

social welfare law quarterly

frontline



Special feature: focus on employment ● Child poverty
Rights of psychiatric patients ● Asylum destitution

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76



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

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editorial

A system fit for the 21st Century?

As one welfare reform bill is about to be passed, another one is coming over the horizon. The current Welfare Reform Bill was debated at the Assembly in mid June 2010. The Law Centre produced a number of amendments to the Bill and circulated them to the Assembly's Social Development Committee. The amendments seek to soften the increased conditionality within the benefit system and to introduce a sunset clause to enable the 'Work for your Benefit' scheme to come back again for Assembly scrutiny once the results of the pilots introduced in England and Wales are known.

The argument that parity should automatically dictate provision has not entirely dictated the passage of this Bill.

Eight areas within the Northern Ireland Bill differ from the Welfare Reform Act passed in Britain in March 2010. Differences include not giving the Child Maintenance and Enforcement Commission powers to confiscate driving licenses and passports for failing to cooperate with the Commission; not extending the right of disabled people to exercise greater control of their lives through managing more of their own care and support; no extension of compulsory birth registration for unmarried couples; and no tying payment of certain benefits to compulsory drug rehabilitation treatment. The last of these has mercifully been shelved in Britain by the new coalition following a critical report by the Social Security Advisory Committee though an expanded version may reappear in the new GB bill.

The importance of distinguishing Northern Irish needs and circumstances when considering welfare reform will continue to grow. The government in Britain has announced the intention to introduce a new Welfare Reform Bill. The Bill is likely to tighten conditionality further and do yet more to move people off Incapacity Benefit and towards work. A version of 'three strikes and you're out' is planned. Refuse a job once and a week's benefit is lost; twice then three months' benefit goes and the third time a claimant loses benefit for three years.

DWP research on the impact of sanctions has shown one in five claimants did not realise they had been sanctioned until after the event*. Moreover, it was claimants with mental health

problems, learning difficulties, literacy problems and those from ethnic minority backgrounds who were most prone to falling foul of sanctions.

In effect, the new coalition's direction of travel is not markedly different from its predecessor save for the desire to apply policies more quickly and harshly.

What distinguishes the new coalition's ministers in Work and Pensions is that several ministers have a genuine interest in social security. Ian Duncan Smith founded and chaired the Centre for Social Justice - a think tank which published *Dynamic Benefits: Towards Welfare that Works* in September 2009. The report recommended introducing a Universal Work Credit and Universal Life Credit Scheme administered by DWP and effectively reducing the benefit system to just two benefits. The Universal Work Credit combines Income Support, Jobseeker's Allowance, Incapacity Benefit and Employment and Support Allowance while Universal Life Credit covers additional expenses and replaces tax credits, Disability Living Allowance and Housing Benefit. The Universal Work Credit has far more generous earnings disregards, which may prove one of the more interesting features of welfare reform under the coalition. Elsewhere, Steve Webb, the new Lib Dems Pensions Minister, previously worked at the Institute for Fiscal Studies and is a benefits and pensions specialist. Meanwhile, David Freud, the merchant banker turned welfare reform analyst under Labour who switched political allegiance to the Conservatives, has emerged as a junior minister.

In his first major speech, Ian Duncan Smith outlined his desire to create a simpler and more transparent welfare system so that work always pays. The speech signalled his personal commitment to social justice and a welfare system that is fit for the 21st Century. No one can argue with the Secretary of State's vision or genuine zeal for reform - the litmus test will be how he proposes to get there. Radical thinking needs to be road-tested against our own particular circumstances. One thing is certain - social security is about to get very interesting.

Les Allamby

*See *SSAC sanctions in the benefit system: evidence review of JSA, IS and IB sanctions*

Tribunal reform gathers pace

Law Centre (NI), the Appeals Service and University of Ulster School of Law held a conference on tribunal reform on 23 June at the Bar Library, Belfast. *'Redressing Users' Disadvantage: Proposals for Tribunal Reform in Northern Ireland'*, a report by Gráinne McKeever and Brian Thompson, commissioned by the Law Centre and funded by Nuffield Foundation, was launched on the day.

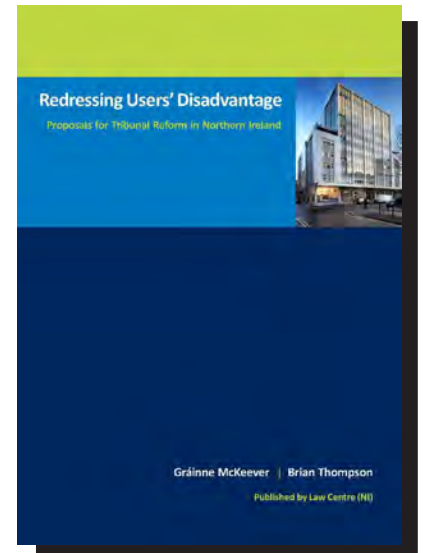
The authors conclude their report with: *'The establishment of the Department of Justice has ended a state of limbo in which progress on tribunal reform was suspended. At this point it therefore makes sense to look around for models but it is to be hoped that research will enable a change from copying others' reforms to exercising self-initiative: an evolutionary process moving from adopting through adapting to innovating.'*

The conference, as well as the research, aimed to ensure that the needs of users are central to this process of change. Speakers included the Lord Chief Justice for Northern Ireland Sir Declan Morgan, Hazel Genn, Professor of Socio-Legal Studies at University College London, Gráinne McKeever of the University of Ulster School of Law, Richard Thomas, Administrative Justice and Tribunals Council Chairperson, Brian Thompson, Law School, University of Liverpool, Tom Frawley, Assembly Ombudsman for Northern Ireland and Northern Ireland Commission for Complaints, and Ursula O'Hare, Assistant Director Policy and Publications at the Law Centre.

The new Justice Minister for Northern Ireland, David Ford MLA, recently announced his intention to undertake a

fundamental review of Public Legal Services. He outlined his Department's vision for services which would help more people solve their legal problems, putting greater emphasis on out of court solutions which would save money and stress. Of particular interest to the voluntary advice sector was his comment that he would like *'a much wider choice in the sources of legal help available to those in need. Instead of simply paying people to go to law, it should also be possible to "bring the law to the people" through advice centres and legal clinics. You only have to look at the excellent work being done by Citizens Advice, Advice NI and the Law Centre to see what I have in mind.'*

Copies of *Redressing Users' Disadvantage: Proposals for Tribunal Reform in NI* are available from the Law Centre's Publications Unit at the cost of £9.95, or you can download a copy from our website www.lawcentreni.org



Refugee group calls for end to detention

Refugee Action Group (RAG) launched its report, **Distant voices, shaken lives**, on Friday 11 June at the Long Gallery, Stormont. The event, coordinated by the Northern Ireland Community of Refugees and Asylum Seekers (NICRAS), marked the beginning of Refugee Week 2010. The RAG report highlights the 'human face' of immigration detention in Northern Ireland and was well received by attendees and media alike.

Copies of the report can be downloaded from: www.refugeeactiongroup.com or from the Law Centre's website.



Photo: Refugee Action Group

Act introduces new statutory homelessness provisions

When implemented, the Housing (Amendment) Act (Northern Ireland) 2010, which received royal assent in April, will introduce a number of changes to existing laws; particularly in the area of homelessness. It aims to strengthen policies and procedures for the prevention of homelessness and to create a new statutory appeals procedure. This article looks at some of the homelessness provisions.

Homelessness strategy

The Act places a duty on the Housing Executive (NIHE) to develop and publish a homelessness strategy every five years which aims to:

- prevent homelessness in Northern Ireland;
- secure that sufficient accommodation is and will be available for people who are or may become homeless;
- secure the satisfactory provision of advice and assistance for people who are or may become homeless; or who have been homeless and need advice and assistance to prevent them becoming homeless again.

This strategy must be developed with the Regional Agency for Public Health and Social Wellbeing and the Regional Health and Social Care Board.

Advice and information

The Act requires NIHE to provide free advice on homelessness, and its prevention, to anyone in Northern Ireland who requires it. The Department for Social Development will provide guidance on what form and content the advice will take. It will hopefully cover topics such as tenants rights, harassment and illegal eviction, possession proceedings, managing debt and accessing accommodation.



Photo: John Holloway

Homelessness County Court Appeals

Currently, an applicant who is unhappy with a NIHE homelessness decision can appeal through NIHE's two stage internal appeal procedure or pursue a judicial review on a point of law.

The Act will establish a new statutory appeals system for reviewing homelessness decisions. Homeless applicants unhappy with NIHE's decision can request that NIHE carries out a review. If they are unhappy with the outcome, they will have a 'right' to appeal to the County Court on a point of law. Unlike with judicial review, the County Court will be able to make an order confirming, quashing or varying the decision.

Under the Act, an applicant will have the right to challenge a homelessness decision if it relates to:

- the applicant's eligibility for assistance;
- a duty owed to the applicant under Article 10 (duties to persons found to be homeless) or 11 (duties to persons found to be threatened with homelessness) of the Housing (NI) Order 1988;
- the suitability of accommodation offered in discharge of NIHE's duties under either of those articles.

The Act covers more than just homelessness. Download a fact file from www.housingrights.org.uk/publications/fact-files.html

**Sharon Geary,
Housing Rights Service**

Tough but fair?

Citizens Advice is concerned about the impact the government's emergency budget will have on low income families through the increase in VAT and planned changes to benefits. The main concerns are:

- freezing the level of Child Benefit for three years - an important benefit for low income families;
- limiting the Sure Start Maternity Grant to the first child only - families with low incomes may face real financial pressures at the birth of subsequent children;
- abolishing the Health in Pregnancy Grant of £190 for all pregnant women;
- lone parents expected to look for work when their youngest child goes to school;
- removal of the baby element of tax credits and reduction of the backdating from three months to one month - the first twelve months of a baby's life are often the most expensive time for families;
- shift in DLA from a self-assessed benefit to claimants going through a medical test.

We welcome the plans to help pensioners and the increase in Child Tax Credit which will provide some additional support for families in poverty.

Siobhán Harding, Citizens Advice

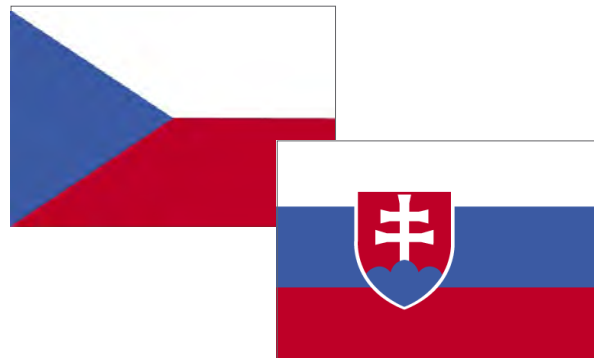
Czech and Slovak people together

The group of people who decided to establish a Czech and Slovak Association in Northern Ireland has been meeting since September 2009. During our meetings, we noticed some shortcomings in the local information system. This is the main reason why Czech and Slovak people usually take a long time to adapt to their new reality. The lack of places where those in need due to language barriers can come along to get help and advice or even to talk to their compatriots turned out to be quite an obstacle.

On 11 November 2009, the Czech and Slovak Association NI was officially set up with its rights, duties and aims. At the beginning of our activity there were only seven of us but the association and its accomplishments have since grown.

The association does not focus on one area only - we think it is important to deliver a variety of information concerning employment, education, discrimination, health and life. We believe that by helping one person we can engage her/ him to cooperate with others and consequently to help solve the problems of the whole society.

The Advice Centre aims to help everybody, regardless of age, sex, religion or financial status, tackle their problems. It was created to inform members of the Czech and Slovak



communities about their rights and duties, assist in problem solving and signpost appropriate institutions and organizations. It provides the organization's communities with vital information on life and employment in Northern Ireland through individual consultations, telephone and online services.

The association can be contacted at 7 North Street, Belfast. Telephone 9032 1232.

Roman Vilkovic

Director, Czech and Slovak Association of N Ireland

Raising standards in private rented housing

On 24 March, the Department for Social Development released the Private Rented Sector Strategy plans to raise standards in the sector. The plans include:

- a mandatory landlord registration scheme, which will see landlords provide details for a Northern Ireland register for the first time;
- a rent deposit scheme to protect deposit agreements between tenants and landlords;
- an education and awareness programme to ensure that landlords and tenants are aware of their rights and responsibilities;
- an enhancement of the current fitness standard for private properties.

The strategy seeks to ensure that the essential foundations are put in place to enable the sector to meet the increased demands it faces in Northern Ireland.

The Department initially consulted on proposals for the sector through its draft strategy: *Building Sound Foundations*. Housing Rights Service was greatly concerned that the mandatory registration of landlords, something we consider to be the integral foundation, was missing from the draft strategy, and we argued strongly against this omission.

We are delighted to see that mandatory registration was included in the final strategy. We look forward to being involved in discussions to inform the detail of the scheme.

In terms of the other new plans for the sector we believe the balance has been struck. Safeguards should now be in place for tenants whose landlords are not fully up to speed with their responsibilities, or who do not take these responsibilities seriously.

Housing Rights Service also welcomes the plan for a tenancy deposit scheme which will protect both landlord and tenants should a dispute arise. Rent levels and affordability in the private rented sector continue to present problems for some of our clients. We have been calling for developments to tackle these for some time. The planned tenancy deposit scheme is a positive step in addressing affordability.

We have long called for an enhancement of the current fitness standard for private rented properties. We did, however, express concerns at the potentially adverse impact of this on some tenants of the draft proposal to link the level of Housing Benefit payable to the condition of the property. We welcome the omission of this policy from the strategy. We fully support the measures to ensure that by 2015 all private rented sector properties should meet the Decent Homes Standard.

Fiona Douglas, Policy Officer, Housing Rights Service

New premises for Craigavon District CAB

Craigavon District CAB has relocated its busy Portadown office to brand new premises in the recently completed state of the art Portadown Health and Care Centre.

The new bureau is beside the main entrance on the ground floor of the centre. The centre delivers a one-stop shop for health care provision and associated support services that include advice and information. This gives the bureau a very visible and high profile presence in the new £16 million flagship building. The centre also houses eight GP practices, x-ray, orthopaedics, a dental unit, rehabilitation facilities, a café and a non-dispensing pharmacy service which will also offer advice and support for medication.

This model of integrated health care and advice provision, based upon partnership working between a local health trust and Citizens Advice, is an extension of the philosophy already successfully seen in Belfast. It demonstrates the real benefits that arise from collaborative working. As part of the move, the bureau has taken the opportunity to restructure the way in which it



Portadown Health and Care Centre. Photo: CAB

handles phone enquiries from clients in Lurgan and Portadown and to develop a new customer service approach to improve overall service delivery.

Siobhán Harding, Citizens Advice

CAB training on the move

During the year, Citizens Advice has been involved in the delivery of specialised training to a variety of organisations. Training is available for external organisations across a wide range of subject areas including social security, money advice, interviewing and negotiating skills and social security advocacy.

Following a request from Sammy Wilson's office, training and advocacy staff within Citizens Advice developed a two day

training programme for Democratic Unionist Party (DUP) members. The training consisted of an overview of the social security benefits system and of social security advocacy.

The training took place in Stormont and was attended by 23 local DUP members. Those who participated work in various roles within the DUP and wished to deepen their knowledge of the social security system to best serve the needs of their constituents.

Participants were very positive, commenting that it was: *'very much in tune with our role in the community'* and an *'excellent day'*.

The Big Lottery has funded the NI Association for Mental Health (NIAMH) to develop a wide ranging Beacon Members Initiative. This gives vital access to pre-vocational, vocational and educational courses for people who are disadvantaged due to their mental health. Citizens Advice is a partner in this project, providing training at two key levels. NIAMH staff are trained in financial capability and in understanding social security benefits along with the impact of work on benefits.

Louisa McKee, Training Manager, said, *'We are enormously proud of this partnership and the huge impact it is having on the lives of those marginalised and disadvantaged due to their experience of mental illness.'*

Further details of the training provided by Citizens Advice are available by contacting Janet Sproule on 028 9023 1120 or via e-mail at sproulej@citizensadvice.co.uk.



DUP Members at CAB training on social security benefits and advocacy. Photo: CAB

New online resource for mortgage debt advice

Housing Rights Service recently launched an online resource which provides mortgage debt and repossession advice to homeowners on their public advice website www.housingadviceNI.org. The new repossession portal was developed in direct response to the growing demand for advice and assistance in dealing with mortgage debt in the wake of the economic downturn, which saw the number of housing debt enquiries to the advice line increase by 300 percent.

The portal was designed with the knowledge that many people who are in housing debt or facing repossession are reluctant to seek help in person or over the phone because they are embarrassed about their situation. It is an ideal medium for addressing such a sensitive topic, especially for those who want to research the topic themselves before the problem becomes severe or before seeking debt advice.

It is widely accepted that early intervention with a debt problem can contribute to a better chance of a positive outcome. The portal aims to help people find answers to their mortgage debt problem at an early stage by offering practical advice, including information on:

- the reasons for mortgage arrears;
- options when facing mortgage debt;
- going to court;



- what happens when repossession is granted; and
- self help tools including: template letters to creditors, budgeting tools, income and expenditure sheet and income converters.

Finally, in recognition that housing debt and repossession can be life-devastating, we have tried to put a human face to the problem by including a number of case studies to show that a range of outcomes are possible with the right help and advice.

Sharon Geary, Housing Rights Service

Charity Commission update

The Charity Commission has announced that the Register of Charities for Northern Ireland will be operational by the end of June. The Revenue has now handed over its list of charities, which are registered for tax purposes, to the Commission.

The Charity Commission intends to make the Revenue's list of recognised charities available on its website. This list is to be known as '*Organisations that have previously been known*

as charities' and is NOT the Register of Charities. The Commission will write to all charities in the near future explaining what they will have to do to register, so there is no need to contact the Commission.

The Charity Commission also anticipates that it will issue the public benefit test guidance this month since charities will have to demonstrate, as part of the registration process, how they meet the public benefit test requirement.

Once the official Register of Charities is up and running, every new charity and those charities currently recognised (with the Revenue) will be required to register with the Charity Commission. The Commission anticipates that it will target the largest charities first and complete the process within 24 months. It will encourage charities to register online but will also permit registrations in hard copy.

See the Charity Commission's website www.dsdni.gov.uk/ccni.htm for full details on the establishment of the Register and the indicative timetable. Visit www.nicva.org to download the updated Charities Act briefing paper.

John McCormick, NICVA



MIGRANT WORKERS

Right to reside and access to housing

Abed Natur, Manager of Legal & Migrant Services at the Law & Migrant Rights Centre¹, explains recent caselaw which strengthens migrants' right to housing assistance.

The Court of Appeal of England and Wales referred two cases to the European Court of Justice (ECJ) for a preliminary ruling on right of residence and access to housing assistance: *Ibrahim C310-/08* (23 February 2010) and *Teixeira C-480/08* (23 February 2010).

The cases concern the application of the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006², which provides that persons who are not subject to immigration control will not be considered habitually resident and thus not eligible for housing assistance, if they are deemed not to have the right to reside in the UK.

This applies to a European national from another member State exercising treaty rights. It also applies to family members who are themselves not citizens of the European Union, have the right to reside as a family member of an EU citizen and/or have retained such a right under the EC Treaty.

The ECJ, in giving an opinion on the two cases, clarified the application of *Baumbast and R C413/99* (17 September 2002), which concerned Article 12 of Regulation No 1612/68. Article 12 provides that children of migrant workers (European Citizens) and former migrant workers have the right to equal treatment in respect of access to education:

'The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory.

Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions.'

In light of this, children of an EU citizen have the right to reside and their parent who is the primary carer of that child also has the right to reside, regardless of her/his nationality. In *Baumbast*, the European Court of Justice, in its interpreta-

tion of Article 12 of Regulation No 1612/68, held that:

'...children of a citizen of the European Union who have installed themselves in a Member State during the exercise by their parent of rights of residence as a migrant worker in that Member State are entitled to reside there in order to attend general educational courses there, pursuant to Article 12 of Regulation No 1612/68. The fact that the parents of the children concerned have meanwhile divorced, the fact that only one parent is a citizen of the Union and that parent has ceased to be a migrant worker in the host Member State and the fact that the children are not themselves citizens of the Union are irrelevant in this regard.' (paragraph 63 of judgment)

The UK, in defending local authorities' decisions to refuse housing assistance in *Ibrahim* and *Teixeira*, mainly contended that Citizenship Directive 2004/38/EC³ constitutes the sole basis for the conditions governing the exercise of the right of residence in the member state of citizens of the Union and members of their families, and consequently no right of residence now can be derived from Article 12 of Regulation No 1612/68.

The ECJ rejected this, stating that the child has an independent right of residence derived from Article 12, which bestows the right to equal access to education and that the parent who is the primary carer can also claim a right of residence on the sole basis of Article 12 without being required to show that he or she has sufficient resources and comprehensive medical insurance so as not to become a burden on the social assistance system.

The ECJ stressed that the European legislature, by enacting the Citizenship Directive 2004/38/EC, intended to simplify and strengthen the right of free movement and residence of all EU citizens and their family members (*Teixeira*, para. 60).

The legal test of destitution

The Citizenship Directive could not be used to limit existing rights of free



Abed Natur. Photo: Law Centre (NI)

movement and residence and to do so would fly in the face of Article 24(1) of the Directive, which provides that all EU citizens residing in the territory of the host Member State are to enjoy equal treatment with the nationals of that State within the scope of the Treaty. EC Community law has direct effect on Member States' domestic law⁴.

It is noteworthy that the Department, in its published guidance⁵, states that Article 12 of Regulation 1612/68 does not apply to a child of an A8 and A2 national during the Accession period⁶.

Footnotes

- 1 Law and Migrant Rights Centre, S.T.E.P, 11 Feeney's Lane, Dungannon, Co. Tyrone BT70 1TX. Tel: 028 8772 9002. Fax: 028 87722943. Email: abed@stepni.org.
- 2 Equivalent regulation in NI is The Allocation of Housing and Homelessness (Eligibility) (NI) Regulations 2006.
- 3 This was transposed by the Immigration (European Economic Area) Regulations 2006 into the UK legal system.
- 4 See Para. 66 of *Metock C-127/08* (25 July 2008).
- 5 Para. 10 DMG Memo Vol 2/21.
- 6 See *Patmalniece v SSWP UKSC 2009/0177*, where the Supreme Court granted permission to appeal to a Latvian pensioner who contended the right to reside requirement is direct and/or indirect discrimination and could not be justified by a legitimate aim not linked to nationality.

FALLING OUTSIDE THE THRESHOLD

Asylum hardship support and the legal test of destitution

Edith Shillue, Asylum Advice and Support Worker, Bryson One Stop Service, explains the intricacies of and problems with the hardship support system for people who are at the end of the asylum process.

Hardship Support, commonly known as Section 4, is of interest to immigration practitioners whose clients have a range of legal, social and personal complications at the end of the asylum process.

The qualifying guidelines are stringent and administration is a combination of enforcement regulation and strict subsistence allowance. The support is administered by the UKBA's business partner, Sodexo.

Application

According to NASS guidelines, applicants cannot apply *only* because they are destitute and have no access to public funds. However, the destitution test remains the most difficult to pass. There are burdensome evidence requirements in the application process and numerous refusals.

A 2008 study by *Asylum Support Appeals Project (ASAP)* exposed regular misapplication of legal tests for destitution. Of 40 rejection letters studied, 28 were found to be without legal foundation and decisions overturned on appeal. According to NASS, clients had 'not established the necessary standard to engage the high threshold of Article 3 of the ECHR' but the UKBA had, in fact, established its own, higher threshold.

In Northern Ireland, recent evidence requests include: bank statements, National Insurance numbers, names and addresses of employers, tenancy addresses and landlord contact details and letters from friends or charitable organizations refusing to provide support. Most applicants are unable to access any of the above, but applications will be delayed or refused without them.

Vulnerable populations

Those who are approved for voluntary return have the fastest award decision; but there are others, often destitute for

months or years, who are extremely vulnerable. These cases are often listed as Appeal Rights Exhausted, but there is no effective mechanism for removal and no new evidence for a Fresh Claim. ASAP found that many who attempted voluntary return were refused support, despite continued attempts to get travel documents. Those who are regularly refused or delayed travel documents by the country of origin must continuously provide evidence that they *cannot* return or be removed.

Advisers can help by keeping record of efforts to return (phone calls, fax records, embassy appointments, inquiry by MPs etc), laying the ground for legal challenges to a discontinuation or refusal of support. Countries with this particularly challenging situation include Somalia, Sudan, Kuwait and Palestine.

Pregnant women and children

Pregnant women only qualify for Section 4 if they are eight weeks or less

away from their due date. This is difficult to verify, as many have had no antenatal care. UKBA considers both mother and child fit for travel to country of origin six weeks after giving birth. Advisers may wish to access medical records of health and fitness for travel in such cases.

Appeals

Section 4 refusal decisions *can* be appealed. 70 per cent of decisions were overturned on appeal in 2008/9. The appeals process is best handled by a solicitor and often relies on awareness of human rights law, the legal tests for destitution and the legal process of asylum claims and further submissions.

Solicitors wishing to further challenge the support decision process may wish to read a February 2010 Tribunal decision by Judge Sebha Haroon Storey (First Tier Tribunal) (AS/10/01/21325).

The Law Centre is publishing an updated version of its multilingual booklet signposting free independent immigration advice. It will be posted on our website this summer, and distributed free to members and key organisations. Look out for it on www.lawcentreni.org. Advance orders are welcome. Contact our Publications Unit on 9024 4401.

The image shows the cover of a multilingual booklet titled 'IMMIGRATION ADVICE'. The cover features a blue background with silhouettes of three people holding hands. The title 'IMMIGRATION ADVICE' is written in large, bold, orange letters at the top. Below the title, there is a list of languages and their corresponding terms for immigration advice, arranged in two columns. The languages include: Talooyinka Socdaalka, Poradenství pro imigranty, Porady dla imigrantów, Recomandări în domeniul imigrării, Patarimai dėl imigracijos, Conseils juridiques sur l'immigration, Консультации по вопросам иммиграции, Padomi par imigrāciju, অডিফান পদার্থ, Bevándorlási tanácsadás, نقل وطن سے متعلق صلاح, 移民諮詢, Conselhos à Imigração, Akonsellamentu Imigrasau nian, 移民顧問, Rady pre prisťahovalcov, Консултации за имигранти, 移民諮詢, and مشاوره و راهنمایی مربوط به مهاجرت.

MENTAL HEALTH RIGHTS

Detention before admission to psychiatric hospital

Nigel Spiers is a practicing Approved Social Worker who represents NIASW on the Mental Health and Learning Disability Alliance. He argues that the lack of clarity about the difference between voluntary and involuntary admission in the assessment and conveyance process needs to be addressed in order to better safeguard the rights of people who are detained for psychiatric treatment.

Deprivation of liberty (DOL) through being detained for assessment or treatment in a psychiatric hospital has attracted much interest from human rights lawyers and activists, users of mental health services and mental health professionals, particularly since the UK wide Mental Health Act 1998 (MHA) mostly became law from 2 October 2000. Judgements from the European Court of Human Rights (ECtHR) before and after the MHA and from UK courts since, as well as the Act itself, have made it unlawful for public bodies to act in a way that is incompatible with the European Convention on Human Rights (ECHR), even though wording of relevant pre MHA legislation may be 'incompatible'. In Northern Ireland, the relevant law is the Mental Health (Northern Ireland) Order 1986 (the Order).

Much less attention has been paid to the other 'detentions' permitted by the

Order, namely *Article 129, Warrant to search and remove patients*, *Article 130, Mentally disordered persons found in public places* and *Article 131, Provisions as to custody, conveyance and detention (to various places)* and the subject of this article, *Article 8* where the effect of an application for assessment is 'to take the patient and convey him to the hospital...'. *Article 131 (1)* describes in detail what this means for the 'patient'. 'Any patient required or authorised or by virtue of this Order to be conveyed to any place or kept in custody or detained in a place of safety ... shall while being so conveyed, kept or detained as the case may be, be deemed to be in legal custody'.

Article 8

For most people who are detained in hospital, DOL begins when they are in effect arrested prior to admission to hospital

under Article 4 and Article 8 of the Order. A person can be taken to psychiatric hospital from a private house, a police station, a general hospital, and public environments including roads or footpaths.

In this context, the person is not contemplating entering hospital for mental health treatment, even though they may have been advised that this is necessary and encouraged to do so. The person may be well known to mental health services or being encountered for the first time and assessed by an Out of Hours General Practitioner and Approved Social Worker (ASW). It is others who contemplate the need for a person to enter psychiatric hospital if necessary without the person's informed consent. These can be relatives, neighbours, police, general hospital staff, GPs and mental health staff from the health and social care trusts. Obviously, grounds for admission must be satisfied and Article 4 of the Order states that a person is 'suffering from mental disorder of a nature or degree which warrants his detention in a hospital for assessment... and failure to so detain him would create a substantial likelihood of serious physical harm to himself or other persons'.

When a person with psychiatric diagnosis is known to mental health services and their GP, determining the above can be relatively straightforward, although a history of severe mental illness and previous involuntary admissions should not overly influence the decision. Where the person is not known or is someone exhibiting very different behaviour, determining what might be wrong and whether



Photo: Martin Murray

detained conveyance and admission to hospital is required can be very challenging for those concerned. Age, gender, ethnicity, religious faith, culture, relationships, life experiences, cognitive ability, physical health and injury, alcohol and drug abuse and recent life events all influence a person's behaviour and are in turn affected by the onset and development of a mental illness or an organic condition.

Safeguards

In the Order a medical practitioner, usually a GP, has to make a medical recommendation but the application to the health and social care trust operating the psychiatric hospital is made either by the nearest relative of the individual or by ASWs. In 1986, almost all applications were made by nearest relatives (NRs). Now, almost all are made by ASWs (replacing welfare officers under previous legislation) who must attempt to consult the NR. If a consulted NR objects then another ASW is required to interview the individual to ascertain if admission is necessary.

This safeguard of separate applications and recommendations has been strengthened by the increased involvement of trained and approved social workers, registered with their employing trust and the Regulation and Quality Improvement Authority. It is likely that the proposed new mental health legislation will not permit NRs to fulfil this legal role. Clearly, any action must be lawful and proportionate and ASWs must consider alternatives to involuntary conveyance and admission.

Human rights and duty of care

For most people who are detained in hospital, being detained for conveyance is their first experience of the power of mental health law. The ECHR permits 'arrest' for reasons of mental illness. Article 5(1)(e) states *'the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants'*; obviously now very outdated language. Articles of the Convention, including *Article 5 Right to liberty and security of person, Article 8 Right to respect for private and family life and Article 9 Freedom of thought, conscience and religion* have to be considered before an application can be made.

The care and treatment of a person in these circumstances starts when the decision is being considered and

continues until safely physically taken into the hospital. Not only must the assessment and conveyance be lawful, but its manner should be proportionate to the behaviour of the potential patient and their assessed risk to themselves and others. Even if considered a risk to others, and including when potential patients have been threatening or violent, the assessment that they are not responsible for their actions obliges all involved to consider the person to be ill and to fulfil a

The assessment may take place in a public place or if in a private home with the consent of the owner or tenant; when not provided and the need is urgent then entry is legally permitted under *Article 129, Warrant to search and remove patients*.

Physical restraint & place of safety

The mode of conveyance to hospital has to be risk assessed. It is usually an ambu-

“ *A concerning development since 2009 has been the occasional use of a Taser device to subdue an individual when acting under the Order.* ”

duty of care. As far as possible, the dignity of the individual should be preserved.

The Order's Code of Practice (COP) states *'The ASW is (...) ultimately responsible for ensuring that the patient is conveyed in lawful and humane manner and should be ready to give the necessary guidance to those asked to assist'*. However, a further part of Article 131 of the Order says *'A constable or any other person required or authorised by or by virtue of this Order to take any person into custody... shall, for the purposes of taking him into custody or detaining him, have all the powers, authorities, protection and privileges which a constable has...'*

Assessment

For an assessment, the individual must be interviewed (or a definite attempt made) in person by the GP and ASW either separately or together. Article 40 of the Order refers to the ASW interviewing *'the patient in a suitable manner'*. At the very least, the GP and ASW have to confer. When the need for assessment occurs unexpectedly, especially out of hours and in a private house, it can be particularly challenging to manage a critical event in the life of a potential patient. This is often compounded by police having to be present to provide support and safety and the ambulance service needing to be available in anticipation of conveyance to hospital. There is added difficulty if the individual is very disturbed, aggressive or fearful. They may not want to engage or may not be able to communicate in English and an interpreter may be required.

lance but, occasionally, a police vehicle, family car or staff transport is used. The amount of physical restraint should be proportionate. Very occasionally, an individual is handcuffed or a fast acting sedative administered. Police officers using their shields to overwhelm an individual, especially if the person has an offensive weapon, is also proportionate.

A concerning development, however, since 2009, has been the occasional use by police officers of a Taser device to subdue an individual when acting under the Order. The PSNI have their own Force Protocols and risk assessments for dealing with mentally disordered persons in various contexts. However, electrocuting a person, often a patient known to mental health services, to convey them to hospital appears against the spirit of the Order. It is certainly at variance with the COP which states *'Although the police may have to exercise their duty to protect persons or property whilst the patient is being conveyed they should where this is not inconsistent with their duty, comply with any directions given by the ASW'*.

Another concern is the risk that we may follow England where reduction in acute beds has led to people being held in police stations as 'place of safety' for lengthy periods and delays in carrying out assessments because it is known beds are not available.

Conclusion

The law and practice of detention for conveyance to hospital certainly needs reviewed in respect of the present Order and of anticipated new mental health legislation.

Workplace disputes

Root and branch reform needed

Daire Murphy, employment legal adviser at Law Centre (NI), looks at DEL's response to the consultation on dispute resolution and identifies where further work needs to be done.

The consultation on how to resolve workplace disputes conducted by the Department for Employment and Learning (DEL) has run its course, and the Department published its policy response, outlining what measures it intends to take as a result. Whilst voluntary sector advice agencies and those who work with employees will welcome many of the proposals, the outcome falls short of the root and branch reform that would be necessary to produce a truly fair system.

The Department must now move to draft legislation and change structures to give effect to its proposals, which means that some time remains before the outcome becomes set in stone. There is hopefully a window of opportunity for the Law Centre and others who represent the interests of workers and employees to give a critical analysis of the proposals and to push for amendments that will

have a positive impact for our clients. We would urge any readers who have issues or concerns arising from this consultation to make their voices heard at this critical stage.

A model for Northern Ireland based consultation

While we have reservations about some of the outcomes of the consultation, DEL certainly deserves praise for the way in which the consultation process was carried out. Too often in the past, a consultation could amount to a token exercise, with the inevitable outcome that the English legislation which had already been consulted on and implemented was imported wholesale. With devolved administration comes the opportunity to achieve a different outcome for Northern Ireland and for people here to make a genuine difference to the outcome.

DEL has taken the opportunity that this new situation presents to hold a proper, open and wide-ranging consultation that can serve as a model for how future consultations in other areas can be carried out. For that alone the Department should be congratulated.

A tailor made response

It is clear from the response that the Department and the Minister are determined to produce a dispute resolution system that is tailor made for Northern Ireland and not simply a copy of what has been done elsewhere.

The most obvious example of this is the decision to retain the statutory dismissal procedure, while repealing the much maligned statutory grievance procedure. The Law Centre and others had argued for the statutory dismissal procedure to be retained, as it offers a much needed guarantee of basic procedural fairness when a drastic sanction such as dismissal is being contemplated.

Employees in Northern Ireland will continue to enjoy the protection of this unequivocal statutory right, while employees in Great Britain will not.

Falling short of a fair and coherent system

A number of other measures proposed by the Department are, in themselves, positive developments, but we remain concerned that they do not necessarily mesh together to produce a strategic reform that will ensure a fair and coherent system.

For instance, much emphasis has been placed on the promotion and use of Alternative Dispute Resolution (ADR) techniques, such as mediation, as early in a developing dispute as possible. This is obviously a positive thing, but the Law



Photo: BIM

Centre is very doubtful whether this initiative will be an effective panacea for all the ills of the Industrial Tribunal system. It is far from certain that employers will see any benefit to themselves in engaging early ADR when the realities of the tribunal system make it so hard for employees to take a case all the way through and win.

It is not practical or desirable to make ADR compulsory, but anyone who has experience of employer failure or refusal to engage with unrepresented claimants in the existing conciliation system would not be too confident that this attitude will suddenly change.

No legal aid

The root cause of many of the problems with the existing system is the fundamental inequality of arms between legally represented employers and the employees who are trying to deal with a very complex, difficult and alien legal system on their own.

The Department has decided to make no change to the rule that legal aid is not available for Industrial Tribunal proceedings and does not propose to fund any increase in representation services, so this imbalance is likely to remain. The Law Centre recognises that the current economic crisis puts severe pressure on the public purse. We believe, however, that some increased assistance targeted at meritorious cases would bear fruit in swifter and better resolution of those cases and consequent savings of resources elsewhere.

The problem with voluntary arbitration

If no assistance is given to claimants to bring claims to Industrial Tribunals, then it becomes imperative that there is another course open for workers to enforce their rights. DEL has proposed that the current Labour Relations Agency (LRA) arbitration scheme be expanded to cover the full range of employment claims, providing a quicker, cheaper and less legalistic alternative to tribunal.

A forum where employees can go and present the case themselves on a more equal footing is what many employee advisers have been crying out for, but the

failure to tie this reform into a coherent system could undermine its potential. The Law Centre had pushed for a system where all appropriate cases would have to go through an informal and speedy hearing to ensure that the Industrial Tribunal did not remain the default option. In DEL's model, the arbitration remains voluntary, and employers may not see any incentives to agree to participate.

Arbitration appeal process

At a recent seminar hosted by the LRA to discuss the Department's response, it became clear that employer representatives had strong reservations about an arbitration system that had no right of appeal. As this could lead to widespread employer refusal to engage with the system, the Law Centre believes that an appeal process (to the Tribunal) needs to be provided. However, any such appeal mechanism needs appropriate checks and balances built in, or employers may simply automatically appeal any ruling that goes against them. In the model we proposed in our consultation response*, we suggested that a tribunal re-hearing a case that had previously been arbitrated should be able to consider the outcome of the arbitration and adjust the level of award (in the way established by the dispute resolution regulations themselves) to penalise unreasonable or misconceived appeals.

Information and advice

The Departmental response also proposes reform of the systems for provision of employment information and advice, with the establishment of an inter-agency advice forum and an 'information gateway' signposting employers and employees to the appropriate agency or resource. The distinction between providing information and giving tailored advice is recognised in the response, and there is a significant degree of consensus that the LRA cannot do the latter without compromising its essential neutrality.

Against this background, it is disappointing that the Department does not intend to provide any additional funding to deliver the advice that it recognises is needed. The rationale is

that increased uptake of ADR will solve many problems, reducing the need for advice. Similarly, the Department hopes that the impact of the ADR will be such that the existing citizen advocacy bodies will be able to provide the representation needed in the cases that remain before the tribunal.

We would be delighted if the new ADR system produced these dramatic results, but remain sceptical. Rather a lot of eggs seem to be placed in this particular (untested) basket. If voluntary ADR and arbitration do not get the uptake that is required then the reform will prove to be cosmetic rather than profound.

Law Centre (NI) will continue to press the Department to make provision for proper advice services for workers. Existing structures are already overwhelmed with the recent surge in need for employment advice, and a proper signposting service will only increase that burden. If you provide signposts to something then surely you should ensure there is something there when the traveller arrives.

At the moment, the Department does intend to provide resources for provision of advice to small employers. This is a laudable aim in itself, but provision of advice to workers, who are much less likely to be able to pay for it, should be a greater priority.

Work to be done

In conclusion, there is much that is positive in the DEL response, including commitments to make tribunal awards more easily enforceable and to explore the establishment of an Employment Appeal Tribunal, but these positives may not deliver the dramatic change to the system that was hoped for and needed. Further work needs to be done to develop a fairer and more accessible model from the Department's template that will deliver results.

* The executive summary of the Law Centre's proposed model for reform can be found on our website at [www.lawcentreni.org/Publications/Policy%20Responses/DisputeResolutionResponse ExecutiveSummary.pdf](http://www.lawcentreni.org/Publications/Policy%20Responses/DisputeResolutionResponse%20ExecutiveSummary.pdf) with a summary flowchart on page 7.

Employment rights

A digest of recent caselaw developments

Anne-Louise Livesey, employment legal adviser at Law Centre (NI), rounds up decisions of interest in the areas of constructive dismissals, holidays, and statutory disciplinary and dismissal procedures.

There have been a number of recent case law developments since the last Frontline employment update. As it would be impossible to detail all the changes, I have selected a number of cases in three key areas which will be frequently encountered by advisers: holidays, statutory disciplinary and dismissal procedures and constructive dismissal.

Constructive dismissal

Buckland v Bournemouth University Higher Education Authority [2010] EWCA Civ 121

On 24 February, the Court of Appeal (COA) decision in the above case resolved two important questions regarding constructive dismissal: what role does the 'range of reasonable responses' play in deciding whether the conduct of the employer has constituted a fundamental breach and whether an employer who has committed a fundamental breach can remedy the breach whilst the employee is considering whether to treat it as a dismissal. The judgement is the authority for the proposition that:

- (1) the 'range of reasonable responses' test plays no part in establishing whether there has been a fundamental breach of contract;
- (2) a repudiatory breach of contract cannot be 'cured' by the employer whilst the employee is considering whether to treat the breach as a dismissal.

The case concerned a claim for constructive dismissal by a university archaeology Professor whose examination markings were, after initial approval by a second marker, subject to a remarking by his

superiors without consultation or his authorisation. These re-markings, which altered a number of the results, were then approved. The claimant protested against the remarking and accompanying criticism of his marking. An enquiry followed which in effect vindicated him but he handed in his resignation shortly after the findings of the report were released and made a claim of unfair constructive dismissal. The tribunal concluded that the remarking without consulting the claimant constituted a fundamental breach of contract and that this was the cause of his resignation. The subsequent inquiry by the university did not remedy the breach and the tribunal found in his favour in the claim for constructive dismissal.

The University appealed to the Employment Appeal Tribunal (EAT) who found that, although the tribunal was entitled to find that the claimant's contract had been fundamentally breached, the subsequent inquiry remedied the breach before he resigned, and therefore there was no constructive dismissal.

Professor Buckland appealed. The COA agreed with the EAT that the 'range of reasonable responses' test should play no part in establishing whether there has been a fundamental breach of contract. However, it rejected the finding by the EAT that the breach had been cured, finding that there was no justification for introducing a doctrine whereby a fundamental breach is curable and if cured takes away the innocent party's option of acceptance.

The Court of Appeal made clear that this will not offer a carte blanche to the wronged party. Sedley LJ stated that the judgement 'does not mean, however, that tribunals of fact cannot take a reasonably

robust approach to affirmation: a wronged party, particularly if it fails to make its position entirely clear at the outset, cannot ordinarily expect to continue with the contract for very long without losing the option of termination, at least where the other party has offered to make suitable amends.'

Holidays

Rawlings v The Direct Garage Door Co Ltd

These are some of the first decisions to be made in light of the European Court of Justice and House of Lords decision in *Stringer & Ors v HMRC* (2009). An Employment Tribunal in Sheffield has held that an employee on long term sick leave who was off for the whole period of the holiday year was entitled to holiday pay. The holiday pay that was not paid over a period of fifteen months by the employer constituted an unlawful deduction from wages.

Shah v First West Yorkshire Ltd

Leeds Employment Tribunal held that the Working Time Regulations 1998 were capable of being interpreted in accordance with the EU Working Time Directive so as to allow the carry over of annual leave, not taken as a result of sickness, to the following holiday year.

Statutory disciplinary and dismissal procedures

Lawless v Print Plus UKEAT [2010] 0333/09

The case concerned a redundancy dismissal where there was a failure to follow the statutory dismissal procedures. The

employment tribunal found that the dismissal had been automatically unfair for failure to follow the statutory procedures and awarded a ten percent uplift in the compensation. The compensation awarded was calculated with a classic Polkey deduction* on the reasoning that even if the procedures had been followed correctly the claimant would have been dismissed in any event the following month.

The claimant appealed to the EAT who held that:

- (1) there is a mandatory ten percent minimum uplift for failure to follow the statutory procedures, the tribunal then has a discretion to award more than ten percent, up to a maximum of 50 percent if it considers that to do so in all the circumstances is just and equitable;
- (2) a tribunal must give reasons for awarding more than ten percent or equally for not doing so if a greater uplift was sought;
- (3) when deciding the question of what percentage of uplift is 'just and equitable', considerations of the tribunal should include:
 - (a) whether the procedures were ignored altogether or applied to some extent;
 - (b) whether the failure to comply with procedures was deliberate or inadvertent;
 - (c) whether there are circumstances which may mitigate the blameworthiness of the failure.

The EAT also found that the tribunal had erred in using the 'balance of probabilities' approach when calculating future loss.

* A Polkey deduction is a reduction in the compensatory award made to an employee in a successful claim to reflect the likelihood that there would have been a fair dismissal in any event if statutory procedures had been applied correctly.

Equal pay case victory for Birmingham workers

In April this year, about 5,000, mainly female, employees of Birmingham City Council won a case for equal pay at an employment tribunal. The ruling related to bonuses paid to refuse collectors until 2007. The tribunal found that the bonuses paid to workers in male dominated manual jobs like road workers, binmen and street sweepers, who were on the same pay grades as cleaners, cooks, care assistants and caretakers, were being paid for simply turning up for work and therefore discriminatory.

Unions said the workers may be owed £30m in back pay, although a figure of up to £600m has also been quoted. Payments will be calculated on an individual basis depending on factors such as length of service and whether people were full-time or part-time workers.

The council had since introduced a revised pay and grading structure in line with the Equal Opportunity Commission equality guidelines, although this has left some employees worse off and led to industrial action.

This month, the council has announced that it is going to appeal, saying its lawyers have advised that, although this will not overturn the judgement, elements of the decision were incorrect and that the council can reduce its financial cost on appeal.

But Unison has asked the council to withdraw the appeal and settle outstanding claims. Paul Savage, of Action4Equality lawyers who represent some of the workers, said: 'Challenging a couple of points is not going to overturn a very strong and forthright ruling.'

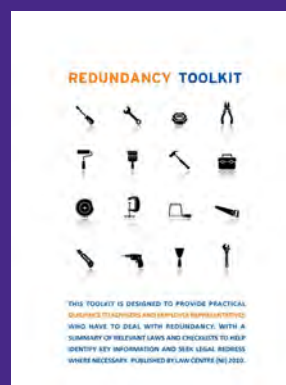
Day of Action for factory workers rights

The Independent Workers Union held a day of action on 9 June in Newtownards to leaflet the public and lobby the stores that stock Mash Direct. The Union says workers at the factory, including many from overseas who work 60+ hours, have been denied standard employment rights.

The union is calling on people to contact their local Tesco, Sainsbury's, Spar, Centra or Asda and demand that they insist Mash Direct uphold the rights of its employees. These should include a written statement of terms and conditions, right to work free from harassment, right to take a formal grievance and right to trade union representation.

Redundancy toolkit

In recent years, Law Centre (NI) has experienced a significant increase in the number of queries received from employees and their representatives in relation to redundancy. In response to this growing need, we are producing a redundancy toolkit for advisers. The toolkit will be placed on our website this summer, and copies will be sent to members who work on this issue.



TACKLING CHILD POVERTY

An analysis of the new Child Poverty Act and its likely impact

In this article, Law Centre (NI) director **Les Allamby** looks at the Child Poverty Act 2010 and what it will mean for tackling child poverty in Northern Ireland.

In 1999, the Labour government announced a commitment to eradicate child poverty by 2020. It was a pledge agreed in a speech endorsed by both Tony Blair and Gordon Brown. The initiative also set out interim targets, including a reduction in child poverty by one quarter by 2004 and one half by 2010. In Northern Ireland, there is also an additional target to eliminate severe child poverty by 2012.

It took four years after the initial announcement to agree a measurement to form the basis for measuring child poverty. In Northern Ireland, in *Measuring Severe Child Poverty in the UK*, Save the Children revealed that 43,000 children, ie 10 per cent of all children, continue to live in severe poverty and around 117,000 children live in poverty. It is clear that the 2010 target is likely to be missed by some distance.

In September 2008 Gordon Brown announced the intention to introduce Child Poverty legislation. The Child Poverty Act 2010 was passed on 26 March 2010.

The Child Poverty Act 2010

The Child Poverty Act is a UK piece of legislation which requires England, Scotland and Northern Ireland to put in place

Child poverty target

The Act starts by setting a date by which a report must be made on whether the 2010 target has been met. The timetable for this report is as soon as practicable but no later than 30 June 2012. Next, the Act provides a duty on the Secretary of State to meet four child poverty targets by 2020. The targets are technical definitions and cover relative low income; combined low incomes and material deprivation; absolute low income; and persistent poverty.

The relative low income target is less than ten per cent of children living in such households by 2020. The low income and material deprivation target is that less than five per cent of children will be covered by this definition. The absolute poverty target is to reduce the proportion of children in this state to less than five per cent. The persistent poverty target has not been defined as it is a new measure and it has no specific 2020 target.

Child poverty strategies

In order to meet these targets, the Secretary of State responsible for tackling child poverty must, by 26 March 2011, publish a strategy ensuring that, as far as possible, children in the UK do not experience socio-economic disadvan-

- the provision of financial support for children and parents;
- the provision of information, advice and assistance to parents and the promotion of parenting skills;
- physical and mental health, education, childcare and social services;
- housing, the built or natural environment and promotion of social inclusion.

In Northern Ireland, OFMDFM must publish its own strategy by 26 March 2011. The strategy must set out the measures that Northern Ireland government departments propose to take to meet the child poverty targets and to ensure as far as possible that children in Northern Ireland do not experience socio-economic disadvantage. The strategy must be periodically reviewed and revised before the Northern Ireland Assembly. The strategy may not refer to matters which are reserved to Westminster (for example, taxation and immigration).

Child Poverty Commission

A UK-wide Child Poverty Commission is to be created to provide advice to the UK government and to the Scottish and Northern Ireland authorities on their child poverty strategies. At least one member of the Child Poverty Commission will be appointed by OFMDFM and the Commission will be set up in 2010. The devolved administrations are required to have regard to the Commission's advice but are not compelled to follow the advice.

The advice from the Child Poverty Commission will, we understand, be published to allow people to see to what extent the advice has been followed.

OFMDFM is also required to consult with children and parents and organisations working with or representing children and/or parents and others as it thinks fit.

strategies that describe the activities to be undertaken to tackle child poverty. The Welsh Assembly has already introduced similar requirements, which is why it is exempt from parts of the Act. There are three key components in the Act for Northern Ireland, namely targets, strategies and a Child Poverty Commission.

tage. The strategy may refer to proposals from Northern Ireland. In particular, the strategy has to address what measures need to be taken in the following areas:

- the promotion and facilitation of employment of parents or the development of the skills of parents;

“The Act offers no guarantee to eradicate child poverty. What it does is guarantee that the issue will continue to occupy the spotlight.”



Photo: Donald Gruener

Analysis

The Child Poverty Act is a significant step forward, yet it offers no guarantees to eradicate child poverty. What it does is guarantee that the issue will continue to occupy the spotlight. The Act was passed with the support of both the Liberal Democrats and the Conservatives while in opposition, albeit with some reservations about the details. The coalition has asked Frank Field, a Labour MP and former director of CPAG, to examine further the current statistical methods of measuring child poverty.

There is a sting in the tale within the Act in that the UK child poverty strategy and the advice given by the Child Poverty Commission to OFMDFM must take into account:

- economic circumstances and, in particular, the likely impact of any measure on the economy; and
- the fiscal circumstances, particularly the likely impact of any measure on taxation, public spending and borrowing.

In addition, the Northern Ireland strategy must have regard to the resources available to Northern Ireland departments and the effect of the implementation of the strategy on those resources.

In effect, it will be difficult to enforce the duty in courts. The Warm Home and Energy Conservation Act 2000 in Britain imposed a duty on the relevant Secretary of State to publish a strategy to ensure that as far as reasonably practicable people do not live in fuel poverty. Friends of the Earth and Help the Aged took a case against the Secretary of State for failing to implement an effective strategy. This challenge was unsuccessful at both the High Court and the Court of Appeal.

A key question will be how the public expenditure cutbacks and policy initiatives impact on the risk factors affecting severe child poverty. In particular, these include children who:

- live in workless households;
- have parents with low educational attainment;
- live in socially rented accommodation;
- live in single parent households;
- are from ethnic minority backgrounds;
- are in large families;
- have young parents;
- have parents with no savings/assets;
- have one or more parent who is disabled.

In effect, the emergency budget will be the first test of whether child poverty will be sacrificed at the altar of the budget deficit.

Moreover, in Northern Ireland the provision of affordable, accessible, good quality childcare remains far behind the rest of the UK. Unlike elsewhere, in Northern Ireland there is no lead Department responsible for childcare, no statutory duty on public authorities to ensure adequate childcare provision and no strategy for childcare agreed by the Northern Ireland Executive.

The impact this factor has in placing barriers towards finding work for lone parents or working two parent households should not be underestimated. Any child poverty strategy needs to make progress in this area if the route to work is to be a meaningful route out of poverty.

Conclusion

The Child Poverty Act is an important part of the campaign to tackle inequality and child poverty as it will hold the Westminster government and Northern Ireland Executive to account for what it is doing to tackle child poverty effectively. Nonetheless, it is only one part of any campaign as ending child poverty needs both action and legislation.

policy update

With a new government at Westminster, **Ursula O'Hare** charts the changes ahead in Law Centre areas of work.

The recent political changes in Belfast and Westminster present some opportunities as well as challenges. The newly established Assembly Justice Committee which held its first session in April, for example, has already been briefed by officials on tribunal reform.

At Westminster, the Coalition Agreement and Programme for Government has committed to further welfare reform; a cap on immigration numbers from non-EU states; an investigation into the creation of a 'British Bill of Rights' and yet another review of long term care. Many of these Westminster policy initiatives will have significant local ramifications.

Welfare reform

The Coalition Agreement and Programme for Government promises to end all existing welfare to work programmes in favour of a single programme. JSA claimants under 25 will be referred to welfare to work programmes after a maximum of six months. Others will be referred immediately. Benefits for those

considered able to work will be conditional upon a willingness to work.

As always, the devil will be in the detail. It is still unclear what the government intends by its commitment to 'simplify the benefit system in order to improve incentives to work'.

The new Minister of Welfare Reform at the Department of Work and Pensions, David Freud, authored the Freud Report, *Reducing Dependency, Increasing Opportunity: Options for the Future of Welfare to Work*. A number of his recommendations were included in the 2008 White Paper on Welfare Reform (*Raising Expectations and Increasing Support: Reforming Welfare for the Future*) and in the Welfare Reform Act 2009. The choice of David Freud as Minister of Welfare Reform gives a strong clue as to the likely direction of future travel on welfare reform.

The Welfare Reform (NI) Order 2010 (the local variant of the 2009 GB Act) was considered by the Social Development Committee last month. There are some important differences from the GB Act that are worth highlighting.

- The GB Act gives powers to make those addicted to specific drugs or alcohol accept treatment in order to continue to qualify for benefit. This power is not being implemented here, or now in Britain, though there is an expectation that this may reappear in the new revised GB Welfare Reform Bill.

- A pilot scheme to allow Pension Credit to be awarded without having to make a claim is now being put together in Britain with a view to seeing how that might improve take-up. There is no plan for such pilots in Northern Ireland.

- The 'Disabled People: Right to Control Provision of Services' section in the GB Act provides that a person with disabilities who receives social services support as part of a package of care can be awarded the equivalent financial sum to buy in the care. The aim is to

give more flexibility and control to individual users. Powers to build on that approach are not being implemented here.

- Powers for the Child Maintenance and Enforcement Commission (CMEC) to disqualify parents who fail to pay child maintenance from holding a driving licence or a passport for up to two years have not been applied in the Northern Ireland Order. Instead, the CMEC has to go to the courts to exercise such powers here.

The Law Centre tabled a number of amendments to the Order to Committee members. These included:

- introducing a general principle that the well-being of children should be taken into account in decision-making;
- powers to relieve lone parents of the obligation to seek work as a condition of getting benefit where they have care responsibilities for a child under sixteen in receipt of DLA; and
- ensuring that sanctions will not be applied in such a way as to have a negative impact for children or pregnant women.

The Committee's report on the 2010 Order was published on 10 June².

Tribunal reform

In May, the Justice Committee heard from officials about plans for tribunal reform in Northern Ireland. Over 20,000 tribunal cases are heard every year on a range of issues including employment disputes, entitlement to benefit, mental health detention, planning appeals, immigration and special education needs. Although tribunals were intended to be a fast, cheap and accessible way of resolving disputes, the reality is that claimants can face many hurdles in bringing a claim before a tribunal. The devolution of justice powers creates the opportunity to deliver overdue reform that will best meet the needs of users.

In June, we launched the findings of the Nuffield Foundation funded research project into tribunal reform in Northern Ireland. The research findings were presented at a major conference in Belfast in June. See news item page 5.



Ursula O'Hare. Photo: Kevin Cooper

policy update

Employment: dispute resolution

The outcome of the DEL consultation on dispute resolution is discussed in pages 14-15 of this edition. The Department's policy proposals have been crystallised in the Employment (No.2) Bill which was introduced in the Assembly on 7 June and which was debated on 21 June.

Immigration

The headlines on immigration in the new coalition government's Programme for Government are the commitment to an annual cap on immigration from non-EU states and to ending the detention of children for immigration purposes.

The detention of children for immigration purposes has been widely criticised by a number of agencies, including the Chief Inspector of Prisons, Anne Owers.

The Immigration Minister, Damien Green, intends to consult on plans to end this practice, including at Dungavel Detention Centre in Scotland where children removed from Northern Ireland are customarily held.

The Law Centre is attending the Minister's consultation event in Glasgow.

Mental health and community care

The pending equality impact assessment on the proposals for new mental capacity and mental health law will give the opportunity to consider how much of the policy jigsaw of the single bill is now clear.

The Department's proposals for a single bill have generated considerable interest internationally and feature in a special edition of the *Journal of Mental Health Law*³. The Law Centre continues to chair the Department's Reference Group on the law reform proposals and to participate in the Department's Steering Group.

Meanwhile, amendments to the current Mental Health (NI) Order 1986 to enshrine the right of detained persons to displace the statutory nearest relative with their person of choice are anticipated to come before the Assembly in the autumn.

As work progresses on the single bill, the pace of change for 'delayed discharge



Panel speakers at the North South Immigration Forum Fidelma O'Hagan, Ursula O'Hare and Les Allamby of Law Centre (NI), Norah Gibbons, Barnardos (RoI), Denise McHugh, Health Services Executive (RoI), Hilary Harrison, DHSSPS, Liz Griffiths, Law Centre (NI).

Photo: Law Centre (NI)

patients' from long stay hospitals is creakingly slow. The recent Public Accounts Committee Report (May 2010) criticised the Department for failing to meet its 2008 targets for re-settling patients in the community. The Law Centre is examining a number of cases of delayed discharge.

While it is not quite back to the drawing board in England and Wales on the issue of long term care, the Coalition Programme for Government promises a commission on long term care to report on a range of ideas within a year. This follows the extensive consultation on the Labour Government's proposals for a National Care Service.

The outcomes of that review will, of course, have local repercussions. It is time for local policy makers and politicians to plan for the long term care needs of an increasingly ageing society. By 2041, there will be three times more people aged 75+ living on the island of Ireland and five times the number of people aged 85+ (CARDI, *Illustrating Ageing in Ireland*, 2010).

The current review of the Ageing in an Inclusive Society Strategy by OFMDFM and the Older People's Advisory Group will need to reflect the changing needs of a larger community of older adults.

Older People's Commissioner Bill

OFMDFM Committee this month considered the draft Bill to establish an Older People's Commissioner. The Law Centre has worked closely with the age sector to ensure the Bill gives the Commissioner sufficient powers to be a robust champion for older people. This involves the Commissioner having powers to investigate, challenge and take legal action on behalf of older people.

Older people carry into later years all the advantages and disadvantages of their earlier life. For some, this means an enduring cycle of disadvantage. The new office of the Older People's Commissioner will have a critical role to play in giving voice to this disadvantage but also in encouraging fresh and positive thinking about ageing in our society.

Footnotes

1. www.cabinetoffice.gov.uk/media/409088/pfg.coalition.pdf
2. www.niassembly.gov.uk/social/2007mandate/reports/report_61_09_10R.htm
3. www.northumbria.ac.uk/static/5007/JMHL_special_edition

Equality Commission

FOR NORTHERN IRELAND

Migrant workers and recruitment agencies

The Equality Commission for Northern Ireland has published a report of a formal investigation into the role of recruitment agencies and businesses in the employment of migrant workers in Northern Ireland. **Eileen Lavery**, Head of Strategic Enforcement at the Commission, discusses the conclusions and recommendations which arise from the investigation findings.

Workers from outside Northern Ireland are now a vital part of the economy here. But how do they find employment here? And to what extent are their rights affected by the systems used to recruit them? The Formal Investigation report, *The Role of the Recruitment Sector in the Employment of Migrant Workers*, examines whether the involvement of recruitment agencies and businesses in the employment of newly arrived jobseekers creates any barriers to equality of opportunity for them.

One of the key challenges for Northern Ireland is to ensure that those who come to live and work here are treated with dignity and fairness, that their contributions to the economy and to wider society are recognised and that they are accorded the same respect and value that people from Northern Ireland should expect to have when they go abroad to live and work.

Findings

The evidence is that more than half of migrant workers used recruitment agencies to find work. That sector is not the only route into employment for migrant workers, but it is a popular way into work

for many. For some, it develops into an employment relationship which may last for some years. Our investigation confirmed that it plays a significant role with over half the participants having used it to find work.

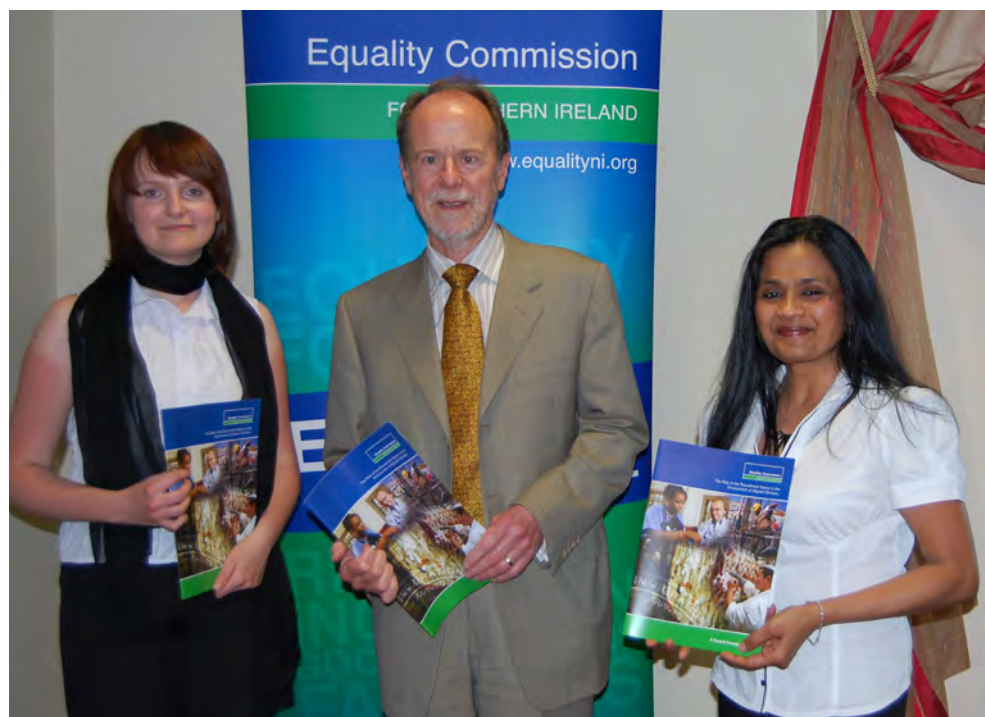
Although roughly one third of participants have a professional qualification and the vast majority have further education qualifications, the evidence is that they find mainly low paid, low skilled temporary work with irregular hours and some workers remain agency workers for a number of years.

There is also evidence that, for many migrant workers, language is a barrier to their being able to make full use of their skills and qualifications and gain permanent employment. Language is also a barrier to awareness of employment rights and contractual documents. Workers using overseas agencies are particularly vulnerable.

In the investigation, we found that considerable good practice exists in the recruitment sector and among employers. The report highlights a number of key examples of this, including the provision of help with services such as banking, transport and accommodation.

Recommendations

A number of areas are identified where further change is recommended, including greater consistency of approach in helping migrant workers to understand their contract terms and their rights. Difficulties in communication between migrant workers and the agencies or employers are identified as probably the single biggest barrier to equality of opportunity. The report indicates areas where both recruitment agencies and employers can do more to help migrant workers overcome this.



At the launch of the migrant workers formal investigation, Julia Novak, speaker and Polish translator; Bob Collins, Chief Commissioner, Equality Commission, and Ivy Ridge, Co-ordinator, Ballymena Inter-Ethnic Forum. Photo: Equality Commission

We have made a number of recommendations to address language barriers, including that documentation which legally must be made available to employees should be in a language understood by the work seeker or employee and that consideration be given to the development of model contracts for use by all agencies. Easier access to qualification equivalency data also needs to be addressed, so that there is equal opportunity for migrant workers who wish to use their qualifications, skills and experience to obtain suitable work.

We have also stressed that migrant workers need to be more aware of the rights they have as agency workers - government bodies and community organisations should work together to ensure that such information is readily available to them. Recruitment agencies also should maintain a focus on their duties under the law. In particular, recruitment agency staff should receive training in their obligations under anti-discrimination legislation.

The investigation

During the investigation, the Commission gathered information from 27 focus groups attended by almost 200 migrant workers of seventeen different nationalities. We also consulted with ten employers and fourteen recruitment agencies as well as trade unions, business organisations, government departments and community organisations.

The Equality Commission began this formal investigation in September 2008 under the provisions of the Race Relations (NI) Order, and the report of its conclusions and recommendations was launched at an event in Lisburn Civic Centre on 17 June 2010.

The report acknowledges the work undertaken in recent years by a range of partner organisations including the Department for Employment and Learning, the Gangmasters Licensing Authority, the Recruitment Employment Confederation and Gems NI.

It also points to new legislation at European level, the Temporary Agency Workers Directive, which will address the issue of equalisation of treatment of agency workers with those of permanent employees. This, of course, will be of benefit to all agency workers, not just migrant workers.

The report will be available in English, Lithuanian, Polish, Portuguese, and Slovakian. If you would like a copy please get in touch with Rosalynd Harkness, Investigations Officer, tel. 028 90500574 or email: rharkness@equalityni.org.

news

Public Assemblies Bill consultation

Published in April, the Draft Public Assemblies, Parades and Protests Bill, is OFMDFM's response to the need to deal with contentious parades. However, it covers all public meetings, demonstrations and protests involving trade unions, political activists, community organisations and campaign groups.

Under the new law, all gatherings involving 50 or more people in a public space would require 37 days prior notification to the PSNI. Organisers would have to specify which groups will be taking part. Failure to do so could result in jail terms of up to six months for the organisers and any participants.

An example given in the Explanatory Guide states that *'if a group wanted to protest against the closure of a local sports facility... the group's activity would fall under the definition of a public meeting and would therefore be subject to the notification procedures for a public assembly.'*

'Public space' is defined in the proposals as *'any road or footway or any other place, apart from a building, to which the public or a section of the public has access'*.

Protest meetings such as trade union protests outside workplaces, rallies against the wars in Iraq and Afghanistan or solidarity vigils held to support the victims of racist attacks would all fall under the remit of the new law.

The Northern Ireland Human Rights Commission and a number of other groups have expressed serious concerns at the scope of the proposed law.

To respond to the consultation, email: publicassemblies.consultation@ofmdfmi.gov.uk or post to the Secretariat Working Group on Parades OFMDFM Room GD51 Stormont Castle Belfast BT4 3SR. The consultation closes at 1 pm on 14 July.

Northern Ireland
Ombudsman



Building control fees charge

The complainant in this case claimed to have sustained injustice as a result of maladministration by Belfast City Council (the Council) in relation to a Building Control invoice, dated 2008, issued in relation to building work carried out during 2006 at his business premises. He complained to the Ombudsman that neither he nor his agent was informed, at the time of the inspection, of the fees involved.

The Ombudsman's enquiries established that Building Control fees are payable by statute with the fee being a set amount depending on the category of work. There is no provision in the Fees Order to 'write off' all or part of a fee that is due. The legislation does allow for certain exemptions to the fees (eg facilities for people with disabilities) which in this case did not apply.

Having examined the legislation and all other documentation in this case, the Ombudsman found no evidence of maladministration in the decision to issue the complainant with a Building Control invoice. The Ombudsman considered it to be clear that the Council acted in accordance with the legislation relating to this matter, in that it had a statutory duty to collect fees for services provided, and that it was therefore required to seek payment from the complainant. The Ombudsman concluded that the Council's letter to the complainant, apologising for the late issue of the invoice, and an offer to arrange for payment by instalments, to be a reasonable recognition of any potential injustice caused.

DLA and the ability to drive

Thomas Henry, intern at Law Centre (NI), analyses recent decisions which cast a light on the proper use of external tests in DLA decisions.

This article looks at recent decisions which affect claims for mobility and care components of Disability Living Allowance (DLA). In both cases, *CDLA/1572/2005* and *R 1/07 (DLA)*, the ability to drive was the deciding factor in the Social Security Commissioners' decisions. These cases demonstrate the importance of relevance and transparency.

The cooking test and the ability to drive

In *CDLA/1572/2005*, the claimant made a claim for DLA on the grounds of sciatica back and leg pain. Medical examinations could not identify a disability that was sufficient to qualify for DLA; consequently the decision-maker refused his claim.

The claimant exercised his right to appeal and asked the appeal tribunal to award DLA of high rate mobility and low

rate care. The tribunal found that his only limitation in walking was speed, which was half the normal walking speed. On the 'cooking a main meal' test for low rate care, the claimant referred to lack of co-ordination. He attributed this to his medication. The tribunal dismissed his appeal stating that, as the claimant could drive, co-ordination was not a problem.

The claimant appealed to the Commissioner.

Commissioner Jacobs found that it was within the tribunal's remit to take into account any relevant evidence and that the tribunal's use of the driving test did refute the claimant's account of lack of co-ordination.

Walking on unfamiliar routes and the ability to drive

In *R 1/07 (DLA)*, Commissioner Brown concluded that the ability to plan a journey and drive a car were relevant to the

ability to walk on unfamiliar routes without guidance or supervision (section 73(1)(d), Social Security Contributions and Benefits Act 1992).

In this case, the claimant had an award for high rate mobility and middle rate care of DLA. By supersession, the award was reduced to high rate mobility and low rate care. An appeal to a tribunal removed the award completely.

The case was appealed to the Commissioner. The Department stated that, as the claimant could drive a car, it demonstrated clear headedness and competency not to require supervision or guidance.

The claimant's defence relied on *CDLA/2462/2003*, in which the 'tribunal did not make any findings on whether or not the routes were familiar to the claimant'. Commissioner Brown considered the Department's decision correct as: 'When driving no matter whether a route is familiar or not there can be varying traffic conditions, emergency situations, pedestrians etc'.

Using external tests

Indeed, both appeal tribunals and Commissioners have relied upon external 'tests' to facilitate them in reaching decisions concerning DLA appeals. Evidence of this can be seen in the seminal case of *CDLA/216/2009*.

In this case, a woman was claiming high rate mobility, as she was virtually unable to walk under section 73(1)(a) of the Social Security Contributions and Benefits Act 1992. However, she had to fulfil the conditions in regulation 12(1)(a)(ii) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999, which said that in certain cases, where prostheses or artificial aids are



Photo: John Gomez

used, conditions under regulation 12(1)(a)(ii) are not taken to be fulfilled.

She used a shopping trolley for support when out walking which led to the question as to whether it could be considered an artificial aid. Regulation 12(4) states:

'a person is to be taken not to satisfy the conditions mentioned in section 73(1)(a) if he:

- a) *is not unable or virtually unable to walk with a prosthesis or artificial aid which he habitually wears or uses, or*
- b) *would not be unable or virtually unable to walk if he wore or used a prosthesis or an artificial aid which is suitable in his case.'*

Judge Lane said that there was a contrast between 12(4)(a) and 12(4)(b). However, he added: *'An aid that is used habitually is likely to have proven suitable for the claimant whereas an unsuitable aid is not likely to be used habitually.'*

The appellant's unorthodox choice of walking aid enabled her to walk outdoors satisfactorily and so she was not virtually unable to walk, therefore her appeal was not allowed. Judge Lane said *'if the appellant could walk satisfactorily with a shopping trolley, she would be able to walk satisfactorily with a suitable artificial aid such as a walking stick or wheeled walking*

decision-makers to ensure that there is a 'true comparison' when applying these 'tests'; otherwise it will lead to inferences being made that will inevitably disqualify genuine appeals on genuine claims.

The 'cooking test' for low rate care is a notional test, a theoretical one, 'a thought-experiment, to calibrate the severity of the disability' (Moyna v Secretary of State, 2003). The test is set out in section 72(1)(a)(ii) of the Social Security Contributions and Benefits Act 1992, which confers entitlement to lowest rate care component on a person who is so severely disabled physically or mentally that s/he cannot prepare a cooked main meal for her/himself if s/he has the ingredients.

This 'cooking test' has been defined and re-defined over the years until the House of Lords, in Moyna v Secretary of State (**R(DLA) 7/03**), decided that *'a broad view of the matter'* needed to be taken when deciding on each case.



Photo: John Gomez

The Commissioners do not always decide in favour of the Department in this respect. In **C14/06-07 (DLA)**, the claimant argued that her ability to drive was irrelevant to her ability to cook. Deputy Commissioner Powell found that the appeal tribunal did not sufficiently explain why it considered the claimant's ability to drive was evidence that she could cook.

This is a case where the tribunal went wrong because it did not ensure that there was a true comparison.

While Commissioners need to refer to, and rely upon, the ability to drive, it is important that they give adequate reasons for their decision so that there is no ambiguity or confusion. True comparisons between the ability to drive and the relevant test allow for transparent decision making. Simply assuming that because a person can drive s/he can cook is an unfair assessment and may lead to decisions being found erroneous in law.

Conclusion

The statement by Commissioner Jacobs (**CDLA/1572/2005**), in which he says that *'The key is obviously to ensure that the function involved in driving and in cooking is truly the same'*, could be viewed as the defining measure to be used when relying on extraneous tests in DLA appeals.

“ True comparisons between the ability to drive and the relevant test allow for transparent decision making. Simply assuming that because a person can drive s/he can cook is an unfair assessment and may lead to decisions being found erroneous in law. ”

frame.' Accordingly, she would not be virtually unable to walk under 12(4)(b).

The importance of true comparisons

This is again an example whereby decision-makers have looked outside the box when reaching their decisions. They are not disingenuous in doing so, just thorough, as in the **CDLA/216/2009** case, where the comparison between the shopping trolley and orthodox walking aids demonstrated some transparency. Where this decision leads in future remains to be seen but it will be up to the

When using the ability to drive as evidence supporting the ability to cook, Commissioner Jacobs (**CDLA/1572/2005**) stated:

'The key is obviously to ensure that the function involved in driving and in cooking is truly the same. If it is, the evidence is relevant and admissible. It is my experience that, if tribunals go wrong in using evidence in this way, they do so by drawing inferences rather than questioning the claimant about both activities (cooking and driving, for example) to ensure that there is a true comparison.'

book reviews

Employment Tribunal Claims: Tactics and Precedents

By Naomi Cunningham. Published by Legal Action Group. Price £35.00.



● This is the third edition of the Legal Action Group's practical guide to Employment Tribunal Claims by Naomi Cunningham and Michael Reed.

Whilst readers need to be mindful that the book reflects the employment law position in the English jurisdiction, it is an effective resource, ideal for the newly qualified practitioner, those new to the field of employment tribunal claims, whether representing a claimant or faced with the daunting task of self-representing, as well as more experienced advisers.

In the introduction to the book, the authors set out that the key aim is to alert users to the unwritten rules and guide them in the art of staying on the right side of the decision making body. The book essentially unpacks the process of bringing a claim to the Industrial Tribunal from the very initial stage of weighing up whether to bring a claim at all. Written in a clear and understandable language, it is divided into sections that broadly follow the sequence of employment tribunal proceedings. This includes information on the claim form and employer's response, getting information from the other side, the role of witnesses, negotiation and settlement, stages in the proceedings including case management discussions and postponement requests, preparing for the main hearing, procedure at the hearing, compensation, decisions, costs and review of decisions.

To complement the information discussed in the chapters, there is a table of precedents, drawn from a large number of real cases, a table of cases and a glossary which further serves to give the reader an in-depth and practical guide to this area of law. The book is further supplemented by a blog at www.etclaims.co.uk where the writers regularly post material that updates or supplements the material in the book.

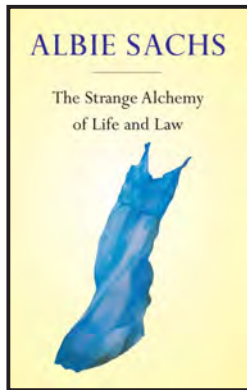
As Mrs Justice Cox describes in the foreword to the first edition, the text provides comprehensive and straightforward advice and successfully demystifies the legal process. This edition does not disappoint and is an invaluable aid for all levels of experience in this area of law.

Karen Mercer, Law Centre (NI)

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The Strange Alchemy of Life and Law

By Albie Sachs. Published by Oxford University Press. Price £19.99.



● From 1994 until 2009, Albie Sachs was a member of South Africa's first Constitutional Court, having played a prominent part drafting South Africa's post-apartheid Constitution. Sachs spent part of his formative years imprisoned and in exile as part of the fight for justice.

In this book, Sachs juxtaposes events in his life with extracts from his own and other landmark judgements of the Constitutional Court over his fifteen years of service. He describes the interplay of his life and the events that shaped South Africa post-apartheid. In one moving chapter, Sachs describes his encounter

with a man called 'Henri', who had played a part in the bomb that had cost Sachs his arm and sight in one eye. He uses his experience to explain the role of the Truth and Reconciliation Commission in shaping South Africa and allowing the country to move on from past atrocities and begin to heal, a process Sachs calls 'soft vengeance.'

Sachs opens by stating that every judgement he writes is a 'lie'. He then proceeds to show throughout the course of the book that the fluid, reasoned and ordered judgements that are handed down in court are usually the result of painful deliberation, jumping backwards and forwards, and countless redrafting. In one chapter he reveals how, after a long 'somnolent soak' in a warm bath, he came to write a most quoted statement from a judgement concerning capital punishment. He describes that this had been the least rationally-induced, the least deliberately thought-through phrase in the whole of the judgement, yet this had 'travelled the best'. Anyone who has ever written a law essay or legal submission can take comfort in the fact that even one of the great legal minds goes through this agonising process after years working as a judge.

The reader appreciates his honesty and admires his principled belief in the law as an instrument to protect, challenge and revolutionise.

Sachs challenges us to think beyond our own beliefs and prejudices by describing the thought process involved in reaching constitutionally significant decisions, including the constitutionality of same-sex marriages, the balance of property rights versus free speech, and whether prisoners should be allowed to vote. The result is an enlightened reader, who appreciates the tenacity of constitutionalism as the bedrock to a just society.

Often heart-wrenching, often humorous, *The Strange Alchemy of Life and Law* is a book that can be read and reread, each time revealing, a new, refreshing appreciation of Sachs creative legal mind.

Sara Duddy, Law Centre (NI)

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Distant voices, shaken lives - human stories of immigration detention in Northern Ireland

By Robin Wilson. Published by Refugee Action Group.



● *Distant voices, shaken lives* is the result of an initiative by the Refugee Action Group to humanise the debate on the detention of asylum seekers and migrants.

It tells the stories of eight individuals detained in, or on the way from, Northern Ireland, before being taken to an immigration removal centre in Britain, usually via interim police custody. Their experiences make this a powerful document, presenting the system through the eyes of the detainees and starkly highlighting the unnecessary suffering it inflicts. The author puts the stories in the context of the repressive immigration laws and attitudes which shape the current policy. He makes the case for more humane alternatives to detention and 'a supportive casework approach of community-based support and welfare, rather than punishment.'

Ultimately, the end of detention will not resolve the injustice of a protectionist attitude to immigration and asylum but it will go some way towards alleviating its cruelty. As such, it is a goal well worth pushing for, and it is to be hoped that RAG and its partners will succeed in their campaign. A very important publication, aptly launched during Refugee Week.

Catherine Couvert, Law Centre (NI)

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40 years of the Office of the Northern Ireland Ombudsman

Published by Office of the Northern Ireland Ombudsman, 2010.

● The book is a collection of contributions reflecting the 40 years work of the Ombudsman's Office. As well as evaluation of the past, there is also analysis of the current and future challenges of the role of the Ombudsman and some suggestions for development and improvement. Three

Library news

Recent additions to the Law Centre library

Books and reports

Not a marginal issue: mental health and the criminal justice system in Northern Ireland. Criminal Justice Inspection NI, March 2010.

Principles of mental health law and policy. Gostin, Lawrence and others, Oxford UP, 2010.

Lone parent obligations: a review of recent evidence on the work-related requirements within the benefit systems of different countries. Dan Finn and Rosie Gloster. Dept for Work and Pensions, Great Britain (Research Report No 632) <http://research.dwp.gov.uk/asd/asd5/rrs-index.asp>

Mental wellbeing: a general guide for employers on creating a working environment that encourages mental wellbeing. Health and Safety Executive NI, March 2010. Available at www.hseni.gov.uk.

Immigration document checks and workplace raids : a negotiators' guide. Migrant Workers' Network, April 2010. www.migrantsrights.org.uk/downloads/policy_reports/MRN-trade-union-guide.pdf

Asylum and the European Convention on Human Rights. Mole, Nuala and Meredith, Catherine, Council of Europe, 2010.

Report on the Welfare Reform Bill, together with the Minutes of Proceedings of the Committee, 3 June 2010 (NIA/61/09/10R). Northern Ireland Assembly, Committee for Social Development.

Journal articles

Care providers fear immigration plans: political parties favour systems that would limit the number of migrants available to the Health Service. Community Care 6 May 2010.

Lost in a legal maze: community care law and people with mental health problems. The Law Commission's review of adult social care law. Journal of Mental Health Law, Winter 2009.

A new legislative framework for mental health capacity and mental health legislation in Northern Ireland: an analysis of the current proposals, by Maura McCallion and Ursula O'Hare, Law Centre (NI) 2010.

A model law fusing incapacity and mental health legislation, Journal of Mental Health Law - special 2010 issue.

Useful weblinks

Child Poverty Action Group (CPAG): www.cpag.org.uk

A subscription to CPAG's online services now gives access to 2500+ tribunal (formerly Commissioners') decisions, reported and unreported, from 1950 on.

separate chapters deal with the Ombudsman's relation to administrative justice, rights, responsibilities and redress, and innovation and reform.

The foreword is by William Hay, Speaker of the Northern Ireland Assembly, who

welcomes the opportunity for the Assembly to work with the Ombudsman and together address the challenges and opportunities highlighted by the contributors.

Mary Blair, Law Centre (NI)

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Training at Law Centre (NI)

BELFAST

5 August	Mental Health and Criminal Justice
25 August	Completing Disability Forms: DLA and ESA Best Practice
15 September	The Citizens Directive 2004/38/EC and the Immigration (EEA) Regulations 2006
28 September	Industrial Injuries Benefits
12 October	Identifying Errors of Law - Social Security Appeals
8 and 15 November	Introduction to Immigration Law and Practice (two days)
16 November	ESA - Caselaw and Practice Update
24 and 25 November	Advocacy Skills (two days)
30 November	Tax Credit Overpayments (half day)
7 December	Mental Health Law

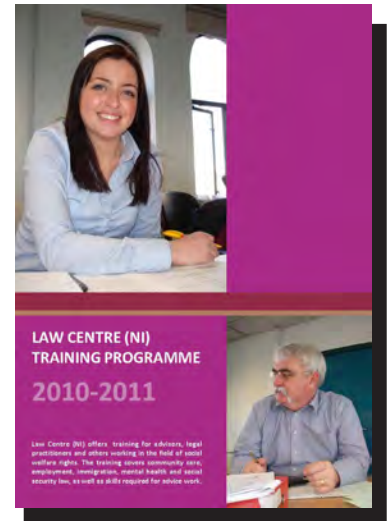
DERRY

18 August	Completing Disability Forms: DLA and ESA Best Practice
7 October - 25 November	Welfare Rights Adviser Programme (eight days)
2 December	Mental Health Law

CONTACT

For courses run in Belfast, contact Deborah Hill: **Tel:** 028 9024 4401 **Fax:** 028 9023 6340 **Textphone:** 028 9023 9938
Email: deborah.hill@lawcentreni.org

For courses run in Derry, contact Noirin Hyndman: **Tel:** 028 7126 2433 **Fax:** 028 7126 2343
Email: admin.derry@lawcentreniwest.org



See our full training programme on www.lawcentreni.org

Training and conference room for hire

The Law Centre's training and conference room seats 40 people and can be hired at the rates listed below.

An additional meeting room, seating ten people, can be booked subject to availability, at rates to be negotiated.

Members

£60 (half day)
£120 (full day)

Non-members

£70 (half day)
£140 (full day)

These rates include the hire of the room and use of the following equipment, which must be pre-booked and is subject to availability:

- overhead projector and screen
- powerpoint projector & laptop
- VHS, VCR and monitor
- flipchart
- white board

Catering

■ tea/coffee/biscuits	£1.50 per person per serving
■ tea/coffee	£1.00 per person per serving
■ sandwiches	£3.00 per person per serving



For more information or to book, contact Ann Cartwright on:

028 9024 4401

or email:

ann.cartwright@lawcentreni.org

