



social welfare law quarterly

frontline

**Special feature: How cuts will impact on Northern Ireland
Tribunal reform update ● Unemployment and inequality**

Autumn 2010 Price £2.95 / €2.95

77



Ombudsman^{Northern Ireland}

If you feel that you have been treated unjustly through bad administration by a government department or other public body

the Ombudsman

may be able to help you

For further information please contact the Office:

By telephone: **FREEPHONE 0800 343424**

or

In writing to: **The Ombudsman, Freepost BEL 1478, Belfast BT1 6BR**

or

Visit our Website: **www.ni-ombudsman.org.uk**

or

By email to: **ombudsman@ni-ombudsman.org.uk**

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

ASSEMBLY OMBUDSMAN FOR NORTHERN IRELAND

NORTHERN IRELAND COMMISSIONER FOR COMPLAINTS

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

frontline 77

contents

news

Redundancy toolkit / Skills for Justice training report	5
Debt fact sheets / Problems with Employment Support Allowance	6
Benefit uptake / Money Active training	7
Future of housing in Northern Ireland	8
New housing law proposals / Housing Rights Service website	9

features

Special feature: budget cuts and benefit reform

Tough times ahead: Les Allamby predicts how cuts will affect benefits	10
Smart solutions in tough times: Seamus McAleavey, NICVA	12
Protecting the vulnerable: Karen McGrath, Disability Action	13
Cuts are unavoidable: Peter Robinson, DUP	13
Fighting back on public service cuts, Patricia McKeown UNISON	14
Cuts must be challenged: Mitchel McLaughlin, Sinn Fein	14
The need for an Older People's Commissioner: Michele Smyth, Age NI	15
The poor and welfare cuts: Bob Stronge, Advice NI	15

Special feature: focus on tribunal reform

Proposals for tribunal reform: Gráinne McKeever & Brian Thompson	16
The Administrative Justice and Tribunals Council: Richard Thomas	18

practitioner

Policy update

Ursula O'Hare on the effects of welfare reform	20
---	----

Equality Commission

Seamus McMullan outlines the links between unemployment and inequality	22
---	----

Community care update

Anne-Louise Livesey on the duty to meet need	24
---	----

Immigration update

Barbara Dunham on a ruling that protects gay asylum seekers	26
--	----

Book review / Library news

Systems thinking in the public sector	27
--	----

Editor

Catherine Couvert

Design & layout

Michael W Beggs

Cover photo

Catherine Couvert

Printed by

Minprint

Published by

Law Centre (NI)

Editorial panelSiobhán Harding
*Citizens Advice*Kevin Higgins
*adviceⁿⁱ*Sharon Geary & Claire Moss
*Housing Rights Service*Gráinne McKeever
*University of Ulster*Ursula O'Hare and Maura McCallion
*Law Centre (NI)*John McCormick
*NICVA***ISSN** 0962 - 8800

frontline is published four times per year by Law Centre (NI). It aims to provide a forum for information, analysis and opinion on matters relating to welfare law and allied social policy issues. Views expressed in the magazine should not be taken to be those of Law Centre (NI).

Editorial/Advertising

124 Donegall Street, Belfast, BT1 2GY

Tel: 028 9024 4401

Fax: 028 9023 6340

Textphone: 028 9023 9938

Email:

admin.belfast@lawcentreni.org

Website: www.lawcentreni.org**© Law Centre (NI) 2010**

All rights reserved. No part of this publication may be reproduced, stored on any retrieval system or transmitted in any form by any means, including photocopying/recording, without prior written permission of Law Centre (NI).



Law Centre® Lexcel



editorial

Taxes would be fairer than cuts

While the focus is on where public expenditure cuts will fall in Northern Ireland, the first impact of welfare reform savings kicks in from the beginning of October.

The reduction of help with mortgage interest in Income Support, Income-based JSA and Income-related ESA will leave around half of claimants currently getting support losing out. For a significant minority, the reduction will mean over 40 per cent of the mortgage payments will have to be found from elsewhere.

Recent reports suggest a further £4 billion is to be saved once the Chancellor makes his statement on the Comprehensive Spending Review on 20 October. The coalition government placed great store on the fairness of its emergency budget in June. The Chancellor claimed that he had presented a progressive budget. Recent analysis from the Institute of Fiscal Studies (IFS) suggests otherwise. Unlike the Chancellor, the IFS examined all the proposals contained in the budget through to 2014 whereas Treasury analysis only examined the impact to 2012. The IFS concluded that the budget measures including tax and welfare reform are regressive, with the decision to link benefits to the Retail Price Index rather than the Consumer Price Index leading to less generous benefits and a saving of over £5.8 billion by 2014/2015. In effect, those with the broadest backs will not be bearing the greatest burden.

Northern Ireland will have particular difficulties in swallowing this medicine. Welfare reform proposals are predicated on more working age people being able to get back into work as the economy recovers.

For lone parents, this assumes accessible and affordable childcare is available; for the long-term sick that proper support services are in place and that jobs are out there to move into. The recent Ulster Bank PMI Survey contrasted the fourteenth consecutive month of growth in business activity across the UK with the failure to see any growth in Northern Ireland since November 2007. The Ulster Bank is predicting that

unemployment will not peak until at least 2012. Over five people are out of work for every job vacancy in Britain with the ratio even worse in Northern Ireland. Moreover, Northern Ireland has almost twice as many people per thousand in receipt of DLA and nine per cent of the working age population receive Incapacity Benefit compared to 5.4 per cent in Britain. It is against this backdrop that any cuts in public expenditure must be measured.

One area almost absent from the debate is whether tax as well as public expenditure savings might be a fairer way forward. The coalition government in Britain is seeking to close the deficit by concentrating on public expenditure (and public services) cuts, with almost 80 per cent of the deficit reduction being managed in this way. In Northern Ireland there are limited tax raising powers open to the Assembly. Nonetheless, one area open to scrutiny is increasing water charges within the rates, which could raise £200 million. Unlike Britain, payment of water within local rates is still subject to a rebate scheme, albeit a scheme open to improvement. Raising money in this way would be more progressive than the equivalent sum being chopped from public services normally aimed at the poor.

The poverty impact of changes is particularly important. Voluntary organisations including NICEM, the Children's Law Centre, CAJ and the Law Centre have written to the First and Deputy First Ministers to emphasise the requirements to provide equality impact assessments of these proposals. The Law Centre has commissioned the Institute for Fiscal Studies to do a distributional analysis of the welfare reform proposals in Northern Ireland to assess the fairness of the plans.

Every political party embraces the concept of fairness yet, ultimately, the litmus test will be whether those on higher incomes take the lion's share of the pain. The current prognosis for this test of fairness is not good.

Les Allamby

Toolkit on workers rights in redundancy

The Law Centre has published a **Redundancy Toolkit** for voluntary sector advisers and employee representatives called on to help people facing redundancy in Northern Ireland.

Written by specialist employment lawyers, the toolkit makes the complex law around redundancy accessible to frontline advisers. It is designed for them to bring to workplaces where they may be called on to advise on redundancy situations.

It is divided into two sections. The first part summarises the main areas of the law. The second part contains practical tools including checklists to identify and gather key information, assess the fairness of redundancy procedures and seek legal redress where necessary.

Launching the toolkit, Social Development Minister Alex Attwood said: *'Helping people who are facing redundancy is absolutely crucial. It can be a very stressful time, especially if they do not know what to do next. This toolkit, for advisers in the voluntary advice sector, explains the complex area of redundancy, lay-off and employer insolvency so they will be better equipped to assist people at risk of losing their jobs. I am pleased that my Department has supported the Law Centre*



Launching the Toolkit: Social Development Minister Alex Atwood and Law Centre (NI) Assistant Director (Casework & Training) Maura McCallion.
Photo: Kevin Cooper

to develop this vital resource, especially during this current economic climate.'

Download from www.lawcentreni.org or order a paper copy in a ring binder from catherine.couvert@lawcentreni.org.

Law student prize winner

Congratulations to Ashley Macpherson, this year's winner of the Law Centre's annual prize for University of Ulster law students. The prize is for the best student in the social justice law module of the undergraduate law degree. We want to encourage law students to develop their legal knowledge in our areas of law and foster their commitment to using law as a tool for social justice.



Maura McCallion with winner Ashley Macpherson.
Photo: University of Ulster

Training for advice

Skills for Justice has completed a report on training provision in the voluntary advice sector, on behalf of the Advice Services Alliance (ASA) Training Working Group.

The Advice Services Alliance is the umbrella organisation for independent advice services in Northern Ireland. It comprises representatives from Citizens Advice, Advice NI and Law Centre (NI) with an independent chair, currently the Reverend Harold Good. ASA co-operates on issues of advice provision in Northern Ireland. Skills for Justice is the sector skills council for the legal advice sector.

The survey analyses training provision in the voluntary legal advice sector and the extent to which it is related to National Occupational Standards (NOS). NOS for the legal advice sector provide benchmarks related to the skills needed to work in the sector. They are widely used to promote effective working skills and to produce clear development paths for employees. They form the basis of many qualifications including National Vocational Qualifications (NVQs). They are also used in the National Competency Framework (NCF).

The report makes recommendations for an integrated training strategy for the legal advice sector in Northern Ireland and how best to fulfil the training needs of all those who are employed within the sector. Read it on www.lawcentreni.org/news.

Eamon Doherty, Training Officer, Law Centre (NI)

Debt fact sheets

Citizens Advice has launched a series of 'Dealing with Debt' self-help fact sheets for people who want simple information on topics including bankruptcy, rent arrears and enforcing a debt and useful resources such as budget sheets and sample letters. The production of the fact sheets was made possible through funding and support from the Department of Enterprise, Trade and Investment.

The DETI funded **Dealing with Debt** service operated by Citizens Advice helped over 2,500 clients with over £33 million of debt during the year 2009/10. This is an increase of seven per cent on the previous year and continues the four-year upward trend since the service began.

The fact sheets are available for download from the Citizens Advice website at www.citizensadvice.co.uk/en/Publications/Money-Advice/Self-Help-Material/



Scott Kennerley, Money Advice Project Manager with the new debt fact sheets. Photo: Citizens Advice

Problems with ESA cause hardship for many

A report released in August by Citizens Advice in Northern Ireland highlights the problems many people experience with the administration of Employment and Support Allowance (ESA).

ESA was introduced in October 2008 to replace Incapacity Benefit for new claimants with the aim of giving more help to those who might, with support, be able to work.

Since ESA was introduced, CAB advisers in Northern Ireland have been reporting a number of problems with the administration of the benefit.

- Delays in processing ESA claims, often caused by the loss of documentation supporting a claim or a lack of communication/follow-up from ESA on individual claims, have caused financial hardship.
- Delays in getting a medical assessment (Work Capability Assessment (WCA)) have left many claimants on the basic rate of ESA for long periods of time.
- Problems with the WCA have led to some seriously ill and disabled people being found fit for work. There are particular concerns for those suffering from mental health problems, many of whom are awarded no or few points on their WCA only to be awarded the benefit on appeal.
- Some clients have received incomplete, incorrect or misleading advice from ESA which can have potentially serious implications for them. For example, some claimants are not being advised of the need to apply for both

Contributory and Income-related ESA, which means that they could potentially miss out on help with their housing costs.

- For some clients with mobile phones the cost of calling ESA is prohibitive.

The introduction of this new benefit has been a huge challenge for the Social Security Agency who administers it, for the advice sector and for claimants, particularly given the current economic climate. By definition, those applying for ESA are likely to be experiencing difficult circumstances and may be coping with serious health problems and therefore feel the effects of administration problems keenly.

Citizens Advice would like the Social Security Agency to address the administration problems outlined in the report. Communication between staff and claimants needs to be improved. There should be better recording systems to acknowledge the receipt of documents and track their progress through internal systems. There needs to be accurate and complete knowledge amongst staff advising claimants on ESA.

The government should review the WCA and assess its suitability in identifying those with limited capability for work. In particular, the descriptors used to award points for mental health issues should be reviewed and, where mental health conditions are present, a specialist in mental health should carry out the WCA. The full report can be accessed on:

www.citizensadvice.co.uk/en/Publications/Social-Policy-Reports/ESA-Evidence-Briefing/

Siobhán Harding, Citizens Advice

Benefit uptake injects £38.8M into local economy

The results from the 2009 benefit uptake contract delivered by Citizens Advice on behalf of the Social Security Agency once again show the value of this partnership for many local people. In the last twelve months, the contract has helped vulnerable people to identify and claim £6.1 million in social security benefits. Over the average length of the resulting claims, this will eventually amount to £38.8 million.

Citizens Advice Chief Executive, Derek Alcorn said: *'The impact of £6.1million on the local economy in a recession cannot be understated. This is money which will be spent in local businesses and the exercise has made a significant impact on poverty in Northern Ireland. The SSA initiative is a useful combination of the information in the SSA's database and the skills and knowledge of staff in Citizens Advice.'*

As part of the programme, Citizens Advice dealt with 10,000 clients with the aim of increasing both the number claiming social security benefits and the amount of benefit paid. Benefit entitlement assessments examined a client's eligibility for all social security benefits and other payments, such as the Social Fund. They also addressed eligibility to Housing Benefit and Rate Relief.

The programme focused on Attendance Allowance, Pension Credit, families with children and carers. This resulted in an additional 1,887 claims for benefit. People who benefited from the programme were on average better off by £55 per week, with average arrears of benefit of £535.

This is the third year that the SSA has contracted Citizens Advice to deliver a benefit uptake programme, relying on bureaux' expertise in the benefits system, their work against poverty and social exclusion and their regional spread.

A couple in their late seventies lived on retirement pensions only and both were in ill health. They had no savings, lived in



Barry McVeigh, Projects Manager at Citizens Advice with Emma-Jane Donnan, Benefit Entitlement Unit, Social Security Agency. Photo: Citizens Advice

rented accommodation and received no help with rent and rates. They struggled financially, particularly because of increased heating costs during last winter's very cold weather. East Belfast CAB did a full benefit assessment which identified that they were missing out on £69.14 per week in Pension Credit and that, once they claimed this, they could have their rent and rates paid in full. The clients were delighted to be entitled to the extra money and felt it would make a huge difference to their lives. They were grateful for the help with the claim process and the completion of forms.

Barry McVeigh, Citizens Advice

Money Active training begins



Kelly Collins, Financial Capability Project Manager & Siobhan Gough-Duffin, Financial Capability Training Officer, Citizens Advice at a Money Active training session.

Photo: Citizens Advice

Money Active is a new money management project developed by Citizens Advice and funded by Nationwide Building Society. The project will train and support volunteers across the CAB network and a wide range of community organisations so that they can carry out pro-active financial education work within their local community.

Local volunteers will learn to deliver practical interactive outreach sessions on key money management issues. They will also be able to deliver to a wide variety of target audiences in community settings such as residential care homes, mums and tots groups, youth centres and local libraries.

This exciting new project will develop the volunteering role of Citizens Advice. It will expand and diversify the current volunteer base and enable an innovative new approach to forging volunteering partnerships with local communities.

For more info contact Nichola MacDougall on 028 9026 2525 or email macdougalln@citizensadvice.co.uk.

The future of housing

Lord Richard Best, Chair of the Commission on the Future for Housing in Northern Ireland, launched the Commission's final report on Friday 28 May 2010.

The report calls for a new housing strategy that sets the policy direction for the next ten years. It recommends that any such strategy should aim to attract:

- sustainable levels of public and private investment;
- a stable housing supply;
- the creation of a mixed housing economy; and
- support for greater integration and social cohesion.

The report advocates the role of housing as central to Northern Ireland's economic development, in promoting social cohesion, securing poverty reduction and enabling sustainability and well being.

It opens with a vision for housing in 2020 which outlines what an effective housing system might look like:

- levels of homelessness would have significantly reduced, as would housing need, with more affordable and appropriate housing readily available;
- intervention to help households who are at risk of repossession would be readily available, to prevent homelessness and the trauma of losing a home;
- all homes would exceed the Decent Homes Standard and be environmentally efficient;
- by 2020, all new housing should be built on a mixed income and mixed tenure basis to foster social cohesion and greater community integration; and
- there would be greater flexibility with regard to tenure and the allocation of social housing.

In order to realise this vision, the Commission makes detailed recommendations on key areas of housing policy and delivery. The report gives a substantive list of activities that should be undertaken by the Northern Ireland Executive, individual departments, local government and housing associations.

Housing Rights Service commends the work of the Commission and believes that the report contains many positive recommendations, including:

- a housing strategy should include an explicit policy position on mortgage rescue schemes and use of flexible tenure to help shape the housing market in the longer term;



The housing sector and government must work together to achieve the vision for housing in 2020. Photo: Catherine Couvert

- the government should rectify the absence of legal aid for those facing eviction from their home;
- a pre-action protocol should be introduced for all possession actions;
- housing advice should continue to offer support to households who are threatened with, or who experience homelessness.

The Commission makes welcome recommendations for the future of the private rented sector, in particular for the implementation of the initiatives contained in the Private Rented Sector Strategy.

Housing Rights Service believes it is imperative that the housing sector and government work in partnership to achieve the vision for housing in 2020.

The report of the Independent Commission on the Future for Housing in Northern Ireland can be found at:

www.cih.org/northernireland/housingcommission/Report.pdf

Ruth Barry, Policy Officer, Housing Rights Service

New housing law proposals to be welcomed

Fiona Douglas, policy officer for Housing Rights Service broadly welcomes forthcoming housing legislation, with a few reservations.

The Housing (Amendment) (No. 2) Bill was formally introduced to the Northern Ireland Assembly on 22 June 2010 and referred to the Social Development Committee on 30 June. The stated purpose is to:

- enable better regulation of the private rented sector;
- provide new tools to tackle fuel poverty;
- promote effective housing management; and
- clarify the existing law in respect of homelessness.

Housing Rights Service recently submitted written evidence to the Committee on the contents of the bill. We welcome its introduction and broadly support its planned measures.

In particular, we have long advocated for the registration of private landlords. We consider this to be at the forefront of improving the regulation of the private rented sector. It is essential that the bill requires landlord registration to be an inescapable statutory duty with appropriate sanctions in place for non compliance. Through the experience of the registration scheme for Houses in Multiple Occupation, we know that the existence of such a statutory scheme is not enough. Tougher sanctions are an essential means of ensuring sector-wide compliance. Therefore, we have called for a commitment to a timeframe within which to implement the scheme and for tougher sanctions for non compliance.

Another measure included in the bill that we very much support is the introduction of Tenancy Deposit Scheme(s) in Northern Ireland. This is timely and necessary given the increased reliance on the private rented sector to meet housing need in Northern Ireland. Again, we urge the Department for

Social Development to commit to a timeline within which this scheme must be operational.

We highlighted other issues to the Committee, including some omissions in the bill which had been included in the original consultation and in the Private Rented Sector Strategy. We hope to see a re-instatement of these measures in the current bill:

- increased fines for non compliance with the registration scheme process for Houses in Multiple Occupation up to a maximum of £20,000 as proposed in the original consultation document;
- an extension to Notice to Quit periods to two months where the length of the tenancy is over five years and three months where the tenancy is over ten years. Such a commitment was made by the Minister for Social Development in March 2010 at the launch of the Private Rented Sector Strategy.

In the proposals relating to antisocial behaviour, we are relieved to see that the Department has taken on board our views expressed in the original consultation. At that time, we had serious concerns regarding the controversial measures relating to antisocial behaviour that were being proposed. We appreciate the rationale behind the new proposals, whereby consent to exchanges of social tenancies will be withheld where a court order has been made against one or other of the tenants on the grounds of antisocial behaviour.

The rest of the proposals are largely technical amendments that do not change the original policy intention. Overall, we agree with the approach taken by the Department. It is evident that the views of consultees to the Private Rented Sector Strategy and the original bill consultation were taken on board by the Department, a testimony to the knowledge and expertise that exist in the voluntary sector.

To read Housing Rights Service's evidence to the Committee for Social Development log on to the policy section of our website www.housingrights.org.uk

New look website for Housing Rights Service

Housing Rights Service has recently redeveloped its corporate website, www.housingrights.org.uk. The changes were guided by visitor feedback and driven by a desire to provide a first class product. The revamped site, launched in August, boasts three new features.

Our blog details our experiences to date with the Preventing Possession Initiative, a project that aims to prevent homelessness as a consequence of debt related possession action. Blog posts cover practice and policy issues. Commenting is open to everyone and we hope readers of Frontline will contribute.

The new Member Area of our site contains a wealth of resources for housing practitioners. Our members can now

access fact files, case studies, case law updates and the Housing Rights Service library catalogue online. This section of the site also contains presentations, feedback and notes from past Housing Rights Service events.

We have redeveloped our Learning & Events section to include details of all our upcoming events and courses. We have also added information that lets you know how we are making a difference to our clients and on a wider level.

If you want to find out more about the work of Housing Rights Service or wish to become a member of the organisation, contact etain@housingrights.org.uk

Tough times ahead

Benefit cuts will have severe impact

Law Centre (NI) director Les Allamby analyses how benefits will be affected by planned budget cuts and welfare reform and wonders how this will play out in Northern Ireland.

Trying to keep up with the pace and scope of developments in social security is difficult at the best of times. The emergency budget introduced on 22 June 2010 announced £11 billion worth of expenditure cuts to social security. In September, the Chancellor said that a further £4 billion cuts are to be announced in his October statement.

In parallel has come a considerable increase in the rhetoric deployed against people who claim benefits, particularly those of working age; publication in July 2010 of a policy paper, *21st Century Welfare*, setting out the direction of travel for social security policy and implementation of significant changes to social security inherited from the previous government.

This article summarises the changes we already know of and analyses some of the issues facing Northern Ireland as a result.

Changes in the pipeline

The timeline for changes already announced extends over a number of years.

October 2010

- The standard interest rate for mortgage interest in Income Support, Income-based Jobseeker's Allowance (JSA) and Income-related Employment and Support Allowance (ESA) will be reduced from 6.08 per cent to a level based on Bank of England published average mortgage rate (3.67 per cent at time of original announcement).

January 2011

- The health in pregnancy grant will be abolished.

- Arrangements introduced by the previous government start to apply where any new claimants on Income-based JSA after 4 January 2009 have mortgage interest support withdrawn after two years on JSA.

February 2011

- The migration of claimants on Incapacity Benefit (IB) to ESA will begin; claimants will be referred for Work Capability Assessment (WCA). The plan is to complete the migration by March 2014. A pilot in Britain is starting this October.

April 2011

- Benefits will be uprated based on the Consumer Price Index (CPI) rather than the more generous Retail Price Index (RPI). The exception to this change will be the state retirement pension which will go up in line with earnings, prices or 2.5 per cent whichever is the best. The minimum income guarantee in Pension Credit will increase in line with the rise in the full basic state pension.

- Child Benefit will be frozen for three years.

- Payment for a Sure Start Maternity Grant for a second or subsequent child will be abolished.

- The second income threshold for the family element of Child Tax Credit (CTC) will be reduced from £50,000 to £40,000.

- The withdrawal rate for tax credits will increase from 39 per cent and 6.67 per cent above second income threshold to 41 per cent.

- The CTC baby element for children under one year of age will be removed.

- The child element of CTC will increase by £150 above CPI uprating.

- The level of in-year rises in income for tax credits which are ignored will be reduced from £25,000 to £10,000.

- Private rented sector tenants claiming Housing Benefit will no longer be able to receive more in local housing allowance (LHA) than actually paid in rent. Previously up to £15 of the amount by which LHA payment exceeded rent could be kept.

- LHA weekly rates in Housing Benefit will be capped at £250 for one bedroom, £290 for two bedrooms, £340 for three bedrooms and £400 for four bedrooms or more.

- The freeze on the level of non-dependent deductions from Housing Benefit will be ended.

- Disabled Housing Benefit claimants with a non-resident carer will be entitled to have entitlement assessed on the basis of an extra bedroom.

- Funding for discretionary housing payments will increase. This will be by £10m in 2011/2012 and £40m in 2012/2013 in Britain. No figures for the increase have been published for Northern Ireland.

October 2011

- The LHA in housing benefit will be set at the 30th percentile of local rents rather than the current 50th percentile level.

- Lone parents with a youngest child aged five or over will no longer be eligible for Income Support and must claim Income-based JSA instead. Existing claimants will be transferred to Income-based JSA from April 2012.

April 2012

- The family element of CTC will be withdrawn straight after the child element.
- Backdating of tax credit claims and certain changes of circumstances will be reduced from three months to one month.
- A disregard of £2,500 will be introduced in tax credits for in-year falls in income.
- Child element of CTC will increase by £60 above CPI up-rating.
- The 50 plus element of Working Tax Credit will be removed.

April 2013

- Housing Benefit will be reduced for the long term unemployed receiving Income-based JSA to 90 per cent of the initial award.
- Housing Benefit entitlement for working age people in the social rented sector will reflect family size.
- In-year rises in income in tax credits which are ignored will be reduced from £10,000 to £5,000.
- Disability Living Allowance (DLA) claimants of working age will become subject to a new objective medical assessment.

Analysis

Housing costs and low income

Cutting help with housing costs looms large as an initial impact. Based on the Equality Impact Assessment in Britain, the reduction in help with mortgage interest will leave half of all claimants worse off, with seven per cent of them losing more than 40 per cent of their mortgage interest payments. Housing Benefit changes will cause real difficulties in the private rented sector initially which will eventually spread to the public rented sector.

The assumption (or hope) is that landlords will respond to the changes by lowering rents and/or claimants will



Dramatic changes will affect the most vulnerable in society. Photo: Aiden McCready

respond by moving to cheaper accommodation. It is difficult to see why landlords will reduce rents unless there is no alternative to taking on Housing Benefit tenants. In effect, where there is an alternative market (for example in student areas) which encompasses a significant part of the private rented sector, then Housing Benefit claimants will be faced with funding a shortfall or eviction. The second assumption underpinning cuts in housing costs is that it will act as an incentive for people of working age to get into work. With five people for every job vacancy in Britain and a worse ratio in Northern Ireland there will remain large numbers in long term unemployment regardless of people's motivation.

Lone parents

For lone parents being pushed towards finding work at an earlier stage, the missing element is childcare. With no lead government department, no statutory duty on public authorities to provide adequate child care and no cross-departmental strategy, Northern Ireland lacks the infra-structure, resources and (apparently) the will to ensure accessible and affordable childcare is in place.

Long term ill health and disabilities

The migration of IB claimants to ESA has set an ambitious (or unrealistic) timetable. The current plans entail dealing with around 500 people a week, every week for three years. The Department's estimate is that almost one in four claimants will fail the WCA on migration. In addition, with the tightening of the WCA test the expectation is that over 40 per cent of new claimants to ESA will also fail the test. Whether the Social Security Agency and Appeals Service have the capacity to deal with the likely numbers appealing remains to be seen.

Large numbers of people will move from IB and ESA to JSA and be expected to look for work while others, for example where a partner is in employment, will fall out of the benefit system altogether. In the current financial climate, the necessary support from Jobs & Benefits offices to assist people back to work is likely to diminish rather than increase.

Perhaps the largest sting in the tale is the long term change to DLA. The proposals for change are light on detail beyond the introduction of revised eligibility criteria with a points based system to assess entitlement to the

continued on page 19

Smart solutions in tough times

Seamus McAleavey NICVA

I have spent the last couple of weeks meeting MLAs, ministerial advisers and permanent secretaries of government departments. A NICVA led delegation held a roundtable meeting with every finance director of Northern Ireland's government departments. Our discussions centred around one topic - the likely impact of the budget settlement on Northern Ireland for the next four years from 2011.

There is no doubt in my mind that the settlement for Northern Ireland will be the toughest that any of us have ever seen. A report NICVA commissioned from Oxford Economics and ERINI (Economic Research Institute of Northern Ireland) predicted we were likely to lose over £1.2 billion over four years. Privately, the economists thought that it was more likely to be £1.5 to £1.9 billion. Everything I am now hearing makes me believe the higher estimate is the correct one.

These enormous reductions will affect the lives of everyone. The decisions which lie ahead for the Executive are the most difficult they have ever faced, and will place all the Ministers, both individually and collectively, under severe strain.

The scale of the cuts is such that they cannot be achieved by 'cutting bureaucracy', or achieving efficiency savings alone. We will have to do an awful lot of things differently, better and more innovatively. I believe voluntary and community organisations with experience in effective public service delivery can help deliver smart solutions in these tough times.

I want to ensure that voluntary and community organisations are not seen as an easy target for cuts that government departments may have to make. The services delivered by voluntary and community organisations are effective and efficient and provide real value for money. We know that there will be increased demand for many of the services provided by the sector as the social and economic consequences of the cuts roll out. The sector is not only about providing services; community development is an important part of life in

Northern Ireland, contributing to social cohesion, participation and building social capital.

NICVA's *Smart Solutions in Tough Times* campaign is designed to showcase the sector and help ensure that vulnerable and disadvantaged people and communities continue to receive the services they need and that the hard work done to build up communities does not start to unravel.

Our campaign will gather evidence, hold meetings with government departments and brief ministers, MLAs, key officials and Assembly committees. We will encourage government departments to treat the sector fairly and guard against the unintended consequences of any decisions made, by focusing on the priorities and outcomes they would like to see, rather than basing decisions on what can be cut quickly and easily.

Citizens Advice and Advice NI have shared their good practice stories on the NICVA website to help us to demonstrate the value of voluntary and community organisations to the budget makers. We

would encourage others from the welfare advice sector to do the same.

Citizens Advice centres meet the information and advice needs of some 260,000 people. Their Benefit Uptake Project with the Social Security Agency has ensured that many vulnerable groups, in particular older people, have accessed benefits that they were unaware they were entitled to. In 2009, it helped people identify and claim £6.1 million in benefits, which will eventually amount to £38.8 million over the average length of the resulting claims.

Advice NI co-ordinates a network of 80 advice centres across Northern Ireland. In 2008/2009 the centres answered 227,802 enquiries from 107,703 clients. This resulted in £30 million identified for people over the year. Read their case studies and others at www.nicva.org/case-studies

The financial crisis facing the Northern Ireland Executive is daunting, of that there is no doubt. Departments must act together to agree priorities and work with those who can help make a difference and create positive outcomes.



There will be increased demand for the services provided by the sector. Law Centre (NI) adviser Louise Arthur prepares for a hearing. Photo: Michael Beggs

Ensure the most vulnerable are protected

Karen McGrath Disability Action

Although Chancellor George Osborne claimed that Budget 2010 will ensure the most vulnerable people are protected, Disability Action has concerns about how it will impact on people with disabilities and their families.

Concerns

One of our main concerns is the Chancellor's announcement on Disability Living Allowance.

Disability Action believes the obvious consequence of moving to a medical assessment for DLA claimants is that many people will have the benefit removed. DLA is designed to meet the

additional costs of care and personal mobility, it is not about medical issues.

If the main aim of the government is to reduce the number of fraudulent claims then this is not the right way to do it. This change of process will mean that many disabled people will not receive a benefit that helps them maintain their basic participation in our community.

Other areas of concern are in relation to tax credits, Housing Benefit, lone parents and VAT.

The increase in VAT to 20 per cent will particularly affect those on the lowest incomes. This effective increase in the cost of living will significantly impact on

the lives of those disabled people living in poverty.

What next?

Disability Action has developed a briefing on the impacts of the budget announcement. It is available on our website and by contacting Disability Action's Belfast office.

We will be working hard to ensure that a full consultation takes place in relation to Disability Living Allowance in Northern Ireland. We will continue to work with our members to ensure that those who are most in need are still supported in these difficult times.

Cuts are unavoidable

Peter Robinson DUP, First Minister for Northern Ireland

Last June, the DUP warned cuts in public expenditure were unavoidable but that supporting the Tory/UUP proposals for severe cuts of £80 billion over five years rather than a more gradual approach would endanger economic recovery in Northern Ireland. Having our public expenditure slashed so drastically will have a devastating impact and likely bog Northern Ireland down in recession for a prolonged period.

The scenario unfolding from Treasury identifies capital expenditure as the main target for reductions. With an already depressed construction industry, the impact of public sector construction drying up could prove catastrophic.

Dealing with the Conservative-Liberal Coalition cuts will present the Executive with its biggest policy challenge to date. While the Executive is not responsible for the economic downturn or the spending

cuts, it is our responsibility to do what we can to tackle the problems they create. In these difficult economic conditions, the Executive's main priority must be to keep people in work and put people back to work. If necessary, budgets should be skewed to maximise the effect of public expenditure in keeping the economy moving forward.

The public will not quickly forgive Ministers who put the interests of their parties or Departments before the interests of Northern Ireland as a whole. Rather than simply salami slicing budgets, the Executive must agree a strategic approach to the challenges that we are faced with. This will undoubtedly mean difficult and painful decisions. Narrow party political considerations will only result in a compromise which serves political interests but not the public interest. With an Assembly election only

months away, it may be tempting for some to play politics with the difficult decisions that need to be faced in the weeks ahead, but such cynical opportunism would be transparent to the wider public.

DUP Ministers will do what is best for Northern Ireland as a whole, regardless of whether it is in the narrow interests of their departments. Devolution means local people taking decisions which are in the best interests of those who elect them.

The Executive has demonstrated it can unite to oppose the threat from dissident republican terrorism; now it must unite to see Northern Ireland through the present economic challenges. Given the scale of the Coalition's cuts, very difficult and unpopular decisions are inevitable but the Executive is capable of responding to the challenge. Many people will rightly judge the Executive and Assembly on this basis.

Protecting public services: the fight-back begins

Patricia McKeown Unison

Tory propaganda has convinced many people that there is no alternative to 'slash and burn cuts in our public services'.

Debunking the myths

UNISON has a very different view. The union has produced an alternative budget which, if adopted by the UK government, would bring in all the money needed without a single cut in services and jobs. *Debunking the myths*, our September e-newsletter, was published to arm members and workers in the sector with the facts to debunk the myths and to explain our proposals for an alternative budget. It can be downloaded from: www.unison.org.uk/northernireland

The Northern Ireland version of UNISON's alternative budget is capable of turning our economy around. We are now on a mission to convince the NI Executive

and all political parties that this is the right way to go if all our people are to have a decent future.

Our government ministers are in danger of agreeing a budget with cuts so drastic that they will throw the Northern Ireland economy into a depression from which we may never recover. On their current plans, up to 40,000 jobs will be lost, as many as 30,000 of them in the public service.

This heralds the destruction of the NHS, the welfare state and our education system. It will also put hundreds of small firms out of business. It will increase poverty on a scale not seen since the 1930s.

Calling on the Executive

On 20 October, the UK Chancellor will announce the cuts. Our Executive must not follow his lead.

UNISON calls on the Executive, the Assembly and MPs to work with trade unions to develop an alternative budget and spending plan and to refuse to tolerate an approach to cuts from the UK government that will tip our economy from recession into depression.

Protesting

Through the Irish Congress of Trade Unions, UNISON is joining with all unions in a united campaign against cuts.

On 29 September 2010, unions across Europe took to the streets with the same message for their governments: 'no to austerity - protect jobs and services'. On that day UNISON members joined lunchtime rallies in Belfast and Derry.

On 23 October, unions here will march for jobs and justice and to protect our services.

Challenge cuts and take control of our economy

Mitchel McLaughlin Sinn Fein

Both the Executive and the Assembly have a responsibility to protect essential public services. We have a particular responsibility to promote equality and to address disadvantage.

The current reality is that the block grant from the British Treasury to the Executive is insufficient. Transfers to the Assembly are calculated by reference to a mathematical formula rather than need and this combined with the fact that we have extremely limited fiscal or revenue raising powers leaves the North very vulnerable.

Neither the legacy of partition nor the decades of under-funding by successive British governments are taken into consideration when calculating financial requirements. This is unacceptable and must be effectively challenged.

Any cuts proposed or imposed by the British government must not be passively

accepted and indeed Sinn Fein is arguing that they must be resisted. Rather than accept the inevitability of cuts, we should focus our minds on challenging them. All parties should agree a common approach and take concerted action. We need to approach negotiations with the British government, united and determined to resist cuts and secure proper control of our economic destiny. That would allow us to map a way out of the current recession and to protect the most vulnerable and those experiencing disadvantage.

We need to take control of the economic levers if we are to grow our economy. All options must be on the table and this includes the development and harmonisation of the all-island economy. The existence of two currencies, two different tax and social

welfare regimes, two health services etc have constricted and restricted our ability to effectively tackle the effects of the recession. Elimination of needless duplication and the development of efficient systems of delivering public services on an all-Ireland basis will ultimately be more efficient than the swingeing cuts being proposed by both Dublin and London. Recovery cannot be achieved by slashing public services or driving ever more people into poverty and despair.

The Sinn Fein agenda is to challenge cuts, protect public services, address disadvantage and to grow the economy for the benefit of everyone on this island. I would urge other parties to give serious thought to this approach rather than passive acceptance of cuts.

2p a day is a small price to pay

Michele Smyth Age NI

In June 2007, the Assembly proposed an Older People's Commissioner (OPC) as a matter of priority. The Executive showed its commitment by conducting a review and appointing an interim advocate for older people and began developing the necessary legislation.

Three years on, with the legislation months away from completion and the current economic climate presenting challenges across all areas of public spending, what value will this post bring?

The estimated yearly cost of an OPC is £1.5 million. As there are currently 290,000 older people in NI (and rising), this is £5.17 per older person per year, less than 2p a day.

A powerful OPC would create the capacity to ensure that the best use is made of resources by helping to identify inefficiencies and changing services which are not currently delivering for older people. Through the research function, the OPC will be able to assist government to plan better for the future



Age NI representatives at Stormont. Photo: Age NI

as our population continues to age. This is an investment that needs to be made now as we prepare for increasing numbers of older people.

We must consider the positive impact that an OPC, equipped with the right

powers and duties, could contribute to the lives of older people today and ultimately to improving the services that we will all, one day, benefit from. With this in mind, how can we question the potential return on this investment?

Poorest are targeted by additional welfare cuts

Bob Stronge Advice NI

Those already struggling to survive will bear the brunt of the £4 billion additional welfare cuts proposed by Chancellor George Osborne. Along with the £11 billion cut made in June, the combined cuts represent about six per cent of total spending on welfare.

The proposed cuts represent an attack on the poorest families. In our experience, people claim benefits because they rely on this support to survive. Payments received within the benefits system are minimal, for example for a single person aged 24, the weekly JSA payment is £51.85. These announcements are causing real fear among people on benefits.

Although there is as yet no detail concerning these additional cuts, the

Institute for Fiscal Studies (IFS) has stated that the coalition government's first budget in June hit the poorest families hardest and that the measures announced were 'regressive'. Its analysis suggested that low income families with children were set to lose the most as a percentage of net income.

In the current crisis, many lower income families in Northern Ireland are struggling to pay bills. Over the last year there have been unprecedented increases in electricity, heating oil, gas and average grocery bills. The cuts announced in June include restricting Housing Benefit, introducing a more stringent DLA test from 2013, removing the baby element from CTC and abolishing the health in

pregnancy grant. Added to the VAT increase and the minimal uprating of benefits, tax credits and national minimum wage, people already struggling to survive will find themselves in even greater hardship.

Advisers are already bracing themselves to cope with increased demands on advice services due to worsening levels of debt; fuel poverty over the winter months; people facing redundancy situations and many other issues at this difficult time. Further welfare cuts will only cause added hardship for vulnerable households and heap added pressure on to advice services.

Redressing tribunal users' disadvantage

Proposals for tribunal reform in Northern Ireland

Gráinne McKeever and Brian Thompson, authors of Redressing Users' Disadvantage, explain the changes needed in the administrative justice system as highlighted by their research. They analyse welcome proposals for tribunal reform made by the Minister and Lord Chief Justice.

We were commissioned by Law Centre (NI) to conduct research, funded by the Nuffield Foundation, which would recommend proposals for tribunal reform in Northern Ireland.

An important part of the project was the study of the actual experiences and perceptions of tribunal users. This was drawn from interviews with a small sample of appellants, claimants and respondents and those who advise or represent them, as well as members and chairs of three tribunals: social security appeal tribunals, Industrial and Fair Employment, and Special Educational Needs and Disability. The first two tribunals were chosen as they have the largest caseloads and because they

adequate information, advice and support for users. We can distinguish between two stages for users in dealing with an adverse decision. The first is understanding the decision which has been made and the possibilities of challenging it. The second relates to the preparation of, and support in the conduct of, such a challenge. A failure to produce clearly explained and reasoned decisions coupled with poor information about appeal opportunities and where advice may be obtained can prompt two undesirable outcomes, the pursuit of a hopeless appeal and the discouraging of resort to appeal of those who may have good grounds. The majority of those who did proceed to a hearing did not know what to expect. Some experienced stress, sleeplessness

found that representation was advisable and especially so if the issue was complex and/or had a high degree of legal technicality. The expertise and experience of the tribunal could offset the lack of representation but the impartiality of the tribunal could be at risk in coping with an unrepresented appellant or where the quality of the representation is poor.

Our recommendations started from the requirement of putting users at the centre of tribunal policy and practice. Not only must there be good quality information, advice and support, including representation, but the tribunal environment should be user-friendly and appropriate to the hearing of a dispute. Users should be regularly surveyed on their experience and satisfaction with the service they received and user groups should be established.

Dispute resolution

We also recommended that there should be a duty to innovate in the techniques of dispute resolution and that it may be possible to resolve some cases without recourse to a hearing.

Policy should be developed across the whole range of methods of redress dealing with grievances and disputes to include complaints procedures, the ombudsman and the courts as well as tribunals. In some cases, people may have a choice of redress and there should be advice to enable them to choose appropriately.

Better yet would be the development of proportionate dispute resolution within an administrative justice system which not only matched the redress to

belong to two different categories: social security involves a person challenging a decision of a state body, and the Industrial/Fair Employment Tribunals deal with cases between private parties. The Special Educational Needs and Disability Tribunal falls in the first category, and was chosen to ensure that the perspective and experience of a smaller tribunal was included within the research.

Information, advice and support

An important finding that emerged from the research related to the provision of

and nausea in the period before the hearing. For many the degree of formality of the hearing was greater than anticipated and they felt intimidated. For others, their worst fears of an excessively formal and bewildering process did not materialise. Many of the users who did not take advice before the hearing either were not aware of what advice existed or how to access advice, or regarded the cost of accessing legal advice as prohibitive.

The policy underlying tribunals is that users should not need representation, whether or not provided by a legally qualified person. The research, however,

“ In the period of austerity, the need for justice, particularly in disputes with the state, will be all the greater. ”

the characteristics of the dispute but sought to prevent disputes by feeding back lessons so as to improve initial decision-making. In other words, the system should be seeking to put things right when they go wrong and to help get things right first time.

Appeals and the need to restructure

Where tribunal hearings are required, we recommended that users should also have the right to an accessible and affordable appeal from a tribunal's decision on a point of law. At present, appeal routes are varied across different tribunals, and the ability of users to appeal against some tribunal decisions can often be more notional than real.

Altering the method of appealing tribunal decisions is also likely to have an impact upon the structure of the tribunal system. The research did not identify any consensus on what, if any, structural changes should be made to the Northern Ireland tribunal system. We therefore recommended that there should be an immediate consultation on whether tribunals should be restructured into an amalgamated tribunal, including whether there should be an appellate jurisdiction within this structure to deal with appeals, and what relationship such an appellate jurisdiction would have to judicial review.

During the research, the Courts Service became the Courts and Tribunals Service which would, on a phased basis, provide the administrative support for tribunals, taking this responsibility over from several different departments. We recommended that policy responsibility for tribunals should be placed in the Department of Justice but that tribunal members and chairs should be brought within the leadership of the Lord Chief Justice. Just as the courts and judiciary are independent of the executive branch of government, this should also be the case for tribunals. This was particularly important where tribunals were adjudicating disputes in which a public body was a party. The Lord Chief Justice would, under our recommendations, assume responsibility for the welfare, training, guidance and deployment of tribunal members and chairs.



Report authors Brian Thompson and Gráinne McKeever with David Ford, MLA.
Photo: Kevin Cooper

Planned reform

The research was begun before the establishment of the devolved Department of Justice in April 2010 and both the Minister, David Ford MLA, and the Lord Chief Justice, Sir Declan Morgan spoke at the conference on 23 June at which the report was launched. At the conference, the Minister acknowledged the work of tribunals and their impact on people's lives. He said:

'We all recognise that tribunals are a key part of the justice system - they are places where citizens can go to present their grievance and obtain simple, speedy and inexpensive justice.'

He announced the publication of the *Tribunals Modernisation Strategy and Action Plan*. The Plan outlines steps which had been carried out, including the creation of a specialist Tribunals Hearing Centre in Bedford House. It sets out what will be done, including the provision of facilities, the updating of tribunal information and its provision in print and on the website, consultation with tribunal presidents, and the completion of a pilot customer survey as preparation for a full customer survey.

The Minister announced that he would set up a Ministerial Reference Group with

the Lord Chief Justice and the Ombudsman to map the administrative justice system and to begin to develop options for reform.

The Lord Chief Justice in his speech talked about the importance of tribunals in providing justice and that it was essential for them to have the same degree of judicial independence as the courts.

We welcome the response of the Minister and the Lord Chief Justice. It indicates a recognition of the significance of tribunals and administrative justice, which tend to be overshadowed by the courts and criminal and civil justice. We look forward to seeing the Minister's reform proposals as, in the period of austerity, the need for justice, particularly in disputes with the state, will be all the greater.

*** The Executive Summary of the report, *Redressing Users' Disadvantage: Proposals for Tribunal Reform in Northern Ireland*, is available on the Law Centre's website at www.lawcentreni.org/news/recent-news/1-news/671-new-publication-on-tribunal-reform.html**

Promoting fairness and redress

The Administrative Justice and Tribunals Council

Richard Thomas, chairperson of the Administrative Justice and Tribunals Council for Great Britain, explains the functions of the council and sheds some light on how a comparable body could work here.

I was pleased to be asked to participate in the Law Centre's seminar in June this year on advancing tribunal reform in Northern Ireland. I spoke about the organisation that I chair, the Administrative Justice and Tribunals Council (AJTC), following a recommendation in the Law Centre's report '*Proposals for Tribunal Reform: Redressing Users' Disadvantage*', that a comparable body be set up in Northern Ireland.

Of course, in the present difficult financial climate, decisions to create new public bodies will not be taken lightly. However, I propose to outline why I believe the functions of a body like ours are important and I will leave others to consider what institutional framework is appropriate in the Northern Ireland context.

What is the AJTC?

The AJTC is an advisory, non-departmental public body created by the Tribunals, Courts and Enforcement Act 2007. A successor to the Council on Tribunals, it is tasked with keeping the administrative justice system under review, advising government departments, putting forward ideas for change and making proposals for research. We look at the system from the users' point of view.

The Council has fifteen appointed Council members and the Parliamentary and Health Service Ombudsman is an *ex officio* member. It has statutory committees for Wales and Scotland, with members appointed by Scottish and Welsh Ministers.

The 2007 Act defines the administrative justice system as '*the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including the procedures for making such*

decisions, the law under which such decisions are made, and the systems for resolving disputes and airing grievances in relation to such decisions'.

It covers the whole cycle of interaction between public bodies and citizens; from original decision making by government and other public bodies to redress mechanisms like ombudsman or tribunals.

Across the UK each year there are about 1.5 million new social security benefit claims; 2.5 million visa applications; 26,000 asylum applications; more than 700,000 cases going through tribunals; 7,000 judicial review applications; and around 8,000 complaints to the Parliamentary and Health Service Ombudsman.

When one considers the breadth of the subject matter, which also includes decisions relating to mental health, education, property, tax, ratings, parking and employment, it is easy to see the scale and importance of administrative justice even though other parts of the justice system, such as crime, receive far more attention.

The AJTC is uniquely placed to look at the administrative justice system as a whole, from the initial decision to the final outcome of any complaint or appeal. It seeks to improve the way public bodies make decisions affecting individuals and to improve the workings of review and redress mechanisms.

What has the AJTC achieved?

The AJTC has played, and continues to play, a key part in the ongoing reform and transformation of the tribunal system in Britain. The last few years have seen the biggest reforms for 50 years, and through our work with officials, judges and ministers we have played a key part

in designing and implementing reforms. Our contribution to work to simplify and streamline tribunal procedural rules has been particularly significant.

Our Welsh Committee published the first ever review of tribunals operating in Wales in January this year, making recommendations for reform to Welsh Ministers. Our Scottish Committee is leading the way in tribunal reform in Scotland, publishing a discussion paper at its June conference on options for the reform of tribunals in Scotland. This will inform advice to Scottish Ministers about the future administration of tribunals in Scotland.

We have been instrumental in securing mandatory training for panel members hearing school admission and exclusion appeals. In evidence to the Parliamentary Work and Pensions Committee and in discussion with officials and other bodies, we have worked to promote the need to simplify benefit rules and to promote the benefits of having a Presenting Officer from the Department in attendance at hearings.

I chair a mental health stakeholder group, set up in 2007, which seeks to involve key stakeholders in working together to improve the operation of the Mental Health Review Tribunal, now the First-tier Tribunal (Mental Health). I also chair the War Pensions and Armed Forces Compensation Appeals Advisory Steering Group, set up by the Lord Chancellor in 2008.

We are working on seven cross-cutting projects this year. Our major project has been the development of general principles for administrative justice, setting out what we believe are the reasonable expectations citizens are entitled to have of the system in all its guises. We think they will give all organisations involved in the system an

special feature focus on tribunal reform

opportunity to self assess against them. Another of our projects aims to demonstrate the real benefits of decision makers 'getting it right first time' for users, decision makers and tax payers, showing how feedback from redress mechanisms can improve initial decision making within public bodies. Our proportionate dispute resolution (PDR) project will consider 'which horses for which courses?' This will involve reviewing relevant literature on PDR and making proposals about the use of different dispute mechanisms according to the nature of the different kinds of dispute in the administrative justice system.

In March this year, the Ministry of Justice announced plans to create an integrated courts and tribunals service in England and Wales. This is a priority for us this year and the AJTC is offering constructive challenge from the users' perspective to ensure their needs are not overlooked. We are concerned that the distinctive features of tribunals, such as

accessibility, informality and specialisation, should not be submerged in any integrated system.

Is it relevant to Northern Ireland?

The AJTC's own remit in Northern Ireland is very limited indeed. It does not include matters that would be within the competence of the Northern Ireland assembly. The Law Centre's report 'Proposals for Tribunal Reform: Redressing Users' Disadvantage' emphasises the importance for Northern Ireland of someone having a strategic oversight of administrative justice and influencing its development from the user perspective.

While reforms are moving forward in Northern Ireland, there is clearly still much to do. As Les Allamby, Law Centre (NI) director, highlighted in a speech to our conference last year, Northern Ireland still lacks a statutory guarantee of judicial independence for tribunal judiciary and there is no systematic approach to keeping procedural rules fit for purpose.

This generates problems for tribunals, practitioners and users. There is also a need to reduce the time taken for appeals to be heard.

In introducing a unified administration, the Northern Ireland Courts and Tribunals Service (NICTS) was the first on a path which other parts of the UK are now following. Notwithstanding its early start, it is clear from its recently published modernisation strategy and action plan for tribunals, NICTS clearly also still has much to do. It recognises the importance of listening to the user voice to inform the modernisation work as it proceeds.

Accessibility, fairness, efficiency

Whatever decisions are reached about the institutional framework for administrative justice in Northern Ireland, I have no doubt that the AJTC's watch-words of accessibility, fairness and efficiency are as essential to users in Northern Ireland as they are to users in the rest of the UK.

continued from page 11

different rates of benefit along the lines of the WCA test. The Treasury budget report on policy costings, however, has suggested there will be around a 20 per cent reduction in caseload and expenditure once the proposals are fully implemented.

The long term picture

The policy paper *21st Century Welfare* sets out a longer term direction of travel. It is light on detail.

In reality, the only game in town is a variant of the Dynamic Benefits model produced by the Centre for Social Justice in 2009 which envisages a radical reduction in the number of benefits; tackling work disincentives more effectively to get people back to work and tougher sanctions for those who do not comply with taking work. The Dynamics Benefit model was costed at around £4 billion to introduce in Britain and was predicated on not cutting the existing level of benefits for any claimant.

Interestingly, *21st Century Welfare* offers only a commitment to protecting 'vulnerable customers' without spelling out who falls into this category. The timetable for any radical overhaul into this category would appear to be not before 2014 at the earliest.

The Financial Times reported that there were difficult discussions behind the scenes on welfare reform. The reports suggest that a resolution has been reached with DWP in Britain being able to keep one pound for every five pound saved to cover the cost of a radical overhaul.

This means that the Chancellor's October Comprehensive Spending Review statement is likely to bring bad news for social security claimants. The Institute for Fiscal Studies report into the tax and benefit impact of the June budget is that its overall outcome is regressive despite the Coalition's promise that cuts would be fairly distributed.

Impact on Northern Ireland

Where does this leave social security here? With a higher proportion of long term unemployed; higher rates of disability particularly with mental health problems; greater reliance on public expenditure and the public sector and a longer prognosis for economic recovery, the prescription for welfare reform looks even less likely to work here. Despite social security being the responsibility of the Northern Ireland Executive and Assembly, finding room to manoeuvre within the legal principle and financial realities of Treasury arrangements for coordination of provision will be difficult.

Tailored solutions are required to deal with Northern Ireland circumstances. This means moving from the argument that Northern Ireland is a special case to one emphasizing our difference and the impact of those differences. If this argument is not won then claimants are in for tough times ahead.

policy update

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

Welfare reform

Ian Duncan Smith's vision for welfare reform, *21st Century Welfare*, is unashamedly seeking to forge 'a new contract with the (...) people'. This explains the emphasis on conditionality - 'to make it much clearer that the commitment to work is the foundation of the benefits system for people of working age.' The plan is to radically restructure the system by introducing a Universal Credit that would replace Income Support, JSA and ESA and would encompass other costs such as children and housing. An earnings disregard and taper system to reduce the Universal Credit as earnings increase is also on the cards. Options are mooted for greater local discretion for advisers in delivery of the system and reform of the operational systems for delivering payments.

Some of the premises upon which the reform agenda is based deserve further scrutiny and the fine detail of how reform will be delivered will be critical to ensuring that Ian Duncan Smith's commitment to protecting the most vulnerable is upheld. Consultation on the proposals runs until 1 October (www.dwp.gov.uk/docs/21st-century-welfare.pdf).

As the first of the coalition government's reform initiatives get underway, the Social Security Advisory Committee has consulted on the cuts to Housing Benefit and changes to the Work Capability Assessment. The government plans to introduce Housing Benefit changes as early as April and October 2011 which will see the removal of the five bedroom rate and the introduction of a new weekly upper limit for each property size. In addition, the Local Housing Allowance will be set at the 30th percentile rather than the current median of 50 per cent. More positive measures include the provision of an extra bedroom for a non-resident carer where the claimant has established need for overnight care.

For details of both consultations see www.ssac.org.uk. The Law Centre's responses are available on our website at www.lawcentreni.org.

Child poverty

OFMDFM has been consulting over the summer on the development of a Child Poverty Strategy to meet its obligations under the Child Poverty Act 2010. The discussion paper reflects a cross-departmental approach to identifying and tar-

getting the principal barriers to tackling child poverty in Northern Ireland. This includes actions to focus on the most vulnerable children within society and work towards eliminating child poverty by 2020. A full consultation on the Strategy is expected this autumn

Employment

Flexible working and time off for training

DEL published the outcome of its consultation on flexible working and time off to train in July. The Law Centre argued that the right to request flexible working arrangements should be extended to all employees. The Department has, however, followed the approach in Britain of extending the right to request flexible working to those with parental responsibility for children up to the age of sixteen. Regulations to give effect to this change came into force on 18 July.

The outcome of the consultation shows widespread support for the right to request time for training. Again, mirroring the GB approach, the Department has opted to phase this in 'subject to the prevailing economic circumstances being favourable' for organisations with 50 or more employees in year one and to others thereafter. Legislation is expected to be in place by April 2011, with the decision on implementation resting on the Minister's assessment of the prevailing economic conditions.

Immigration

The two-pronged consultation on the proposed immigration cap closed this month. The Migration Advisory Committee consulted on the numerical limit of the proposed cap and UKBA sought views on how to reform the Points Based System to achieve lower levels of non-EU immigration. The cap is intended to come into effect from April 2011. It is difficult not to conclude that the idea of strict



Andrea Adomaitis, Strabane CAB, and Lee Hatton, Law Centre (NI) at the North South Social Security Forum. Photo: Catherine Couvert

policy update

quotas is ill conceived. In our response, we highlighted several concerns about how this will work in practice. We also stressed the potential benefit to the local economy of Northern Ireland being free to set its own shortage occupation list reflecting local circumstances and needs.

Meanwhile, the right of asylum seekers to work was boosted by the Supreme Court's ruling in August that those making a fresh (as opposed to an initial) asylum claim should be able to take up employment if their claim has not been assessed by UKBA after twelve months. This is in line with the EU Reception Directive. UKBA, however, have restricted the effect of the ruling to jobs included on the shortage occupation list, making it difficult for asylum seekers to satisfy the test. The right to work protects asylum seekers from the risks of destitution and we will be looking at how to support this right.

Children and immigration

The outcome of the UKBA review into ending immigration detention for children is pending. Following the last North South Immigration Forum in July on children subject to immigration control, a number of children's and other organisations have come together to explore options for introducing a guardianship system for unaccompanied children. A policy options paper will be developed over the autumn on systems to best protect this most vulnerable group of children. Unfortunately, the coalition's commitment to end child detention has been watered down to minimising detention of children.

Mental health and community care

Capacity law reform

The equality impact assessment (EqIA) consultation on the proposals for new mental capacity and mental health law was published at the end of July. The EqIA is disappointingly short on the detail of aspects of the policy proposals. Whether, for example, community treatment orders will be among a range of possible inter-



Rights in Community Care seminar at Law Centre (NI), L-R: Georgina Ryan-White, Policy Officer Law Centre (NI), Professor Derek Birrell, University of Ulster, Les Allamby, Director Law Centre (NI) and Gerry Maguire, Southern Health & Social Care Trust. Photo: Michael Beggs

ventions is unclear, as are the arrangements for applying the legislation to all those within the criminal justice system. The consultation closes on 31 October (www.dhsspsni.gov.uk/equality-impact-assessment-for-new-mental-capacity-legislation.pdf).

Long term care

The promised commission on long term care in Britain has now been set up under the leadership of the economist Andrew Dilnot. It has been tasked with reporting on how to achieve an affordable and sustainable funding system for adult social care and support, judged against four criteria: choice, fairness, value for money and sustainability. The report is due by July 2011 and will be followed by a White Paper. The outcomes of the review will, of course, have local repercussions.

With this in mind, the Rights in Community Care Group is hosting a series of seminars on the theme of *A Vision for Community Care*. At the first seminar in September, hosted by the Law Centre, Professor Derek Birrell and Gerry

Maguire examined how Northern Ireland should face the funding challenges in the provision of community care.

Dementia strategy

Consultation closed at the end of August on the Northern Ireland Dementia Strategy. With an increase in the numbers of people diagnosed with dementia, including early onset dementia, a number of actions are needed to ensure that services are responsive to sufferers and their families. The strategy makes a positive contribution to this objective; investment in the measures necessary to implement the strategy is the next step.

Older People's Commissioner Bill

The draft bill to establish an Older People's Commissioner successfully passed Committee stage this month and will now progress to plenary debate in the Assembly. 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.

Equality Commission

FOR NORTHERN IRELAND

Rising unemployment impacts on equality

*The recession has already caused an increase in unemployment and in levels of economic inactivity in Northern Ireland. The public sector cuts being planned will likely add to that. The Equality Commission has just published research focusing specifically on the Northern Ireland labour market, which considered the employment impacts of the recession across the equality grounds. **Seamus McMullan** of the Equality Commission explains some of the findings of that study.*

This study, by Professor Ron McQuaid of Edinburgh Napier University, focuses specifically on the employment changes that have occurred in the Northern Ireland labour market during the first phase of this current recession.

The overall impact in Northern Ireland has been one of declining employment and recruitment. Similar to the rest of the UK, the construction, manufacturing and retail sectors have been most affected. Northern Ireland's reliance on the public sector may have temporarily lessened the impact of the recession but this is likely to change in the near future due to public sector cuts.

This Equality Commission Research Report identified specific employment changes across a range of equality grounds. In considering some of the key findings set out below, it should be noted that any change in the employment profile of a particular group may be affected by the composition of that group. For example, if the group was more likely to work in a sector that was particularly hard hit or, as will be seen below, to comprise a greater proportion of younger people.

Young people most affected

Impact by age has been one of the key features of the recession to date, with young people being more affected than any other age group. This is of interest because in previous recessions it was generally older workers who experi-

enced job losses. Between 2006 and 2009, the unemployment rate for those aged 18-24 almost doubled (7% to 13.1%). By comparison, the unemployment rate for ages 25-49 increased by half (3% to 4.5%); while for those aged 50-64 the unemployment rate actually decreased (2.3% to 2%).

Slight difference by community background

In terms of community background, there has been a decline in employment and a rise in unemployment for both communities. The increase in unemployment rate for the Roman Catholic community has been slightly higher (a rise of 1.8 percentage points, compared to 0.8 percentage points for the Protestant community). However, consideration of age and industry of employment has shown these to be contributory factors in understanding differences by community background. For example, Catholics make up a greater proportion of young people in the population in Northern Ireland (50% of Catholics were aged 16 to 24 in 2007, compared with 42% Protestant).

Greater impact on men so far

In gender terms, there has been a greater impact on men than women, as in previous recessions in Northern Ireland. Between 2006 and 2009, male unemployment increased from 3.8% to 6.4%; while female unemployment increased from 2.2% to 2.3%.

While the economic recession has, to date, largely affected the private sector,



Unemployment has almost doubled for 18-24 year olds. Photo: ericsphotography

public expenditure cuts still to come may affect sectors with a much larger proportion of women employees. It also remains the case that many women hold vulnerable positions in the job market in low paid, low skilled and (especially for mothers) part time work.

The pattern by age plays a key role here also. The study again shows that younger men have been disproportionately affected, rising from 8.7% to 19% unemployed in the 18 to 24 age group. There was also a higher proportion of young women affected by unemployment compared to other age groups of women.

Decline in opportunities for disabled people

It is generally recognised that disabled people are disadvantaged in the labour market, both in Northern Ireland and the rest of the UK. This research has however indicated that the recession is not yet having a significant impact on disabled people but that areas of concern are developing. For example, there were indications from interviews that there has been a decline in opportunities for work placements (an important bridge to employment for many disabled people) as a result of the recession.

Impact on single people linked to age

As regards marital status, the greatest impact has been on those who are single, which can again be potentially explained by the large proportion of younger people in this category. The study did not reveal any greatly disproportionate impact to date on those with dependents.

Lack of data on ethnic minorities, migrant workers, gay people

In Northern Ireland, small population size means there is little survey information available on employment statistics for members of black and minority ethnic groups.

As many migrant workers from Eastern Europe, who now make up the largest proportion of this group within Northern Ireland, were employed on casual or temporary contracts, there are some indications that they have been particularly vulnerable to redundancies or staff reductions. There is, however, little evidence of migrant workers returning home,

though the numbers arriving in Northern Ireland have declined.

Similarly, a lack of labour market data makes it difficult to comment on the impact of the recession on the ground of sexual orientation.

Cuts will affect women, lone parents, disabled people

While the research sought to identify the employment implications of the recession for different equality groups in Northern Ireland, it is important to note that the effects of the recession are still unfolding. The research findings provide some pointers to areas where ongoing vigilance is needed.

The expected future public sector cuts may have a disproportionate impact on some equality groups because of the concentration of, for example, women, lone parents and disabled people, both in public employment and in associated voluntary and community organisations.

Effect on long term unemployed

Indeed, interview evidence has suggested that higher demands for employment programmes and benefits have put a strain on existing services and that the

long term unemployed and other groups in the Northern Ireland labour market may be disadvantaged by this.

Recasting our priorities

Decision makers faced with greatly reduced budgets will have tough choices to make. It is even more important, in this context, that all possible steps are taken to avoid further disadvantaging particular groups in our society; to identify those most in need of support; and to recast our priorities accordingly.

This Equality Commission Research *Employment Equalities in an Economic Downturn* specifically considered the impact of the recession in Northern Ireland on the employment trends of the nine groups identified in Section 75 of the Northern Ireland Act 1998. The research methods used in the study included an examination of key literature, analysis of labour market data and interviews with relevant stakeholder organisations in Northern Ireland. The statistics in the report generally cover 2006 to 2009.

Further information, including the research report, is available via www.equalityni.org/research

Ombudsman Northern Ireland



Maintenance to domestic property

In this case, the aggrieved person complained about the Northern Ireland Housing Executive's (the Executive) decision not to install new windows in his home, during a maintenance scheme which was undertaken in his area in 2008.

The Ombudsman's enquiries established that because the aggrieved person was not satisfied with the standard of work undertaken by the Executive's contractor in relation to his neighbour's houses, he would not allow the contractor access to his home. Unfortunately, the Executive was unable to reach an agreement with the aggrieved person before the Contractor moved 'off site'.

As a result of representations by the Ombudsman's Office, the Executive decided to review this case and arranged for a different contractor to install new windows in the aggrieved person's home. New windows were subsequently installed and the aggrieved person was satisfied with the outcome.

Duty to meet need in times of budget cuts

Community care legal adviser **Anne-Louise Livesey** explains how a recent case taken up by the Law Centre clarifies the position on the duty to meet need once it has been assessed.

Since the House of Lords decision in *R v Gloucestershire County Council ex parte Barry*, there has been much debate as to the scope of health and social care trusts' statutory duty to meet need in light of resource constraints.

The Barry decision

The Barry decision, by a majority of three to two in favour of the County Council, had centred on section 2 of the Chronically Sick and Disabled Persons Act 1970 (the equivalent to our Chronically Sick and Disabled Persons (NI) Act 1978). The Lords had found that, in respect of section 2 of the 1970 Act, a local authority can take into account resources when assessing need. It can also do so in its decision whether it is necessary to make arrangements to meet those needs under the statute.

At the time, the decision in Barry was decried by disability rights campaigners as a dilution of the duty under section 2 to a mere power or discretion, a view echoed by the dissenting judge Lord Berwick: *'This seems to reduce the minimum obligation under s2 of the Act of 1970 to the level of Wednesbury unreasonableness.'* However, the provision was included that a reassessment was to be undertaken before any cut or reduction in services.

Re LW: facts of the case

A recent case taken by Law Centre(NI), *Re LW*, has given the courts in Northern Ireland an opportunity to analyse the current duties of trusts to meet need in light of resource constraints under our legislation and in light of the decision of *R v Barry* and subsequent judicial decisions on the matter.

The case concerned a 36 year old woman who was the victim of serious



Law Centre (NI) community care legal adviser **Anne-Louise Livesey**.
Photo: Michael Beggs

traumatic brain injuries and quadriplegia sustained as a result of a road traffic accident 20 years earlier. The ground for the judicial review was that the failure of the trust to provide adequate and suitable domiciliary care services was unlawful. The applicant relied on breaches framed under section 2 of the Chronically Sick and Disabled Persons Act (NI) 1978 and under Art 15 of the Health and Personal Social Services (NI) Order 1972.

The trust accepted that the domiciliary and non domiciliary arrangements for the applicant did not properly address her needs. It had been assessed that a rotational care package, involving three to four days weekly within a residential care unit and the rest of the time at home, was the appropriate provision. However, there was no vacancy in the only deemed adequate residential facility, and had not been for some time,

and there was little or no availability of suitably trained and skilled carers.

Three stages under section 2

Judge McCloskey analysed the scope of section 2 of the 1978 Act in conjunction with the Health and Social Care (Reform) Act (NI) 2009 and the 1972 Order in light of the decision in Barry. He argued that the title of the 1978 Act, and in particular the use of the word 'further', showed that the Act was designed to make provision for the chronically sick and disabled in addition to provision already made for them in the 1972 Order. He concluded that they were singled out for special additional treatment and attention by the 1978 Act. He laid out the three separate, but inter-related, exercises to be carried out under section 2:

1. assessment of the individual's social welfare needs;

2. determination, by reference to the table of services and facilities in paragraphs (a) - (h) of section 2, of what measures the authority considers necessary in order to meet the individual's assessed social welfare needs;
3. action in the provision of the services and facilities assessed and considered necessary.

It is at this third and final stage, in light of recent case law including *R v Barry* and *R v Bailey*, that he felt the power crystallises into a duty and therefore resources can no longer play a part in deciding whether to provide one or more of the specified statutory services to satisfy the assessed need.

He went on to state that the duty under section 2 is an unqualified duty, in contrast to the provision under Article 15 of the 1972 Order: *'Whilst the discretion which characterises the first and second stages of the s.2 exercise permits the intrusion of certain qualifications and limitations, as material considerations, I consider that these can have no influence at the final stage.'*

Further, considering whether there had been a breach of the duty to provide practical assistance in the home, the judge reemphasised the consideration as to whether such assistance rendered was 'adequate and effective' for otherwise the legislation would be rendered 'meaningless'. In the case, he found that there had been no evidence of reasonable conscientious and sustained efforts by the trust and found the trust in breach of its duty to the applicant.

Unequivocal duty under article 15

The judge then went on to look at Article 15 of the 1972 Order and the question of whether, where a trust determines what social care arrangements and facilities are considered by it to be necessary and/or suitable and adequate for a given member of the population, a duty of provision in tandem with a corresponding right crystallise, and if so what is the scope of the duty.

His analysis of Article 15 was that, while in making the assessment in each case the authority can take into account factors such as available resources, budget demands, the individual and her/his family's circumstances including personal resources, availability of resources and the responsibilities to other members of the population, when the assessment has been made the

discretion is replaced by a duty. He based this analysis on the Scottish case of *McGregor v South Lancashire Council (2000) Scot CS 317*.

He therefore found that in relation to the inadequate domiciliary care provided, the trust had acted unlawfully, as it had in its continuing failure to meet the applicant's need. Indeed on this issue, he pointed out that the finding was the same whether viewed through the vehicle of unqualified duty of provision or through the measure of reasonableness (as had been favoured in an earlier Northern Ireland judgement, *R v Judge*).

Duty to meet assessed need and the cutting of services

This judgement makes clear that in these times when local authorities, including health and social care trusts, are facing budget cuts and resource constraints, it

is important to be clear on the extent that resources and other factors can be taken into account when discharging the statutory duty to meet need.

At the assessment stage (ie when formulating eligibility criteria) and when determining what is necessary to meet assessed need, resources can be taken into account. However, when a need has been assessed and the trust is satisfied that it is necessary to provide a service to meet that need, then the duty becomes unequivocal. At this stage, the local authority cannot escape its duty to make arrangements to meet the need by saying it does not have the resources, money or availability to meet it.

Further to this, it is imperative that before cutting any service or provision, a reassessment takes place as per Barry, otherwise the decision to cut the service will be ripe for judicial scrutiny.

Students and benefits online

Students and Benefits 2010-2011 is an on line guide to help students and their advisers work out their entitlement to social security benefits. Published by Law Centre (NI) in association with the National Union of Students /Union of Students in Ireland. It is available to advisers on www.lawcentreni.org.

Students and student unions can also access it on www.nistudents.org and on NUSConnect, a new specialist resource and community website for UK and Ireland-wide NUS member unions, www.nusconnect.org.uk, which goes live on 20 August.

'We are glad that the Law Centre has once again made its expertise of social security benefits available to student advisers. We are proud to be associated with the publication and distribution of Students and Benefits,' said **Ciarnan Helferty**, NUS/USI student president.



Law Centre (NI) Assistant Director (Policy and Publications) Ursula O'Hare and NUS/USI student president Ciarnan Helferty launch Students and Benefits.
Photo: Catherine Couvert

Supreme Court ruling protects gay asylum seekers

Barbara Dunham studies law at the University of Seattle. She was a summer intern at Law Centre (NI) under the William Sampson Fellow bursary of the University of Washington Law School. Here, she analyses a UK Supreme Court judgement of great interest to immigration and gay rights advocates.

Gay men, according to the Supreme Court, should *'be free to enjoy themselves going to Kylie concerts, drinking exotically coloured cocktails and talking about boys with their straight female mates.'* While this statement by Lord Rodger in the recent judgement in the cases of *HJ (Iran)* and *HT (Cameroon)* has raised some eyebrows, the judgment has been welcomed by immigration and gay rights advocates.

The Supreme Court on 7 July 2010 ruled that LGBT asylum seekers would not be asked to *'live discreetly'* to hide their sexual orientation in their home country. In order to qualify for refugee status, asylum seekers must prove that they have fled their home country *'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.'* Just as religious persons should not be expected to change

their beliefs to live safely, neither should gay persons have to attempt to conceal their sexual orientation, according to this new judgment.

Previously, gay asylum seekers were most often told to return to their home country where they were expected to hide their sexuality. Earlier this year, gay rights group Stonewall issued a report stating that the rate of refusal for asylum claims on the basis of sexual orientation was nearly 100 per cent, much higher than the refusal rate generally. The report also found that the UKBA as an institution showed an *'institutional homophobia'*; immigration officers were unsure of what questions to ask, were prone to disbelief and showed a lack of understanding of what it means to be gay. One interviewer went so far as to ask why an applicant would *'choose to be homosexual'* knowing that it was illegal in their home country.

Over 70 countries worldwide prosecute people on the basis of sexual orientation; seven countries make same-sex acts an offense punishable by death. Iran, the home country of one of the appellants in the recent judgment, is one of those countries. In 2005, Iran hanged two teenagers charged with homosexual activity. It has become increasingly difficult to be gay in Iran as authorities there have stepped up their persecution of LGBT persons since gay rights activists joined in the protests following the contested June 2009 election.

Cameroon, the home country of the other appellant, will punish homosexual activity with up to five years in prison and a steep fine. Men suspected of such acts face forced medical examinations to prove homosexual activity. The appellant, HT, said that after neighbours discovered he was gay he was beset by a mob while walking home from church. They first threatened to castrate him and then they started beating him. The police came, he said, but then they too began *'beating me, kicking me all over my body.'* He woke up unconscious in a hospital. When asked why he couldn't live in another part of Cameroon, he replied, *'what happened to me in the past can - will - happen to me in the future... I would live my life in fear.'*

While the decision in the cases of *HJ* and *HT* was welcomed by refugee advocates, supporters also argued that UKBA officers should be trained in the new protocol. This would help avoid bad decisions exemplified by the case of John Bosco Nyombi, a gay asylum seeker who was forcibly removed to his native Uganda in 2008. There he was able to go into hiding but was twice caught and imprisoned, then beaten by both guards and inmates. Now granted leave to remain in the UK, Mr Nyombi was recently awarded an unprecedented £100,000 in compensation from the Home Office.



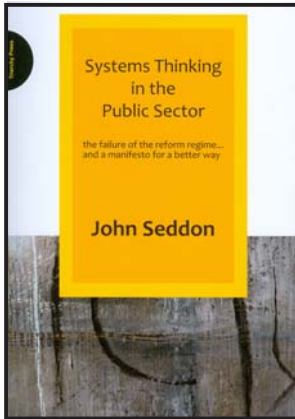
LGBT people should not be expected to live discreetly to avoid persecution.

Photo: Eduardo Jose Bernardino

book review

Systems thinking in the public sector

By John Seddon. Published by Triarchy Press: www.triarchypress.com.



● If ever there was a man whose time has come it is John Seddon. During the years of the Labour government, he waged a one-man campaign against its management orthodoxies. 'Management by objective', 'best practice', 'benchmarking', and the pursuit of 'economies of scale' are examples of what he demonstrates are the causes of inefficiency and ineffectiveness rather than their solutions. In his war against sloppy management thinking Seddon made many enemies; consultants (he calls them 'tool heads'), auditors (they should stick to counting beans) and managers who think their jobs are about organising resources rather than understanding, improving and sustaining the system they operate. Prominent among those who sought to ignore, then misrepresent and finally abuse him were the high command of the Audit Commission, whose pernicious effects on local authority service provision Seddon has meticulously documented. Someone in the new government did, however, listen. Seddon has been favourably name-checked in ministerial speeches and the Audit Commission is to be abolished. More importantly, organisations that have adopted his alternative approach have been seen to deliver remarkable performance improvements.

This book is a primer in Systems Thinking. It explains, with painful examples, the reasons why so much of what the public sector does, it does badly. These reasons have nothing to do with poor quality staff or lack of investment, and everything to do with managers doing the wrong things, using the wrong meas-

ures, meeting the wrong (or any) targets and failing to understand what it is that customers really need. Seddon does not claim that managers are bad people, but argues that they are concentrating on - at best - peripheral issues. He argues they need to focus on just two things: the system they manage and the reasons why it is not working. By understanding the 'what and why' of current performance, managers will obtain the knowledge required to make changes that will deliver real improvements. Everything else - customer satisfaction, high employee morale, lower costs and positive cultural change - comes for free once the system

starts to work properly. It is an exhilarating read, but a frightening one. Many of his ideas are counter-intuitive and all are challenging. Managers need to unlearn most of what they have been taught before. There are no quick fixes, no generally applicable methodologies. For each system, we have to observe, to analyse, to understand and then act. This book shows you how.

Brett Hannam

Brett Hannam is the Chief Operating Officer of the Strategic Investment Board. He writes here in a personal capacity.

.....

library news

Recent additions to the Law Centre library

Books and reports

Am only saying it now: experiences of women seeking asylum in Ireland. AkiDwa, March 2010. <http://www.akidwa.ie/AmOnlySayingItNow> AkiDWA.pdf

Decisions and Settlements Review, 2008-09. Equality Commission for Northern Ireland, 2010.

Distant voices, hidden lives: human stories of immigration detention in Northern Ireland, by Robin Wilson. Refugee Action Group, 2010.

Guidance for employers on preventing illegal working : asylum seekers and refugees, August 2010. UK Border Agency.

Living matters: dying matters, A palliative and end of life care strategy for adults in Northern Ireland. DHSSPS, March 2010.

Journal articles

Addressing financial exclusion among families living in poverty. (Barnardo's research project) Journal of Poverty and Social Justice 18 (2), June 2010.

Advice: whither or wither? by Gareth Morgan (Ferret Systems) Journal of Poverty and Social Justice 18 (2), June 2010.

Drafting schedules of loss. Adviser, July/August 2010.

Medical-social divide hindering homeless people. Communitycare, 12 August 2010.

Employment Support Allowance : transitional issues and appeals. Adviser (139) May/June 2010

When will dementia be cured? Communitycare, 1 July 2010

Useful weblinks

www.ncb.org.uk/diani/diani.aspx DIANI (Diversity in Action Northern Ireland) aims to improve the lives of migrant, asylum seeking and refugee children and young people across Northern Ireland through practice support and policy development.

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



Training at Law Centre (NI)

BELFAST

26 October	Industrial Injuries Benefits
15 and 22 November	Introduction to Immigration Law and Practice
16 November	ESA - Caselaw and Practice Update
24 and 25 November	Advocacy Skills
30 November	Tax Credit Overpayments (half day)
7 December	Mental Health Law
18 January	Mental Capacity and Decision Making
20 January - 10 March	Welfare Rights Adviser Programme (eight days)

DERRY

7 October - 25 November	Welfare Rights Adviser Programme (eight days)
2 December	Mental Health Law
13 January	Mental Capacity and Decision Making

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

Download our full training programme from www.lawcentreni.org

Signposting immigration advice

Law Centre (NI) has produced an updated multilingual booklet signposting immigration advice services in Northern Ireland.

If you have people from various nationalities visit your centre or practice, we would be grateful for your help in displaying the booklet.

Please contact our publications officer, catherine.couvert@lawcentreni.org, to receive the booklets free of charge.

