are committed to offering advisers the right



RTE's Mary Kennedy with Patricia Donald and Dominic Sharvin of Advice NI and Seán Haughey T.D.

Photo: Advice NI

*blend of skills and knowledge necessary to provide people with the best advice possible especially in the current economic climate.'*

## News in brief ...

### Financial Ombudsman Belfast training

On 11 June, the Financial Ombudsman will run a training day for frontline consumer advisers in Belfast. The Trading Standards Authority is hosting the event at its offices. For more details, see [www.financial-ombudsman.org.uk/wt\\_ca.htm](http://www.financial-ombudsman.org.uk/wt_ca.htm). The Financial Ombudsman Service has a free technical advice desk for professional consumer advisers. Ring 020 7964 1400, 10am to 4pm, weekdays.

### Peace rallies

Trade Unions held peace rallies in Belfast, Newry, Craigavon and Derry on Wednesday 11 March in protest at recent killings and attempts to derail the peace process in Northern Ireland.

### Child support

There has been a 25 per cent increase in the number of absent parents paying child maintenance since the Child Maintenance Enforcement Division replaced the Child Support Agency in May 2007.

### Household fuel payments

The Household Fuel Payment Scheme is due to make a one-off £150 payment to approximately 150,000 households. All Pension Credit claimants (excluding those in nursing homes or residential care) and Income Support claimants who receive Housing Benefit or Housing Loan are eligible. There will be one payment per household and people will be paid without having to claim. DSD hopes that all payments will be processed in April.

### Stark inequalities for children

Children and young people are subject to a life chance lottery, says 'Children's Rights: Rhetoric or Reality. A Review of Children's Rights 2007-2008', a report published by the Northern Ireland Commissioner for Children and Young People. While some children have many positive experiences growing up here, for some groups the inequalities are stark. Launching the report, Northern Ireland Commissioner for Children and Young People Patricia Lewsley called for the United Nations Convention on the Rights of the Child to be made law in Northern Ireland as a minimum standard. Read the report on [www.niccy.org](http://www.niccy.org).

## Cancer poverty event

**A**t a recent event at Stormont, MLAs from all parties were encouraged to support the Macmillan campaign to end cancer poverty and were informed that a cancer diagnosis often results in a big drop in someone's income.

Around 55,000 people are currently living with cancer in Northern Ireland but it is only recently that the wider social impact of dealing and living with this condition has been properly acknowledged. Financial concerns have been highlighted as a considerable cause of stress for people living with the disease, second only to physical pain. Ninety per cent of people affected by cancer in the UK experience a drop in income and an increase in daily living expenditures because of their diagnosis. However, too many people affected by cancer in Northern Ireland are not getting the financial support to which they are entitled.

Many patients and their families affected by a cancer diagnosis require financial advice and support on a wide range of issues. These include employment rights, debt, pension rights, fuel poverty and insurance, as well as accessing welfare benefits and meeting all the extra costs associated with a cancer diagnosis such as increased heating bills.

In partnership with Citizens Advice and the Northwest Advice Service, Macmillan Cancer Support established a welfare rights service two years ago to help people affected by cancer with this wide range of welfare rights issues and in particular access statutory benefits that they may not have known they were entitled to.

Macmillan CAB currently has two advice services operating within the Macmillan Support and Information Centre based at Belfast City Hospital and at the Royal Group of Hospitals. A third advice unit will be opening within the next few months at the Mater Hospital. Northwest Advice Service provides its own Macmillan funded welfare rights service at the Altnagelvin Hospital in Londonderry/Derry.

In the last two years, these services have increased benefit uptake to such an extent that they have generated in excess of £5 million for clients, over 90 per cent of whom had not previously come into contact with the benefits system. The key to the ongoing success of these services is that they are staffed by fully trained benefits advisers who have had specialist cancer training and support from Macmillan Cancer Support. The



Michele Campbell, Macmillan Welfare Rights Adviser, Belfast City Hospital. Photo: Citizens Advice

advisers work within the health care setting in partnership with health care professionals to ensure that people affected by cancer have their financial needs addressed.

Details can be found on the Macmillan website at [www.macmillan.org.uk](http://www.macmillan.org.uk) and on [www.citizensadvice.co.uk](http://www.citizensadvice.co.uk).

**Siobhán Harding, Citizen's Advice**

## Carers hit hard by crisis

**A**ccording to the Carers Rights Guide, published last December, three quarters of carers are in fuel poverty; half are in debt; half are cutting back on essentials like food or heating to make ends meet.

Carers can face higher bills than the rest of the population, including extra heating and transport costs. Two thirds are spending their own income or savings to pay for care for the person they look after (up from 35 per cent in 2007). According to the 2001 Census, around 47,000 people provide care for more than 50 hours per week and few of these are able to work.

Helen Ferguson, Director of Carers Northern Ireland, comments: *'Whilst the physical and mental demands of caring often make carers' own health worse, the appallingly low level of Carer's Allowance, worth only £50.55 per week, is only making life even harder.'*

'We're urging carers to get in touch with Carers Northern Ireland for our free Carers Rights Guide to make sure they get every penny they're entitled to. There has never been a more important time to find out what financial help you might be entitled to.' The guide is available from [www.carersni.org](http://www.carersni.org).

## Homelessness and people from abroad

*Sharon Geary of Housing Rights Service is looking forward to legal changes which will give some rights to households with a person subject to immigration control.*

**T**he Housing and Regeneration Act 2008 is about to create changes to the homelessness legislation in Northern Ireland which will:

- allow certain 'persons from abroad' who are subject to immigration control to be considered as part of a homeless application; and
- create a new set of statutory duties owed by the Housing Executive.

At the time of writing, there is no implementation date for these changes and guidance has not yet been finalised.

Under the Housing (NI) Order 1988, people who apply for homelessness assistance in Northern Ireland must show that they are:

- homeless;
- eligible for assistance;
- in priority need; and
- unintentionally homeless.

A person who passes all four tests will be classed as a Full Duty Applicant (FDA) and will be owed a duty from the Housing Executive to permanent rehousing in the social rented sector.

Generally, a person from abroad who is subject to immigration control will be ineligible for assistance. This can also have an impact on other members of the household who would otherwise be eligible, such as a British citizen, a Commonwealth citizen with a right to reside in the UK, a European Economic Area (EEA) national or a Swiss national exercising a European Union Treaty right.

Currently, where the Housing Executive receives an

### Overview of duty owed

#### Full duty applicants ('normal' cases)

three reasonable offers of accommodation

entitled to offers of social rented accommodation which provides security of tenure

#### Restricted cases

one reasonable offer of accommodation

entitled to offer of private rented accommodation - with a tenancy term of at least twelve months

application for homelessness assistance and the household contains a person from abroad, that person will be disregarded when assessing the application if he or she is the person who could convey the homelessness status or priority need. This would be where the person is a dependant child, is pregnant or is vulnerable because of old age, illness or disability etc. The Court of Appeal has held this to be potentially discriminatory against those persons who would otherwise be eligible and contrary to the Human Rights Act, (see *R (Morris) v Westminster City Council* [2005] EWCA Civ 1184).

The forthcoming changes to the Housing (NI) Order 1988', change the way a homeless application will be treated if the household includes an ineligible person from abroad who could convey homelessness status or priority need. The case will be referred to as a 'restricted case' and the ineligible person as a 'restricted person'. The new rules will mean that the restricted person's circumstances will now be considered by the Housing Executive. The Housing (NI) Order 1988 will also be amended to limit the statutory duty owed to such persons. For example, the Housing Executive will be considered as having discharged its statutory duty where the applicant:

- accepts an offer of private rented accommodation, or
- refuses an offer of private rented accommodation.

The Housing Executive will liaise with private landlords to offer private rented tenancies for a minimum period of twelve months. Furthermore, in a restricted case, only one reasonable offer of accommodation, rather than the usual three, has to be made.

These changes are a welcome development in that households who would normally be denied homelessness assistance will now get help. However, it is disappointing that the statutory duties owed in restricted cases will be much more limited than for others owed the statutory homelessness duties. The changes also mark a major departure in formally using the private rented sector to rehouse the homeless, rather than the social rented sector, and may be a sign of things to come.

1. as brought about by paragraphs 17 - 21 to Schedule 15 of the Housing and Regeneration Act 2008



Photo: Stuart Taylor

## CAB debt advice report

**C**itizens Advice launched an independent consultants' report for the Dealing with Debt Service at Stormont on 15 January. Speaking at the event, Minister Arlene Foster said: *'The independent analysis of the debt advice service, funded by my Department and provided by Citizens Advice, concluded that the service is helping very vulnerable people. It is reassuring to know that the debt advice service is reaching those in greatest need.'*

Citizens Advice is currently managing a £1.2m contract from DETI for the provision of debt advice in Northern Ireland, and a contract from the Social Security Agency for benefit take up targeted on 25,000 people. The **Dealing with Debt** service assists clients in financial difficulty. From April 2006 to March 2008, the service assisted close to 4,000 people with debts amounting to over £28m.

Scott Kennerley, Money Advice Project Manager for Citizens Advice said: *'Citizens Advice believes that the finance industry should have a much larger role to play in funding a service which many actually refer their own clients to.'*



**L-R: Scott Kennerley, Rosemary McCormick, Senior Money Adviser, L'Derry CAB, John Devlne, Chair, Citizens Advice, Arlene Foster, MLA, Minister for Enterprise, Trade and Investment, Trevor Clarke, MLA, Event Sponsor, Derek Alcorn, Chief Executive, Citizens Advice.** Photo: Citizens Advice

## News in brief ...

### Asylum for the Kazadi family

Paul Kazadi, chair of the Refugee Action Group, and his family are facing deportation. More info on the Friends of the Kazadi family's website: [www.kazadifamily.co.uk](http://www.kazadifamily.co.uk). Online petition: [www.ipetitions.com/petition/justiceforkazadis](http://www.ipetitions.com/petition/justiceforkazadis).

### New identity for Refugee Legal Centre

From 10 March, the Refugee Legal Centre has changed its name to Refugee and Migrant Justice. Its new website is [refugee-migrant-justice.org.uk](http://refugee-migrant-justice.org.uk). The new name signals that the group now wants to campaign on wider issues.

### Asylum judicial review

In a recent judicial review brought forward by the (then) Refugee Legal Centre, a High Court in England ordered the Home Secretary to reverse the deportation of a gay asylum seeker. The judge asserted that the Border Agency had mis-

led the applicant, denied him his right to seek legal advice and put his life at risk. He was deported last September despite facing persecution for his homosexuality in his country of origin.

Judicial reviews such as this are under threat as the Home Office has mooted its intention to scrap them. Commenting on the ruling, Ursula O'Hare, assistant director at Law Centre (NI), said *'This shocking case demonstrates the need for full access to legal advice and judicial review for those seeking sanctuary in the UK. We support the call to ensure that those facing removal from the UK have full access to the judicial review process.'*

### NIHRC immigration conference

As part of a programme of activities celebrating its tenth Anniversary, the Northern Ireland Human Rights Commission's annual conference on 20 April will focus on *Humans without Rights: the impact of immigration law, policy and practice*. The Commission will launch its new investigation report, *The UK Border Agency: Powers of detention*, and a panel of experts will explore current debates on immigration law, policy and practice. Find out more on [www.nihrc.org](http://www.nihrc.org).

# PREVENTING POSSESSION

## HRS tackles homelessness through debt service

*Claire Moss of Housing Rights Service presents the organisation's new Preventing Possession Initiative.*

Latest repossession statistics are showing a 64 per cent increase in the number of Northern Ireland families faced with losing their home in 2008. On 13 February, Housing Rights Service formally launched its Preventing Possession Initiative at the Royal Courts of Justice. The initiative, the first of its kind in Northern Ireland, aims to tackle the growing issue of homelessness as a consequence of debt.

### Background

Housing Rights Service has been aware for some time that financial crisis and debt are important triggers to homelessness. As a consequence, the organisation provides a specialist housing debt service to people with mortgage or rent arrears. Last year, there was a 300 per cent increase in demand for this. In the current financial climate, with rising unemployment, it is likely that the worst is yet to come. With funding from mainly charitable sources, the new initiative aims to address this growing problem head on. It will do this through:

- providing free advice and representation to people facing the imminent threat of repossession; and
- engaging in preventative policy work with social housing providers and lenders to reduce the likelihood of people reaching this point of crisis.

### Advice and representation

Currently, no matter what a client's financial situation, there is no entitlement to legal aid to defend possession proceedings at court. Most people have no idea how to access advice and support and are so daunted at the prospect of having to defend themselves that they do not attend their court hearings.

To rectify this, the project seeks to ensure that homeowners and tenants threatened with debt related possession have access to free independent advice, support and representation. This will be achieved in three ways.



L-R: Fiona O'Connell, Housing Rights Service Policy Officer (Financial Inclusion), Denise Callaghan, Housing Rights Service Court Representation Officer, Honourable Mr Justice Deeny, Janet Hunter, Housing Rights Service Director, Nicola McCrudden, Housing Rights Service Policy Manager, Fiona Douglas, Housing Rights Service Policy Officer (Housing). Photo: Leah Dickson

- **Direct provision of an in situ court representation service at the High Court and County Court.** With the facilitation of the Northern Ireland Court Service, Housing Rights Service will have a specialist adviser at the Royal Courts of Justice and Laganside Courts to help people facing possession proceedings without legal representation.
- **Liaison with key stakeholders** to identify ways of improving client accessibility to representation services.
- **Work with other advice providers** to develop their capacity to undertake court representation.

### Preventative policy work

The initiative's policy work aims to ensure that less people end up in court in the first place. To achieve this, two policy officers have been appointed to work solely to prevent homelessness as a consequence of debt. They will engage directly with government, lenders and so-

cial landlords to secure positive changes to legislation, policy and practice. They will promote the introduction of a financial inclusion strategy for Northern Ireland. The main focus of their work over the next three years will be:

- the implementation of Pre Action Protocols for use by housing providers and lenders to improve the prospect of reaching sustainable repayment agreements prior to costly litigation;
- engaging with social landlords to develop good practice in rent arrears management and financial inclusion strategies for their tenants;
- promoting responsible lending by, for example, bringing second charge lending within the scope of the Financial Services Authority;
- improving affordable credit options for low income households; and
- ensuring that viable alternative housing options are available to people

who face possession - including a not-for-profit mortgage rescue scheme and good quality, well managed private rented accommodation.

### Complementary measures needed

Whilst the initiative's plans are ambitious, Housing Rights Service is committed to assisting people experiencing problems with housing debt. There are a number of complementary measures that could help support the aims of this project. Housing Rights Service is calling for the speedy implementation of the mortgage rescue scheme announced in Minister Ritchie's 'New Housing Agenda' in February 2008. The organisation would also welcome the introduction of pre action protocols in Northern Ireland that make repossession a last resort. In England, where these have been in place since November 2008, administrative records already indicate a significant fall of around 50 per cent in the numbers of new mortgage repossession claims being issued in the courts.<sup>1</sup>

In all of its efforts, the Preventing Possession Initiative will seek to ensure that the sentiment alluded to by the Honourable Mr Justice Deeny at the launch event becomes reality: *'the home is at the very heart of civilised society and people should not be evicted unless necessary.'*

For more information on the initiative contact Nicola McCrudden on 9024 5640. The full list of the Preventing Possession Initiative's policy priorities can be accessed at [www.housingrights.org.uk](http://www.housingrights.org.uk).

1. Ministry of Justice statistics on mortgage and landlord possession actions in the County Courts 4th quarter 2008.

### ADVISORY GROUP

As part of the Preventing Possession Initiative, Housing Rights Service will establish a project advisory group. The remit will be to harness knowledge and expertise in housing and financial services to enable the project to achieve maximum impact within allocated resources. It will work collectively to:

- identify problems and potential policy and practice solutions;
- identify potential areas where positive change can be affected;
- influence policy and promote good practice within relevant networks;
- assist in disseminating good practice and lessons learned from the project.

If you would like to be part of the advisory group, please contact Nicola McCrudden on 02890 245640 or email [nicola@housingrights.org.uk](mailto:nicola@housingrights.org.uk).

## A BETTER SERVICE?

### Advice NI responds to SSA strategic business review

Given the fact that more and more people are facing a bleak future in the economic downturn, Advice NI believes that the Social Security Agency's strategic business review is an extremely important issue. Northern Ireland is experiencing record increases in unemployment. More people than ever are becoming reliant upon social security benefits simply to survive. It is essential that SSA claimants receive a fast, effective service which meets their needs, both in terms of getting benefit into payment and responding to ongoing issues that may arise.

'Delivering a better service for customers', the SSA's consultation document, outlined the proposed changes, including:

- back office processing for Income Support, Jobseekers Allowance and Social Fund will be centralised in eighteen Benefit Processing Centres located on sixteen sites;
- NINO processing to remain centralised in three locations;
- an enhanced telephony service including low/fixed rate calls;
- dedicated Telephone Support Units (TSU) for each Benefit Processing Centre;
- extending the existing appointment system to include the majority of current caller traffic;
- Customer Access Phones in front offices which will connect the customer to the ESA Centre, Social Fund Crisis Loans Tele-Claims Unit or an expert benefit adviser in the District TSUs; and
- access to the Agency's website.

Advice NI understands the theory behind the rationale for change but has questioned whether the timing is appropriate. We remain concerned that some aspects of the proposal may actually be detrimental to people who rely on the services of the Agency. Of particular concern is the effect on people facing crisis situations, people whose first language is not English, people with mental health and other problems linked to a range of disabilities.

Advice NI's latest membership figures highlight a six per cent increase in money and debt enquiries, with continued high numbers of social security related enquiries. Advice NI is concerned that, for people who are or will become reliant on social security benefits, there is a risk that the proposals (telephony and face to face service by appointment only) may not actually improve services. They may indeed result in a poorer service, causing stress, confusion and ultimately hardship for vulnerable low income households.

The Advice NI response highlighted a number of concerns, perhaps most importantly regarding the loss of face to face walk in services for clients at the local offices. The consultation document did not indicate in any detail how situations requiring immediate action would be handled. On page 8, it stated that 'arrangements will be developed' to cope with situations requiring immediate action. Advice NI believes the SSA needs to make clear arrangements to meet the needs of the most vulnerable in our community. It is worrying that, apparently, up to this point there is no detail on such arrangements.

Please log on to [www.adviceni.net](http://www.adviceni.net) to see the full consultation response.

**Kevin Higgins, Advice NI**

# ALTERNATIVES TO DETENTION

## The bogus hospitality of UK Border Agency

*Anna Morvern, immigration adviser at Law Centre (NI), places the UKBA's new 'Alternatives to Detention' in the context of its wider detention and deportation policies. She argues for more vigorous local campaigning against removal and detention.*

Here in Northern Ireland, the UK Border Agency (UKBA) has recently indicated that it will use fourteen to 20 cells of Larne PSNI station to detain immigrants prior to their removal. For the first time, it will also open a permanent immigration office in Northern Ireland. UKBA plans to locate this office at Castlereagh where there will be around 70 operational staff.

The Border Agency currently removes immigrants from the UK at a rate of eight per minute but has pledged to remove them 'faster'.<sup>1</sup> The Agency's plans for Northern Ireland are part of a UK-wide increase in immigration enforcement and removals activity by the Border Agency, which recently announced 'a large scale expansion of Britain's detention estate'.<sup>2</sup>

People in Northern Ireland have already witnessed first-hand the inhumanity of forcible removal, when the families of Ronke Falode, her children aged nine, twelve and fourteen, and Comfort Odefowoju, her children aged ten, seven, five and seven months, were

*wearing a tattered vest and no jumper.*<sup>3</sup>

Before my employment at the Law Centre, I worked as casework manager at Bail For Immigration Detainees in England, a charity that has rigorously challenged immigration detention in the UK for many years. I acted for many individuals detained in removal centres across England, and I will never forget the horror of those cases. Among them was the man with manic depression who was repeatedly sucking on a small lithium battery because his requests for his usual medication had apparently been ignored by healthcare staff in the detention centre; the heavily pregnant woman detained without her young daughter; the woman in the advanced stages of a hunger strike who was so traumatized by her experiences that she was mute; an HIV-positive woman who weighed only six stone (around 38 kilos) and was held down by no less than four detention staff when she protested that they were taking her walking stick

to have such access to justice. As the Law Centre has repeatedly said to the Border Agency, immigrants moved from Northern Ireland to detention in the UK often face additional hurdles in accessing justice, because they may have to obtain new, local representation when they leave here and arrive in detention in Scotland or England, at the time when they are most vulnerable and stressed. Comfort's story was a case in point as she told the New Statesman:

*'They [the detention centre staff] don't even provide enough formula. It is four o'clock, and Sarah has only had one bottle so far today.' On the first day, Comfort spent the last of her money on formula, but now she has completely run out. 'If I can't even buy milk for the baby, how am I going to get a solicitor?'*<sup>6</sup>

The new Border Agency buzz phrase, 'alternatives to detention' (sometimes abbreviated by the Agency to 'A2D') has a humanitarian ring to it. But the initial details of the government's latest plans for alternatives to detaining immigrants herald a hypocritical perversion of the human values of hospitality, equality and diversity, which any society needs in order to maintain its own self-worth and dignity. Coinciding with its launch of a new code of practice entitled 'Keeping Children Safe from Harm', the UK Border Agency (UKBA), which detains two thousand children each year in ten immigration detention centres across England and Scotland,<sup>7</sup> has announced that it is 'actively testing alternatives to detention, to explore whether housing families in hostel type accommodation and providing one-to-one support will encourage them to leave voluntarily'.<sup>8</sup> At the last meeting of the Immigration Practitioners' Group convened by the Law Centre, Kathleen Burt, Assistant Director of the Enforcement & Compliance Unit, Scotland and Northern Ireland Region, fleshed out some of the details. She indicated that a new 'alternatives to detention' project will be piloted in Glas-

**“The authentic 'A2D' is freedom and it is about time that we shamed the government for its failure to remember this.”**

taken out of their homes in Belfast by the immigration authorities and moved to the English and Scottish detention centres. Comfort's eldest daughter described how they were transported to the detention centre in England:

*'We didn't have time to get any clothes,' says Adesola. 'I only brought two pairs of unders, and I don't have any socks.' She and her sister have spent the freezing cold winter days - during which they were first transported from Belfast to the Dungavel detention centre in Scotland, then transferred to Yarl's Wood - wearing just a pair of sandals on their bare feet. Olasubomi is*

away.<sup>4</sup> Removing an innocent person's freedom for administrative purposes is terrible in itself and these individual cases showed the true scars of that terror.

In a recent landmark judgement, a Congolese family was awarded £150,000 in damages for the unlawful detention of children, aged one and eight, who were taken from their English homes in a dawn raid by immigration officers and detained for 57 days.<sup>5</sup> This is an important judgement. But due to funding cuts, a lack of good legal representation and the ability of the Border Agency to move very quickly when it wishes to put people on the planes, it must be fair to say that it is a rarity for most immigration detainees



Domestic visits room, Harmondsworth Immigration Removal Centre, July 2006. Detainees sit on seats with red backs, their visitors opposite. Photo: Melanie Friend, Border Countries exhibition and book.

gow with the collaboration of the Scottish Refugee Council. It will apparently include housing immigrants in an environment which will get them used to returning, where UKBA proposes to encourage them to reconnect with what is going on in their home country by getting them into the habit of eating their own cuisine again.

In another context, offering immigrants familiar food might be a sign of hospitality but the gesture in this context is entirely bogus. The provision of food from the immigrants' home country has nothing to do with hospitality, nor respect for equality and diversity. Those who enter into contractual arrangements with the government to administer these schemes cannot fool themselves that they are doing genuine, humanitarian work. The dish from war-torn Democratic Republic of Congo or Sudan placed in front of the Congolese or Sudanese asylum-seeker family will only be a horrible reminder to them that they face forcible removal to the country they fled if they do not give up their fight to stay and agree to go quietly. As its targets of expanding removals and detention show, the government is not in the least reluctant to use heavier methods if these supposedly softer ones should fail.

Those measures are backed up with increasingly draconian legislation, such as the provisions in the 2004 Asylum and Immigration (Treatment of Claimants, etc) Act which introduced criminal offences of failure to co-operate with your own removal or deportation.

The authentic 'A2D' is freedom and it is about time that we shamed the government for its failure to remember this. To offer genuine recognition to immigrants as equal and part of our diverse society, the government would not focus its attention on their detention and removal: instead, it would hear them and let them stay. Although immigration control remains a reserved matter, local politicians must have had some say in the opening of a permanent immigration office on Northern Irish soil. It would therefore seem important to campaign against removals to detention and deportations locally and to make clear that our communities will not be co-opted into assisting the removal of deportees, but will instead fight for them if they wish to stay. Only when entry clearance stamps and visas no longer condition where you can go and who you can eat with, could we then pride ourselves on equality, diversity and genuine hospitality.

## Notes

- 1 'Lowest number of asylum applications in fourteen years', UK Border Agency, 26 February 2008.
- 2 'Large scale expansion of Britain's detention estate', UK Border Agency, 19 May 2008.
- 3 'No place for children', Alice O'Keefe, The New Statesman, 13 December 2007
- 4 'Detained immigrants 'are abused'', BBC News, 4 October 2006. See also the new report by Birnberg Peirce and Partners, Medical Justice and the National Coalition of Anti-Deportation Campaigns, 'Outsourcing Abuse: the use and misuse of state-sanctioned force during the detention and removal of asylum seekers', available online at [www.medicaljustice.org.uk](http://www.medicaljustice.org.uk)
- 5 'Asylum detainees win record payout', Robert Verkaik, The Independent, 13 February 2009; [www.bhattmurphy.co.uk](http://www.bhattmurphy.co.uk)
- 6 'No place for children', Alice O'Keefe, The New Statesman, 13 December 2007
- 7 [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)
- 8 'Keeping children safe from harm - code of practice', UK Border Agency, 5 January 2009; 'Briefing Paper on Children and Immigration Detention - March 2008'

# BENEFITS & TAX CREDITS

## MEANS-TESTED

### INCOME SUPPORT / INCOME BASED JSA

#### PERSONAL ALLOWANCES

##### single

under 25	£50.95
aged 25 or over	£64.30

##### lone parent

under 18	£50.95
aged 18 or over	£64.30

##### couple

both under 18*	£50.95
both under 18, with child	£76.90
one under 18 one over 25	£50.95
one under 18 one over 25	£64.30
both aged 18 or over	£100.95

\* for more details of rates for under 18s, see Law Centre (NI) Encyclopedia of Rights or the CPAG handbook.

##### dependent children (existing claimants)\*\*

birth to day before 20 <sup>th</sup> birthday	£56.11
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#### PREMIUMS

family	£17.30
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##### pensioner

couple	£97.50
single (JSA only)	£65.70

##### disability

single	£27.50
couple	£39.15

##### enhanced disability

single	£13.40
child	£20.65
couple	£19.30
family (existing claimants)**	£17.30

##### severe disability

per qualifying person	£52.85
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disabled child (existing claimants)**	£51.24
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carer	£29.50
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\*\*people still receiving personal allowances and premiums for a dependent child may transfer to Child Tax Credit during 2009)

#### DEDUCTIONS FOR NON-DEPENDANTS (MORTGAGE INTEREST)

##### aged 18, or over, and in remunerative work

gross income	
£120 - £177.99	£17.00
£178 - £230.99	£23.35
£231 - £305.99	£38.20
£306 - £381.99	£43.50
£382 and above	£47.75

Others, aged 18 or over and not in work or earning less than £120 or on IS or Income-based JSA and 25 or over or in receipt of Pension Credit or on main phase income related ESA (ie after 13 weeks) £7.40

**Note:** Disregards for rates are covered in Housing Benefit rates

#### DEDUCTIONS

child maintenance (standard)	£6.50
child maintenance (lower)	£3.25
finest (standard / lower)	£5.00 / £3.25

direct payment of fuel debt-5% rate	£3.25
direct payment of housing and rates arrears	£3.25
strikers	£34.50
recovery of ordinary overpayment	£9.75 (max)
recovery if convicted of fraud	£12.80 (max)

#### DISREGARDS

earnings - single	£5.00
earnings - couple	£10.00
earnings - lone parent or in receipt of carer's disability premium	£20.00
Child Support	£20.00
War pensions, War Widows Pension and Widowed Parent Allowance	£10.00
student loan	£10.00
student's covenanted income	£5.00
income from boarders (plus 50% of the balance of the charge)	£20.00
income from sub tenants	£20.00

#### voluntary and charitable payments, DLA and AA ignored in full

#### CAPITAL LIMITS

disregarded	£6,000
resident of care home	£10,000
upper limit	£16,000
child upper limit	£3,000

#### tariff income on capital between disregard and upper limit is £1 for every £250 or part thereof

SURE START MATERNITY PAYMENT	£500
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COLD WEATHER PAYMENT	£25.00
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## INCOME RELATED EMPLOYMENT & SUPPORT ALLOWANCE (ESA)

same as IS, except:

#### PERSONAL ALLOWANCES

both under 18 (after 13 weeks)	£64.30
both under 18 with child (after 13 weeks)	£100.95
one 18 or over, one under 18	£100.95

#### PREMIUMS

##### pensioner

single with work related activity component (WRAC)	£40.20
single with support component	£34.85
single with no component	£65.70
couple with WRAC	£72.00
couple with support component	£66.65
single with no component	£97.50

#### COMPONENTS (from week 14)

work related activity	£25.50
support	£30.85

#### DISREGARDS

**No disregards for War pensions, War Widows Pension and Widowed Parent Allowance**

## HOUSING BENEFIT: RENT

**APPLICABLE AMOUNTS - ie personal allowances, premiums and hospital care allowances**

as for IS except:

#### personal allowance for:

couple - both under 18	£76.90
couple - one under 18	£100.95

single person on main phase ESA	£64.30
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couple, claimant entitled to main phase ESA	£100.95
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#### family premium

lone parent rate	£22.20
baby addition	£10.50

#### pensioner personal allowances

single aged 60-64	£130.00
couple - one or both aged 60-64	£198.45
single aged 65 or over	£150.40
couple - one or both aged 65 or over	£225.50

#### AMENITY DEDUCTIONS

heating	£21.55
hot water	£2.50
lighting	£1.75
cooking	£2.50

#### MEALS DEDUCTIONS

##### full board (3 or more meals a day)

each person aged 16 or over	£22.95
each child under 16	£11.60

##### half board (less than 3 meals a day)

each person aged 16 or over	£15.25
each child under 16	£7.65

##### breakfast only

each person (including children)	£2.80
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#### NON-DEPENDANT DEDUCTIONS

same as IS, except:

**no deductions for non-dependants on IS or JSA (IB) & under 25, on Pension Credit or on main phase ESA (IR)**

#### EARNINGS DISREGARDS

specified employments	£20.00
lone parent - not in receipt of IS where the claimant has a partner	£10.00
single claimant	£5.00
where carer or disability premium awarded	£20.00
additional earnings disregard	£16.85

#### CHILDCARE COSTS

1 child	up to £175.00
2 or more children	up to £300.00

#### OTHER INCOME DISREGARDS

maintenance	£15.00
war pensions	£10.00
Widowed Parent's Allowance	£15.00
student loan	£10.00
student's covenanted income	£5.00
income from boarders (plus 50% of the balance of the charge)	£20.00
income from sub tenants	£20.00

# from 6 April 2009

**Voluntary & charitable payments, DLA and AA ignored in full**

## CAPITAL LIMITS

same as IS, except:

tariff income on capital between disregard and upper limit is £1 for every £500 or part thereof if aged 60 or over

**Pension Credit** no upper limit

## HOUSING BENEFIT: RATES

### PERSONAL ALLOWANCES AND PREMIUMS

as for rent except that personal allowances are not payable for young people aged 16 and 17

### NON-DEPENDANT DEDUCTIONS

aged 18 or over, and in remunerative work

gross income

£382 or more £6.95

£306 - £381.99 £5.80

£178 - £305.99 £4.60

under £178 £2.30

others (for whom deduction made) £2.30

**no deductions for non-dependants on IS or JSA (IB) or Pension Credit or ESA (IR)**

**CAPITAL DISREGARDS, TARIFF INCOME, EARNINGS & OTHER DISREGARDS** as for rent

**Note:** disregards for rates also apply for owner occupiers on IS and JSA (IB). Non dependant deductions for rent are as per mortgage interest deductions.

## PENSION CREDIT

[key figures only]

### STANDARD MINIMUM GUARANTEE

single £130.00

couple £198.45

### ADDITIONAL AMOUNTS

severe disability (per qualifying person) £52.85

carer £29.50

### SAVINGS CREDIT

threshold single £96.00

threshold couple £153.40

maximum single £20.40

maximum couple £27.03

### CAPITAL

disregarded £6,000

disregarded (care homes) £10,000

tariff income £1 for each £500 above disregard

no upper capital limit

### HOUSING COSTS

deductions for non-dependants as for IS

### DISREGARDS

as for IS except:

voluntary & charitable payments, student's loan, student's covenanted income are disregarded in full

### DEDUCTIONS

as for IS except no deductions for child maintenance or reduction for strikers

## NON MEANS-TESTED

### ATTENDANCE ALLOWANCE

higher rate £70.35

lower rate £47.10

### BEREAVEMENT ALLOWANCE

aged 45 - 54 £28.58 to £88.58

standard rate £95.25

**WIDOWED PARENTS ALLOWANCE** £95.25

**BEREAVEMENT PAYMENT** £2,000

**CARER'S ALLOWANCE** £53.10

increase for adult dependant £31.70

**CHILD ADDITION\*** £11.35

Retirement Pension, Widowed Mothers Allowance, Widowed Parents Allowance, Short-Term Incapacity Benefit (higher rate) & Long Term Incapacity Benefit, Carer's Allowance, Severe Disablement Allowance, Higher Rate Industrial Death Benefit, Unemployability Supplement and Short-Term Incapacity Benefit if over pension age.

### CHILD BENEFIT

only or eldest child £20.00

other child(ren) £13.20

lone parent rate has been abolished

### CONTRIBUTORY ESA

week 1 - 13 (assessment phase)

under 25 £50.95

25 or over £64.30

from week 14 (main phase)

with WRAC £89.80

with support component £95.15

### CONTRIBUTORY JSA

under 25 £50.95

25 or over £64.30

### DISABILITY LIVING ALLOWANCE

#### care component

higher £70.35

middle £47.10

lower £18.65

#### mobility component

higher £49.10

lower £18.65

### EARNINGS RULES

Carer's Allowance £95.00

permitted work earnings limit for incapacity for work benefits (higher) £92.00

incapacity for work benefits (lower) £20.00

**GUARDIAN'S ALLOWANCE\*** £14.10

### INDUSTRIAL INJURIES DISABLEMENT PENSION

max lump sum £9,540.00

### 18 or over or under 18 with dependants

100% assessment £143.60

20% assessment £28.72

### under 18

100% assessment £88.05

20% assessment £17.61

reduced earnings allowance (max) £57.44

### INCAPACITY BENEFIT

#### short-term (under pension age)

lower rate £67.75

higher rate £80.15

adult dependant £41.35

#### short-term (over pension age)

lower rate £86.20

higher rate £89.80

adult dependant £51.10

**long-term** £89.80

adult dependant £53.10

### increase of long-term for age

lower rate £6.55

higher rate £15.65

### INVALIDITY ALLOWANCE (transitional)

higher rate £15.65

middle rate £9.10

lower rate £5.35

### MATERNITY ALLOWANCE

standard rate £123.06

MA threshold (for variable rate) £30.00

adult dependant £41.35

### RETIREMENT (Categories A & B), WIDOW'S PENSION (HIGHER) and WIDOWED MOTHER'S ALLOWANCE

single person £95.25

spouse or adult dependant (retirement) £57.05

over 80 age addition (retirement) £0.25

### SEVERE DISABLEMENT ALLOWANCE

basic rate £57.45

adult dependant £31.90

### age-related addition

higher rate £15.65

middle rate £9.10

lower rate £5.35

### STATUTORY ADOPTION PAY, STATUTORY MATERNITY PAY, STATUTORY PATERNITY PAY

lower rate £123.06

earnings threshold £95.00

### STATUTORY SICK PAY

standard rate £79.15

earnings threshold £95.00

\*Reduced for eldest or only child where Child Benefit is paid. Replaced by Child Tax Credit for new claimants.

## TAX CREDITS

### WORKING TAX CREDIT

(per year unless otherwise stated)

**threshold** £6,420

**basic element** £1,890

**30-hour element** £775

**couple and lone parent element** £1,860

**disabled worker element** £2,530

**severe disability element** £1,075

### 50-plus return to work element

16-29 hours £1,300

30 hours or more £1,935

### childcare element

80% of weekly cost for 1 child up to costs of £175

80% of weekly cost for 2 or more children up to costs of £300

**CHILD TAX CREDIT (per year)**

threshold (entitled to CTC but not WTC) £16,040

second threshold £50,000

family element £545

baby addition £545

child element (per child) £2,235

disabled child element (in receipt of DLA) £2,670

severely disabled child element £1,075

(in receipt of DLA higher rate care component)

# RIGHTS IN A TIME OF CRISIS

## Lay-off and short-time working

In the last few months, the employment advisers at Law Centre (NI) have received many queries by people being made redundant, laid off for a period of time or put on short-time. While rights in redundancy cases are fairly clear, there is more uncertainty as to what people can do if asked to stay off work or asked to reduce their working hours. **Caroline Maguire** sets out for advisers the rights of employees<sup>1</sup> in those situations.

### What is lay-off and short-time working?

Lay-off and short-time are defined in Article 182 of the Employment Rights (Northern Ireland) Order 1996 ('the 1996 Order').

Although the term 'lay-off' is often used to mean redundancy, the two concepts are distinct. A redundancy is a dismissal. A lay-off occurs if an employee is not paid in any particular week because there is no work for her/him and s/he is available for work.

An employee is considered to be on short-time if s/he gets less than half a week's pay during any week when s/he is available for work and the reason for the failure to pay is lack of work.

If an employee is paid more than half a week's wages in any particular week then this does not constitute either lay-off or short-time working. However, the employee may still be entitled to a guarantee payment.

### Legal rights if laid-off or put on short-time working

#### ■ Guarantee payment

Any employee who has been continuously employed for one month and is not given work on a day when s/he would normally work ('a workless day') is entitled to a guarantee payment (set out in Article 60 of the 1996 Order). The Department for Employment and Learning booklet, on the DEL website<sup>2</sup>, sets out further details about guarantee payments.

#### ■ Right to claim redundancy payment

Under Article 183 of the 1996 Order, an employee with two or more years' service who has been laid-off or put on short-time may have a right to claim a redundancy payment. Such payment can only be made if the employee has been laid-off or on short-time for:

- four or more consecutive weeks; or
- a series of six or more weeks (of which

not more than three were consecutive) within a period of thirteen weeks.

To claim payment, the employee must notify her/his employer in writing of the intention to claim<sup>3</sup>. The notice must be made within four weeks of the end of the period of lay-off or short-time set out above.

An employer may give a counter-notice contesting such a claim. The counter-notice must be given to the employee in writing within seven days after the employee's original notice. An employee who wishes to contest a counter-notice must make a claim to the industrial tribunal for a redundancy payment.

A claim for redundancy payment under Article 183 can only be made if the employee terminates her/his contract by giving notice (either such notice as required by contract or otherwise one week)<sup>4</sup>. Such notice must be given in the following timeframes:

- if no counter-notice has been given, within three weeks of the date on which any counter-notice could have been given (ie four weeks from the date of the original notice);
- if a counter-notice has been given but then withdrawn, within three weeks from the date on which the notice of withdrawal is given; or
- if a counter-notice has been given and the employee has referred the question of the right to redundancy payment to an industrial tribunal, within three weeks of the industrial tribunal's decision.

The application for redundancy payment should be made in writing to the employer within six months of employment ending. The statutory grievance procedures apply to a claim for a redundancy payment.

An employee cannot claim entitlement to redundancy payment by way of being laid off or put on short-time if s/he is



Photo: AmpH

# THE HUMAN COST OF RECESSION

## A 283% increase in redundancy enquiries

*Citizens Advice has witnessed effects of the recession through its increasing workload of redundancy enquiries. Siobhán Harding reports.*

In the last four months of 2008, there was a 283 per cent increase in the number of redundancy enquiries to Northern Ireland Citizens Advice bureaux compared with the same period in 2007. The number of enquiries has risen from 340 for September to December 2007 to 963 for the same period in 2008. Redundancy enquiries now account for sixteen per cent of all employment issues compared with just six per cent in the same period last year.

In January 2009 alone, the CAB network has seen a further increase in redundancy related matters with 488 redundancy issues presented across the network.

In December 2008, Citizens Advice launched a series of employment rights fact sheets presenting basic information about statutory employment rights, including redundancy. Since these have been on the website, the redundancy fact sheet has been one of the most frequently downloaded, again highlighting the growing demand for information on redundancy. The full series of employment rights fact sheets, including the redundancy fact sheet, can be downloaded from [www.citizensadvice.co.uk/publications](http://www.citizensadvice.co.uk/publications).

Given the current difficult economic climate, more and more people are finding themselves in a redundancy situation. Being made redundant can have very negative effects on a person's self-esteem, relationships, finances and health. It is therefore vital that people who find themselves in a redundancy situation are able to access the complete range of information and advice necessary to deal with it.

### Case studies

A client of **Antrim CAB** came to the bureau for help. He had been employed by the same company for 24 years. He presented for work one day and was told there was no work and advised by his employer to sign on for benefit. He is now in receipt of Jobseeker's Allowance. The Social Security Agency and the Labour Relations Agency told him

that he had actually been made redundant. He contacted a solicitor for information about how to pursue this but was informed that any action they would take would cost £500 'up front'. He wanted to know what he could do.

The CAB adviser looked into his employment situation. It would appear that it is a redundancy situation and he would therefore be entitled to 22 weeks redundancy pay and twelve weeks pay in lieu of notice. His employer had paid him a lying week and his holiday entitlement but nothing more.

The client was advised that he had in effect been dismissed but that the statutory dismissal procedures had not been followed. He could therefore write to his employer requesting his redundancy pay and pursue this through an industrial tribunal if necessary. He asked the bureau to write to his employer on his behalf.

The employer's solicitors then contacted the bureau and offered the client £5,720 in redundancy pay. The employer disputed the twelve weeks notice, stating that although notice was not written the client had been aware that redundancy would take place. The bureau was able to confirm from the client's P60 that the offer of £5,720 was equal to 22 weeks gross pay and informed him that further negotiations could continue with his former employer about his rights to twelve weeks notice pay. He decided that as his former employer lived nearby he did not wish any further aggravation and wished to accept the offer. The bureau advised him to seek the offer in writing and ascertain that it is paid in full within four working weeks from the date of his written acceptance. The client has now received his redundancy payment but without the intervention of a CAB adviser may not have had access to his rightful entitlement.

A client of **Central Belfast CAB** and her partner bought a house together in August 2007 through Northern Rock. The client works for a local bank and her partner was a self-employed bricklayer. The mortgage was for £210,000 with a monthly instalment of £1,167. The mortgage represented five times their joint net salary. The couple had taken out a

/ continued on page 19

dismissed. So for example, if an employee on short-time is dismissed for a reason other than redundancy (eg misconduct) but believes that the real reason for the dismissal is redundancy, s/he will have to bring a claim for unfair dismissal against the employer.<sup>5</sup>

### Contractual changes

An employer can only lawfully lay-off or put an employee on short-time if there is

provision in the employee's contract of employment permitting this or if the employee expressly agrees to the measure. In recent months, there has been an increase in queries from employees who are asked by their employers to agree to lay-off or short-time where there is no provision in the contract of employment for this. In other cases, employers are simply asking their employees to take a wage cut.

What options does an employee have in these circumstances and what are the

possible pit-falls in agreeing to such a measure?

### ■ Imposed variation

Any attempt by an employer to unilaterally impose a fundamental change of contract constitutes a breach of contract. This could give rise to a right to claim constructive dismissal (provided the employee has at least one year's service) and a claim for breach of contract.<sup>6</sup> However, with the current shortage of work, many



Photo: Martin McDonald

employees do not see a constructive dismissal or breach of contract claim as a viable option. Further, the economic pressure faced by many employers could provide them with a defence to a constructive dismissal claim (see below).

Assuming the breach of contract gives rise to a loss of wages, an employee could, alternatively, remain in employment and bring a claim for unlawful deductions from wages. To do this, it is essential that the employee makes clear that s/he is objecting to the variation and working under protest. A written grievance should be raised and, if the matter is not resolved within 28 days, a claim submitted to the industrial tribunal. Any delay in objecting to the variation could result in the employee being deemed to have agreed to it.

#### ■ Variation by contract termination

As an alternative to imposing the change as a variation of contract, an employer may decide to issue employees with new contracts. This requires the employer to terminate the existing contract (with the requisite notice of termination) and issue a new contract<sup>7</sup>. For employees with more than one year's service, this could constitute an unfair dismissal. However, an employer who is under severe financial

pressure and has imposed a change in contract as an alternative to making redundancies or closing down completely could plead some other substantial reason as a potentially fair reason for the dismissal. An employer in such circumstances who has followed any applicable procedures<sup>8</sup> and in all other respects acted reasonably would most likely be able to defeat a claim for unfair dismissal.

#### ■ Variation by agreement

In many cases, an employee may feel that s/he has no option but to agree to some adjustment to pay or working hours as an alternative to losing a job altogether. This does not mean that employees must accept the first option proposed by the employer. A good employer will consult with employees about the proposed changes. Such consultation will help employees to understand why the measure is needed and will give them an opportunity to suggest alternative measures.

Some employees fear that a cut in pay is a prelude to redundancies and may even be an attempt by an employer to reduce the level of redundancy payment due to employees. A permanent change to contractual pay will affect statutory

redundancy payment as any statutory redundancy payment is calculated on the basis of the employee's normal weekly pay under the contract of employment at the date employment ends. Accordingly, if an employee has agreed to a cut in pay even one week before being made redundant, her/his redundancy payment will (most likely) be calculated on the basis of the new lower rate.<sup>9</sup> Given that there is a cap on the maximum amount which can be paid under the statutory redundancy provision (currently £350 gross per week) a pay cut will be an issue for employees earning £350 (gross) or less each week.

Where a cut in pay and/or hours is agreed, the agreement should be set out in writing. It is a legal requirement that certain variations to terms and conditions be set out in writing<sup>10</sup>. It will also ensure that both parties are clear as to the precise terms of the variation. Where possible, employees will wish to ensure that any changes are temporary. If an employer has given assurances that the business difficulties are temporary then s/he should have no difficulty in agreeing a measure for a limited period, say two or three months. The employer might object that s/he cannot guarantee the improvement in business but this can be

catered for by agreeing a review of the variation within a specified timeframe. If, at that time, it appears that the business is still in difficulty, then further negotiation can take place. If an employee agrees to a cut in pay without obtaining clear agreement that it is a temporary measure, there is a real risk that the variation will be deemed permanent. The employee will then be unable to insist on a return to her/his previous salary even if the employer's business improves. Further, as set out above, the employee's entitlement to statutory redundancy payment may be affected.<sup>11</sup>

### The importance of clear communication

Although many employees may feel they have little room for negotiation in the current economic climate, clear communication and written agreements may at least provide some more certainty.

### Notes

- 1 This article examines the rights of employees as opposed to workers generally. Workers do not have a right to a redundancy payment, to a guarantee payment or to claim unfair dismissal.
- 2 See Employment Rights Booklet 14 at [www.delni.gov.uk](http://www.delni.gov.uk). The current maximum amount of a guarantee payment is £21.50 per day with a maximum of five days payable in any three month period.

- 3 An employee is not entitled to a redundancy payment under Article 183 if on the date s/he served the notice to claim redundancy it was reasonably to be expected that the employee (if s/he continued to be employed by the same employer) would, not later than four weeks after that date, enter on a period of uninterrupted employment of not less than thirteen weeks and the employer has given the employee counter-notice of this within seven days of the employee's notice. However, if an employer gives a counter-notice but the employee continues to be laid-off or on short-time for the four weeks following the notice of intention to claim, then the right to claim a redundancy payment remains intact.
- 4 It is possible for an employee to give notice of resignation at the same time as giving notice of intention to claim redundancy (*Walmsley v C & R Ferguson Ltd* [1989] IRLR 112). It may be more prudent, however, for the employee to give notice of intention to claim and to then give notice of resignation once no counter-notice is received. This is because once given, notice cannot be unilaterally withdrawn. So there is a risk (albeit slim) that an employer might accept an employee's resignation despite there being work available.
- 5 Any basic award for unfair dismissal will go towards discharging liability for the redundancy payment.
- 6 A breach of contract claim can only be made if employment is terminated. Uniquely for a claim before the industrial tribunal, a claim of breach of contract

- can give rise to a counter-claim by the employer.
- 7 If more than 20 employees are affected by a change of contract within a 90 day period, the employer is obliged to engage in collective redundancy consultation (see *Transport & General Workers Union v Manchester Airport plc* [2004] UKEAT/0198/04).
- 8 The statutory dismissal and disciplinary procedures will not apply if the employer has offered re-engagement to all employees in the category affected (Regulation 4 of the Employment (NI) Order 2003 (Dispute Resolution) Regulations (NI) 2004).
- 9 If there was clear evidence that the employer acted in bad faith and with the intention of reducing liability to redundancy payment, there may be grounds to challenge the variation. However, in the current economic climate, the fact that a pay cut is very close to a redundancy does not necessarily indicate bad faith.
- 10 Under Article 36 of the 1996 Order, a variation to (among other things) an employee's hours of work or pay must be notified to the employee in writing within one month.
- 11 For the purposes of calculating redundancy pay, it is difficult to say how long a pay cut might be considered temporary and therefore not constitute a new contractual rate. A written agreement which clearly sets out a review period will minimize the risk that an employee is held to have acquiesced to a permanent contract variation.

## THE HUMAN COST OF RECESSION *continued from page 17*

number of insurance policies which included employment protection. When the client's partner was made redundant in November 2008, he was told that as he was self-employed he would not be covered by the insurance. The client cancelled the insurance policy. Following advice from CAB, she has made a complaint about mis-selling of the insurance policy and is seeking to recover the premiums already paid. The property is now in negative equity estimated at around £60,000 and the couple is unable to afford the mortgage payments on the client's wage alone. The client has requested advice from CAB on the implications of self-petitioning for bankruptcy as she is concerned about the possible effect on her job or prospects for promotion.

A client of Central Belfast CAB first came to the bureau in May 2008 after having been made redundant and being out of work for five months. The couple had missed several payments on their secured loans and had a number of other unsecured debts which they had also missed payments on. Their secured loan lender had initiated repossession proceedings. The CAB money adviser

attended the Chancery Hearing in Court with the couple and presented their financial statement. The adviser showed that they could now afford their secured loan instalments plus an amount towards the arrears as the client had started working again. A suspended possession order was granted and repossession proceedings were halted. The couple decided they wished to re-mortgage their home to help with their debts and were referred to an independent financial adviser for advice and assistance with this.

The client returned to the bureau in January 2009, having been made redundant again. The couple had not gone ahead with the re-mortgage as planned because the redundancy happened before the process was completed. They have once again missed payments on their secured loans. They are concerned that their lender will return to the Court and continue with the repossession proceedings. CAB has advised the couple on income maximisation and access to social security benefits. The money adviser has informed their lender that CAB is helping the couple to look at their options.

# MINIMUM WAGE

## Clampdown on low paying employers

*Diane Wilson of Citizens Advice explains new legislation which strengthens enforcement of the national minimum wage.*

**E**mployers who fail to pay their staff the national minimum wage (NMW) are going to face harsher financial penalties. New legislation, which comes into force on 6 April, includes a new method for calculating arrears of wages due to underpaid workers.

It makes provision for an automatic penalty of up to £5,000 for those employers caught not paying the minimum wage. It also gives greater powers to Her Majesty's Revenue & Customs (HMRC), the department which enforces the minimum wage legislation. The new regime has been brought about by the Employment Act 2008 which gained Royal Assent last November.

### Non-compliance

Citizens Advice, which has been operating the NMW Helpline in Northern Ireland since 2001, is urging employers to review their wage systems prior to the changes coming into effect. The vast majority of Northern Ireland employers treat their workers fairly and abide by the legislation. However, a high percentage of investigations undertaken by the HMRC Compliance Unit in Northern Ireland found non-compliance. In 2007-08, the Belfast based team found 68 per cent of employers investigated not to be paying the minimum wage. This resulted in arrears being payable to 566 workers throughout Northern Ireland in that year

alone. Since the original introduction of minimum wage legislation in 1999, around £30 million of arrears have been identified for workers across the UK. Over £2.8million of this has been repaid to 6481 workers in Northern Ireland. It is hoped that these changes to the law will help stop good employers being undercut by dishonest competitors.

### Rules on arrears and penalties

Historically, employers who were found not paying the minimum wage were ordered to repay staff the arrears of wages owed to them at the time. If the arrears were paid accordingly then no further action would be taken. Under the new regulations, workers who are owed arrears for pay reference periods starting on or after 6 April 2009 will be entitled to have their arrears repaid at the current rates if these rates are higher than the rate that applied when the arrears arose.

The aim of this is to ensure that the amount of arrears payable to workers takes account of the length of time that they have been outstanding. In addition, employers will also incur a penalty payable to HMRC set at 50 per cent of the total underpayment figure, with a minimum penalty of £100 and a maximum of £5,000. Employers are legally required to keep sufficient records showing that they are complying with the NMW requirements. It is a criminal offence to fail to do so. HMRC has the power to award arrears of wages to workers dating back up to six years, even after they have left an employer.

### Employers' responsibilities

Research has shown that the minimum wage stops employers paying poverty wages in order to undercut competitors and that very low wages result in high staff turnover, unskilled workers, low productivity and dissatisfied customers. By outlawing low levels of pay, the legislation is designed to help minimise in-work poverty and attract more people into work.

The vast majority of employers who treat their workers fairly will have nothing to fear from these changes. However, sometimes employers believe that they are abiding by the law but are caught out by some of the more technical aspects of the legislation. Deductions for accommodation, uniforms or transport, payment of bonuses and tips and apprenticeship training programmes are common aspects during compliance investigations. Even the simple mistake of employers missing the increase on a worker's sixteenth, eighteenth or twenty second birthday could all lead to penalties under the new scheme.

The NMW increased again on 1 October 2008. Workers aged over 22 years old are now entitled to £5.73 per hour. Workers aged eighteen to 21 should receive £4.77 per hour. Sixteen and seventeen year olds are now entitled to £3.53 per hour.

For more information or advice about the minimum wage legislation, contact the NMW Helpline in confidence on 0845 6500 207 or visit [www.nmwadvice.co.uk](http://www.nmwadvice.co.uk).



Photo: Martin McDonald



## Maladministration in Council land sale

The Ombudsman held an investigation into the disposal by Larne Borough Council (the Council) of surplus Council land in Glenarm and uncovered major flaws in the process. The Ombudsman identified significant evidence of maladministration by the Council and its officials which warranted his severest criticism. As a result of the recommendations arising from the investigation, the Council agreed to apologise to the unsuccessful bidder and consider rerunning the competitive tendering exercise. The Council also agreed to refund costs incurred by the developer in pursuing his complaint.

The complaint from a developer centred on the failure of the Council to follow proper procedure when disposing of property it owned in Glenarm. The developer who was one of the unsuccessful bidders was concerned that the Council had failed to follow proper procedures when conducting the disposal exercise in 2006. The Council had investigated his complaint but rejected any allegation of wrongdoing.

The conduct of this detailed and complex investigation was hampered by the often conflicting evidence surrounding the tendering process. In particular, oral evidence by key officials was contradictory and added to the time taken to investigate the complaint.

- The investigation of this complaint centred on the process used in the disposal of the surplus land owned by the Council. In particular, it uncovered a series of serious errors.
- The advertising of the opportunity to lead the project was wholly inadequate, thereby restricting interest.
- The time allowed for return of Expressions of Interest was insufficient.
- No proper shortlisting of potential developers was conducted.
- Potential developers were allowed access to Councillors on the Tendering Panel.

- Most seriously, the Councillors on the Panel were not given details of the development proposals before meeting to consider the award of the tender.
- Panel members had not received any training on conducting such an exercise.
- Members were left to rely on poorly prepared and misleading Briefing Notes.
- No formal scoring system was used to evaluate tenders against preset and necessary criteria. Only one panel member provided a completed evaluation sheet at the end of the exercise.

The Ombudsman's investigation also uncovered a more concerning aspect of the process. The Report and Recommendation of the Tendering Panel submitted to a Council Meeting for consideration contained significant and misleading information as to the nature of the outcome of the tendering exercise. In particular it presented the conclusions of the panel by use of the term 'preferred development' rather than the advertised role of 'preferred developer'. This in effect had the real potential to narrow the ability of the Council or other stakeholder to protect the public interest by influencing the nature of future development at the Glenarm site.

The Ombudsman's Report established that the Council and the panel members relied heavily on the advice and guidance of the Council's then most senior officer. In essence, this officer influenced or had control over the crucial decisions on how the disposal exercise should be conducted.

The Ombudsman's Report also criticised the Council for its failure to have adequate policies or controls in place to prevent such complete systems failure in the awarding of public contracts. The Ombudsman stressed the importance of having in place robust processes for the awarding of contracts and development opportunities to ensure they are award-

ed on the basis of merit and equity. In so doing, value for money and the public interest could be best served and, importantly, protected. This clearly had not occurred in this case.

On the basis of the Ombudsman's consideration of the process undertaken by the Council and the underlying shortlisting criteria, the Ombudsman did not consider the complainant to have suffered an injustice in not having been selected as the Council's preferred developer. The Ombudsman did, however, consider the complainant had sustained an injustice in seeking to pursue his grievance against the Council with all the attendant cost and frustration involved.

In recognition of the injustice, the Ombudsman recommended that the complainant receive a written apology from the Council's Chief Executive. The Ombudsman also recommended that the Council refund the costs incurred by the complainant in pursuing his complaint after the Council announced its decision. The Council was also invited to revisit its decision in respect of the disposal of the surplus land at Glenarm. The Ombudsman was pleased to record that the Council has adopted his recommendations in full. The Council has also commissioned an independent review of procedures in light of this investigation.

### Voice NI

Visit Advice NI's new discussion forum on:  
[www.voiceni.net](http://www.voiceni.net)

to have your say and share your experiences on welfare benefits, tax credits and policy issues.

# policy update

## Welfare reform bill

The Welfare Reform Bill (the Bill) was introduced to Westminster on 14 January 2009 and completed Committee Stage on 3 March. Committee debates focused on concerns about the increase of sanctions, problems about the availability of child-care and the impact of the proposals on lone parents.

Regular readers of Frontline will have seen the overview by Les Allamby of the proposed changes in the last edition. There are a number of potentially positive aspects to the Bill, including the recognition of carers and giving increased control of direct payments to people with disabilities. Other proposals are more troublesome. These include the increased focus on conditionality and sanctions, the move away from Income Support and the introduction of a requirement for lone parents with children aged under seven years of age to actively seek work as a condition of JSA.

The White Paper, which preceded the Bill, recognised that the Northern Ireland Executive will need to consider the most appropriate arrangements for Northern Ireland. The Law Centre believes Northern Ireland presents particular circumstances with regards to welfare and arrangements to move people into employment and that

there is scope to tailor a Northern Ireland approach to these issues.

Law Centre will be giving evidence to the Committee for Social Development in early April and a copy of our briefing will be available on our website.

## Changes to Housing Benefit

The Law Centre and Housing Rights Service gave evidence to the Social Development Committee in March on the local impact of proposals from the Department of Work and Pensions in GB to cap entitlement to Housing Benefit to five bedroom properties. The proposals are in response to a highly publicised and exceptional case in London where one family was found to be in receipt of £12,000 of Housing Benefit per month. NI has the largest number of people per household in the UK. There is no evidence of high rent for larger properties in Northern Ireland or of larger properties being aimed at the luxury end of the market. The proposals do not reflect local circumstances and Northern Ireland is not referred to at all in the DWP paper.

We asked the Committee to recommend that these changes are not introduced into NI at this time and that an Equality Impact Assessment is carried out as a matter of priority.

## Mental health & capacity law reform

The Department of Health published its proposals for mental health and capacity law reform in January. These envisage moving forward by 2011 through two pieces of legislation: a Capacity Bill and either amendment of the current Mental Health (NI) Order 1986 or a new Mental Health Bill. A statutory framework for meeting the needs of all those who lack decision-making capacity is long overdue and Law Centre's view is that this should be achieved in one Bill, not two.

These proposals will have extensive implications for a wide range of people, including those who have impaired decision-making capacity because of conditions such as Alzheimer's. The Law Centre was pleased therefore to host a conference with the Dementia Services Development Centre (NI) on Consent, Capacity and Human Rights in February. Speakers from across the UK talked about the challenges ahead in dementia care and highlighted the importance of legal reform backed by appropriate service provision.

Also in February, we hosted a seminar, bringing together experts from across the UK, to examine the detail of the Department's proposals for law reform. There was widespread agreement that one bill should be developed to meet the needs of all those with impaired decision-making capacity. The importance of principles of human rights and dignity being enshrined in the legislation and reflected in its details was also highlighted. A number of other matters in the Department's current proposals raise some concern, including community treatment orders and safeguards for those deprived of their liberty. The seminar was timed to coincide with the mid-way point in the consultation period to allow scope for debate and analysis of the proposals. The Law Centre's response will be on our website.

## Mental Health & Learning Disability Alliance

In January, the Alliance concluded its meetings with the health spokespersons of the political parties. A delegation also gave evidence to the Health Committee outlining the Alliance's concerns with the Executive's response to the Bamford Review.

In addition to the proposals discussed above, the Department has consulted on



Speakers at the Consent, Capacity & Human Rights conference. L-R Neil Hunt, Maurice O'Connell, Maura McCallion, Ursula O'Hare and Professor June Andrews.

Photo: Simon Graham



Speakers at the Law Centre's Mental Health and Capacity Law Reform seminar. L-R: Ursula O'Hare, Professor Phil Fennell, Hilary Patrick, Professor Genevra Richardson, Rowena Daw, Patrick McConville and Maura McCallion.

Photo: John Rush

the development of a personality disorder strategy and a psychotherapy services strategy. A sub-group of the Alliance has prepared a response to the personality disorder strategy which broadly supports its proposals. The Department wants to develop dedicated personality disorder services with an underpinning regional training and supervision strategy. It also intends to establish both a Service Users and Carers Network and a Regional Personality Disorders Network Group in Northern Ireland.

A copy of the Alliance response is available from the Policy Unit. The Alliance will also be developing a submission on law reform.

### **Borders & Immigration Bill**

The Government introduced the Borders Citizenship & Immigration Bill into Parliament in January 2009. Unusually, the Bill was introduced in the House of Lords. This is the first of two bills on immigration scheduled for 2009. The Home Office claims that the two bills will simplify immigration legislation and deal with the most pressing immigration matters. It is the latter aspect that this Bill is meant to tackle. It seeks to expand the powers of immigration officials, reform the pathway

to citizenship and end the current framework of the Common Travel Area. The Bill has been widely criticised both for the powers the government is trying to take and the likely effects of these measures. The Law Centre produced a comprehensive briefing on the Bill, highlighting, in particular, the likely impact of the proposed amendments to the Common Travel Area. The Bill cleared committee stage in the House of Lords at the beginning of March prior to moving into the Commons. We will be looking to raise our concerns again as the Bill passes through the Commons. A copy of our briefing is available on our website.

### **Dispute resolution**

In the last edition, we reported that DEL would be consulting on a full review of dispute resolution. This is expected in April. Meanwhile, the Employment and Learning Committee has been taking evidence from members of DEL's Steering Group on dispute resolution<sup>1</sup> and others on the issues. The Law Centre has given evidence to the Committee, recommending retention of the statutory dismissal procedure (which works effectively) and repeal of the grievance procedure, which is widely regarded as cumbersome and

unduly complex. In GB, the grievance procedure was repealed in line with the recommendation of the Gibbons Review<sup>2</sup>, with effect from April 2009.

A number of models of alternative dispute resolution (ADR) may offer better opportunities for resolving disputes in the workplace. We advised the Committee to explore these further. We anticipate that ADR will form a central part of the Department's forthcoming consultation. The complexities facing unrepresented applicants seeking to enforce their employment rights and the barriers in access to justice are widely known. At a time when it is increasingly difficult for workers to source free and directive employment advice for workers, we stressed the need for investment in employment advice services.

**Ursula O'Hare, Assistant Director, Policy Development, Law Centre (NI)**

1. The steering group includes the Labour Relations Agency, Equality Commission for Northern Ireland, Northern Ireland Committee of the Irish Congress of Trade Unions, Confederation of British Industry, Federation of Small Businesses.
2. [www.berr.gov.uk/files/file38516.pdf](http://www.berr.gov.uk/files/file38516.pdf)

# Equality Commission

FOR NORTHERN IRELAND

## Bridging the gap

Earlier this month, some key NGOs and community groups joined over 150 employers from both the private and public sectors at a major networking event organised by the Equality Commission at Belfast Castle. All were there to listen, to participate and to increase their understanding about how to overcome the barriers to employment for people in marginalised groups. **Paul Oakes**, an Employment Development Manager at the Equality Commission, outlines some of the major themes and issues which came under discussion.

**C**entral to the discussion at the 'Bridge the Gap' conference was the understanding that the three cornerstones of building a peaceful society are economic, political and social development.

### Employment and social inclusion

Employment was identified as a key driver of economic and social wellbeing and one of the key routes to social mobility and inclusion. For that reason, fairness and

equality in the workplace are matters of fundamental importance, and they remain so irrespective of short-term economic difficulties. These principles should not be compromised because times are hard. If some groups are denied access to high quality well paid employment, we risk creating a socially excluded underclass, alienated from society.

The conference heard that, though the economy may be in recession, even approaching a possible depression, there are good reasons why employers should continue to focus on their recruitment strategies. As business begins to grow again, the need for recruitment will re-emerge.

Speakers at the event included Bob Collins, Chief Commissioner of the Equality Commission, Sue Ramsey, MLA, chair of the Committee for Employment and Learning at the NI Assembly, Deirdre Stewart of the CBI, Deirdre Timoney of Business in the Community, Paul Donaghy of the Beeches Management Centre, Alan McCully of Translink and Pauline Buchanan from NIC-ICTU. A number of specific themes were addressed through participative workshops designed to help employers identify strategies to tackle inequalities in employment and to understand the barriers to employment for marginalised groups.

### Education for employability

One recurring theme was the need for marginalised groups to have access to education. Underachievement at school by children from marginalised communities is mirrored by their under-representation in employment. It was spelled out in discussion that, unless we can assure access to good quality education for the children of marginalised groups, their chances to access employment will not improve.

This complemented a discussion on the need for society to promote social inclusion for younger people so that they can develop the necessary social skills to access employment. The key role of employability was identified, in giving younger people a sense of belonging to our society and a sense of their own worth.

### The support role of NGOs

Groups such as the Simon Community and Include Youth talked about



Chief Commissioner Bob Collins, Equality Commission for Northern Ireland, second left, with Margaret Doole, Ballymoney Borough Council, left, Erik Cownie, Belfast Interface Project and Jacqui Ritchie, An Múna Tober at the Bridging the Gap event. Photo: Equality Commission

their role in working with vulnerable young people to increase their participation in society. The theme of social inclusion also emerged from the input by Belfast City Council which talked about its role in encouraging greater economic activity, training and employment amongst marginalised groups as a way of building a more shared and more prosperous city.

The Widening Participation Unit within the Beeches Management Centre provided information on a project designed to encourage marginalised groups of people into employment in the health sector, which still experiences problems in getting sufficient numbers of employees for certain posts. As well as meeting the needs of an employer, this project also provides opportunities to those who might otherwise not be able to access employment.

The Belfast Interface Project outlined the particular problems that people living in interface areas face in gaining employment. These include a reluctance by some employers to provide investment into these areas, a perception that the conflict will be played out in their workplaces and often a reluctance based on fear to travel through, or to, an area seen as 'other'. These issues, together with 'cross city' transport difficulties, are addressed in the group's Labour Mobility Project.

The Disability Advisory Service outlined details of the various support mechanisms it provides to help disabled people access work and stay in work. Their service dovetails with that of the Equality Commission, in helping employers to adopt employment policies which encourage disabled people to apply for employment and to stay in employment.

Many employers at the event commented on their surprise at the extent of support that was available from NGOs to assist employers in developing and implementing employability strategies for marginalised groups. They anticipate working with NGOs to explore potential opportunities.

### Areas of concern

Recent changes in the pattern of immigration into Northern Ireland were noted



Alan McCully, HR manager, Translink and Chairman of the Employers' Forum on Disability in Northern Ireland with Brenda Cromie of Disability Action and Paul Oakes, conference organiser, Employment Development Division, Equality Commission.

Photo: Equality Commission

and discussed. Although young single men who came to work here may opt to return as the economy has declined, in recent years more families have arrived, with an increased likelihood of staying for longer periods and becoming more integrated into Northern Ireland society. This enriches and refreshes our society but it also poses challenges for everyone, especially employers, to ensure that people are welcomed and valued and do not experience discrimination or exclusion, in or out of work.

An Munia Tober, an organisation representing the views of the Travelling Community, led a discussion on their work to increase the employment opportunities available to Travellers. As well as the continued discrimination and prejudice exhibited against this community, there was a recognition that the public articulation of that prejudice had a high degree of social acceptability compared with other forms of prejudice. An Munia Tober are keen to see employers implement positive action measures to provide additional training and employment opportunities for Travellers.

Ex-prisoners in Northern Ireland are also more likely than non prisoners to be unemployed and socially disadvantaged.

Participants recognised that prisoners' and ex-prisoners' employment and training needs must be met in order to ensure that they did not become a permanently excluded group. There was a general acknowledgement that many do feel excluded and do face very real discrimination in terms of accessing employment.

### Employment Equality Plan

The Equality Commission's Employment Equality Plan is a practical structure which can help employers pinpoint and address issues of under-representation or isolation in their workforces. It will also help them introduce and maintain positive action plans that work.

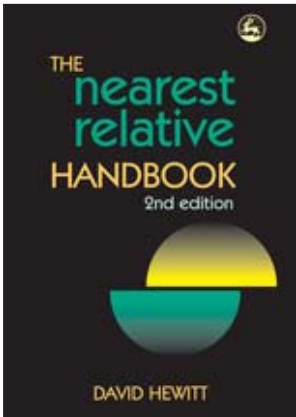
The Commission works closely with employers to offer advice and guidance on equality issues of all sorts. In fact, we have just pulled together in one document the key principles of good employment practice - *A Unified Guide to Promoting Equal Opportunities in Employment*. This is available online at the Commission's website or in hard copy from the Commission.

We can be contacted at 90 890 890 or log on to our website at [www.equalityni.org](http://www.equalityni.org).

# book reviews

## **The Nearest Relative Handbook (Second edition) 2009**

**By David Hewitt. Published by JKP. Price £17.99.**



● The law surrounding the concept of the 'Nearest Relative' (NR) in our Mental Health legislation is complex and sometimes controversial. I would recommend this book as a useful tool to practitioners who work in this area, whether they are from medical, social work, legal or advice based backgrounds.

At the outset, it should be noted that the book is written exclusively with reference to the English and Welsh law. Although our Mental Health (NI) Order 1986 is broadly similar to their Mental Health Act 1983, there are portions of the book which are specific to their legislation, particularly the new provisions introduced by their Mental Health Act 2007. When referring to the book, it would be worthwhile ensuring that you have a copy of our Order and code of practice to hand.

The layout is very easy to follow. The 185 pages are divided into six admirably clear chapters. The first sets out a short history of the NR. The second and third chapters deal with identifying the NR of adults and children respectively. Cessation of the NR status is covered by chapter 4. The role and function of the NR, when a person is admitted into detention or guardianship, is explored in chapter 5. Finally, chapter 6 covers the involvement of the NR in the discharge process. The concise paragraphs are numbered, which is always a bonus, and boxed examples are given to illustrate

some of the more complicated features. Up to date case-law is cited, and useful extracts of judgments quoted.

This 'all you need to know' book may eventually serve an unintended purpose for our jurisdiction. As we move towards a new mental health law in Northern Ireland, the contents can be seen as the future of NR yet to come. Or, where provisions are clearly complex and/or unnecessary, the future we can still avoid.

**Seán Mc Parland, Law Centre (NI)**

## **Community care practice and the law (Fourth edition)**

**By Michael Mandlestam. Published by JKP. Price £45.00.**



● This is an extremely useful if not essential read for all community care practitioners in Northern Ireland. It is important to note that most of the legislation referred to in the book applies to England. However, there are many overlaps with the law here (much of it identical) and the principles and issues explored are very similar and therefore relevant. Mandlestam makes extensive reference to caselaw and Ombudsman's decisions and while many of these will not be law in Northern Ireland they can have persuasive influence in our courts.

There is detailed examination of judicial review which is extremely helpful and also excellent chapters on mental capacity, human rights, disability discrimination, protection and safeguard-

ing of vulnerable adults, to name but a few. Moreover, the author writes in a comprehensive and jargon-free style and the book is very successful in bridging the gap between law and practice.

Overall a very impressive and important guide to Community Care Law and Practice.

**Patricia Southern, Law Centre (NI)**

## **Putting the Learning to Use: inequalities in health and wellbeing**

**Report by Goretti Horgan. Published by University of Ulster and Investing for Health North and West Belfast Community of Interest, 2009.**

● This report evaluates evidence of the link between social inequality and poor health, looking specifically at the problems in North and West Belfast.

The research is initially focused on reviewing the extensive international, national and local research and evidence based findings on poverty, low income (un/employment) and fuel poverty. The focus then changes to take account of, first, the constraints faced by local community groups and organisations in completing or writing up project evaluations and, second, the extensive evidence that the impact of the conflict in NI could not be separated from the question of inequality. Consequently, the report also documents the findings from interviews with staff in a range of health and health-related community programmes and projects, and incorporates a discussion of the impact of the conflict. The result is an impressive and comprehensive assessment of the components of social and economic inequality that contribute to health inequality, ranging from the difficulties with access to affordable, healthy foods to broader problems of child and fuel poverty.

The research findings are consistent with broader UK based research on the links between poverty and ill health, while

also reinforcing the existing research on the specific and additional problems for health and well being arising from the legacy of the conflict in NI. The report also evaluates various government funded and community based initiatives that have been conducted in NI, and identifies which represent good practice and should be extended or continued, and which are too insular in their focus to be effective. Ultimately, the report makes some practice and policy based recommendations, some of which would be relatively easy to implement, with others requiring more fundamental and long-term changes.

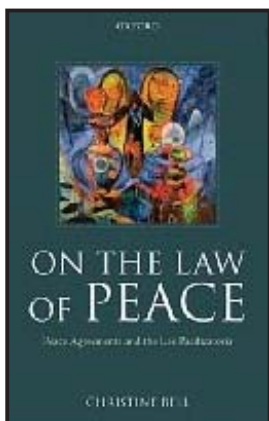
The value of the research is in its specific focus on Northern Ireland, and the report makes clear the case for a different perspective on poverty and ill health here, as compared to other parts of the UK or Ireland. The empirical focus of the work also emphasises the general findings of the literature, but could arguably have been strengthened by interviews with government departments and agencies to establish a more balanced perspective on what works and where priorities lie. However, given the remit of the research and the initial focus on reviewing the literature, this omission is perhaps inevitable. Ultimately, the report makes a persuasive case for the need to reduce general levels of inequality in order to tackle health inequalities, and the particular need for this to be addressed in NI.

**Gráinne McKeever**  
**School of Law, University of Ulster**

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**On the Law of Peace. Peace Agreements and the Lex Pacificatoria**

**By Christine Bell. Published by Oxford. Price £22.50.**



● *'This is a book that grapples with the role of law in ending violent conflict'; this is the opening sentence of Christine Bell's 'On the Law of Peace'. You would how-*

# Library news



## Recent additions to the Law Centre library

### Books and reports

**Baxter, Sue and Carr, Helen.** *Supported housing and the law.* LAG, 2007.

**Carers UK.** *Facts about carers,* January 2009.

**Equality Commission for Northern Ireland.** *Decisions and Settlements Review 2008.*

**Hewitt, David.** *A tendency to laugh and sing: some notes on mental health law.* Northumbria Law Press, 2008.

**Joseph Rowntree Foundation.** *Youth homelessness in the UK, May 2008.*

**Northern Ireland Assembly. Committee for Social Development.** *Report on the Committee for Social Development's consideration of the administration of the Disability Living Allowance (Report 11/08/09R). October 2008.*

**Northern Ireland Housing Executive.** *Northern Ireland housing market: review and perspectives, 2009 -2012.*

**Rubenstein, Michael.** *Discrimination: a review of the relevant caselaw. 23<sup>rd</sup> edition.* Michael Rubenstein Publishing, 2009.

### Journal articles and websites

***Precarious welfare: family and extended family members' 'Right to reside', support and work,*** by Keith Puttock. Adviser 131 January/February 2009.

***What price imprisonment?*** (alternative approaches to prevent reoffending) LAG Annual Lecture 2008. Legal Action, February 2009.

**[www.wellnet-ni.com/publications/2Inequalities\\_in\\_Health\\_Wellbeing.pdf](http://www.wellnet-ni.com/publications/2Inequalities_in_Health_Wellbeing.pdf)**  
 Link to research carried out in North and West Belfast into issues around health and inequality.

**[www.lawcare.org.uk/stressanddepression.htm](http://www.lawcare.org.uk/stressanddepression.htm)** Although aimed at the legal profession, this website gives useful and practical information on how to cope with feelings of stress or depression.

ever be mistaken if you read 'grapple' as a synonym for struggle, or if it conjures up images of someone grasping blindly at an unknown. Instead, this is an authoritative book about a new law of the peacemakers, presented by Bell as *lex pacificatoria*. Bell argues that *lex pacificatoria* both shapes and is shaped by peace agreements and that a legal understanding of peace agreements is key to understanding contemporary peace processes.

Bell brings together human rights law, self determination law, humanitarian law and law relating to peacekeeping as a set of legal and political tools to address conflict. She provides a thorough historical analysis of peace agreements across a myriad of jurisdictions as a context for a contemporary understanding of peace agreements.

The appendices are particularly impressive, providing details of 646 peace agreement documents and would certainly be a useful source for any scholar. Indeed, some reviewers believe that this book is destined to become a classic text, to be read by scholars, students and practitioners in the fields of law and international politics. Yet this is not solely an academic text: Bell weaves in her own personal narrative of peace processes and draws upon a wide range of literary sources including CS Lewis's *The Last Battle*, where the quarrelsome Dwarfs are trapped within the prison of their slovenly minds. Unlike the insular Dwarfs, Bell argues that the law of the peacemaker can play a dynamic, creative and open role towards peace.

**Elizabeth Griffith, Law Centre (NI)**

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# Training at Law Centre (NI)

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Redundancy and Insolvency	22 May 2009
Challenging Overpayment Decisions	3 June 2009
Mental Health Law	10 June 2009

## Derry

Benefits During and After Pregnancy	30 April 2009
Mental Health Law	13 May 2009
Redundancy and Insolvency	4 June 2009

## Contacts

For details of courses run in Belfast, contact Deborah Hill at:  
Law Centre (NI), 124 Donegall Street, Belfast BT1 2GY  
**Telephone:** 028 9024 4401 Fax 028 9023 6340 Textphone 028 9023 9938  
**Email:** [deborah.hill@lawcentreni.org](mailto:deborah.hill@lawcentreni.org)

For courses run by the Western Office, contact Noirin Hyndman at:  
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