

social welfare law quarterly

frontline



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editorial

Universal Credit: will it work?

The government has published its eagerly anticipated White Paper for radical reform of social security, *Universal Credit: Welfare that Works*. However, as they say in advertising, will it do what it says on the tin?

Universal Credit is a working age benefit for people in or out of work. It will provide a basic allowance with additional elements for children, disability, housing and caring. It will replace tax credits, Housing Benefit, Income Support, Income-based Jobseeker's Allowance and Income related Employment and Support Allowance. Universal Credit will be administered by one body, namely the Department for Work and Pensions in Britain and (presumably) Department for Social Development through the Social Security Agency here.

The key aims of the new Credit are to simplify the system and to encourage those who are able to get back to work through improved work incentives and a significant ramping up of sanctions. The new claiming arrangements will largely be on-line, using real time earnings to help cope with changes of circumstances. A desire to simplify the system and improve work incentives is difficult to argue against. For those of us with long memories, the new arrangements have a Back to the Future feel to them, recalling days of Supplementary Benefit. In addition, the White Paper reverses an old adage for, in effect, the devil is in the lack of detail.

The White Paper leaves undeveloped key areas that go to the heart of how and whether Universal Credit will work. For example, how will Carer's Allowance, passport benefits (for example, health benefits, free school meals), the regulated social fund payments (cold weather, winter fuel, maternity and funeral payments) and child care support be integrated into Universal Credit? How will support with mortgage interest be managed now that it will become a benefit available both in and out of work? How will the real time income of the self-employed be assessed? Interestingly, the White Paper suggests that all self-employed people will be assumed to have generated at least a minimum income from self-employment. Further, the discretionary social fund (community care grants, budgeting and crisis loans) will

be transferred to local authorities. Local authorities are unlikely to welcome this with open arms. What will happen here given the different responsibilities that local authorities have in Northern Ireland? Neither local councils nor health and care trusts are appropriate bodies to manage the scheme and in any event will not want to take on the role. Finally, how will Universal Credit as a working age benefit dovetail with benefits available to people of pensionable age?

Questions are beginning to be asked about whether some of the proposals can deliver. The improvement of work incentives envisages a marginal tax rate of 65 per cent for most households who move into work and previously were not paying tax and 76 per cent for those already paying the basic rate of tax. Family Action, a charity which supports vulnerable families, has produced research suggesting up to 1.35 million households may be worse off in terms of work incentives as a result of the proposed changes. Moreover, depending on the way childcare support is integrated, this situation could be made even worse.

It is worrying that, with so many important gaps to be filled in, the coalition intends to bring a Bill to Parliament in January. Even if the Bill sets a framework for the changes, it is arguably not best practice to legislate in outline and fill in the detail later. A local Bill will no doubt follow for the Northern Ireland Assembly.

Finally, Universal Credit cannot be separated from the savings to social security expenditure announced in the emergency budget and the Spending Review Statement. The White Paper outlines that no one will lose as a direct result of the reforms. This will almost certainly be at the point of change, ie after many of the cuts to benefit have been implemented. In addition, the £18 billion worth of savings has been the price paid to allow £2 billion to be invested in Universal Credit. Fully understanding and exploring the ramifications of Universal Credit when all the detail is finally made available will become crucial in the coming months.

Les Allamby

Campaigning in difficult times: a thought-provoking AGM

Law Centre (NI) held its AGM on human rights day, Friday 10 December, in the Indian Community Centre in Belfast.

The theme of the day, *Unlocking the Powers of Local Communities: Campaigning in Difficult Times*, was picked up by Neil Jameson, Executive Director of Citizens UK who spoke about the London living wage campaign and by Seán Healy, Director of Social Justice Ireland, who shared his experience of analysing the yearly budget announcements in the Republic of Ireland from the perspective of the poor.

Joining the discussion, Avila Kilmurray of the Community Foundation and Bernadette McAliskey of STEP pinpointed lessons to be learned in local organising and campaigning.

John Larkin, Northern Ireland's Attorney General, joined the AGM to speak about the Living Law initiative and present certificates to successful candidates on the Law Centre's Welfare Rights Adviser Programme and Tribunal Representation Course.

The Law Centre commissioned report by the Institute for Fiscal Studies on the impact of planned benefit and tax changes was launched on the day. The research shows that Northern Ireland is more badly affected than any other region of the UK save for London. The impact in London is a reflection of larger numbers of very wealthy people being affected by the tax changes and the effect of Housing Benefit changes on high rents in London. Northern Ireland has fewer people on very high incomes and a larger proportion of households with children and of people on Disability Living Allowance, which contributes to the negative impact on incomes.

The research looks at the changes to tax and benefits announced in the Coalition's emergency budget in June 2010



On the panel at the Law Centre's AGM: Neil Jameson, Citizens UK, Avila Kilmurray, Community Foundation, Seán Healy, Social Justice Ireland and Bernadette McAliskey, STEPNI. Photo: Kevin Cooper

and the Comprehensive Spending Review in October 2010 and their impact on incomes through to 2014/2015.

'Tax and benefit changes will have a particularly devastating impact for those on lower incomes in Northern Ireland. On top of the distributional effect, there is the likelihood of a slower economic recovery, higher rates of mental and physical health problems and poorer childcare provision which will make things even tougher for people trying to get into work in Northern Ireland. We need to develop changes to social security that take account of our conditions and which will actually work in Northern Ireland.' said Law Centre (NI) director Les Allamby.

Advice services unite to protect the most vulnerable

The 'Beat the Recession' project, led by Citizens Advice in partnership with Advice NI and Law Centre (NI), is a debt advice initiative set up to help those most affected by the recession. Funded by the Big Lottery Fund, the project was launched on 19 November 2010.

The project targets people who may not be aware that help is available by offering debt and money advice in a variety of non traditional venues and by using a number of web-based technologies.

- Citizens Advice provides debt advice via a number of Roadshows in venues such as Tesco, Libraries NI, sporting venues and health centres, in conjunction with an innovative web-based advice service by webchat, Skype and text message at www.beattherecession.me
- Advice NI offers free legal representation for people facing repossession in court. Other services include help for people

facing redundancy or cuts in working hours, targeted support for people in areas that have been most affected by the recession, and working with community champions to make people more aware of the support available.

- Law Centre (NI) provides links through to its Encyclopedia of Rights and to its Redundancy Toolkit offering specialist legal advice on employment law for those facing redundancy or reduced working hours.



Citizen's Advice: here to help in changing times

The Citizens Advice AGM was held in the Waterfront Hall, Belfast on 14 October with the Minister for Justice, David Ford, as guest speaker.

The Minister said: 'Citizens Advice offers such an important and varied service to the people of Northern Ireland and carries out its work with such professionalism and dedication. It is hugely respected for the way it has touched the lives of so many for so long.'

Over the last year, the charity has helped more than 92,000 people deal with 317,000 issues, including benefits, tax credits, money advice and debt, employment, housing, health, consumer and more. Citizens Advice continues to experience the pressure of demand for its services as a consequence of the current economic recession. Benefit enquiries are the single largest area of advice, accounting for over 56 per cent of total issues dealt with by advisers. It is an area that demonstrates the complex nature of the work undertaken. The charity has also seen an increase of seven per cent in its money advice work. Chief Executive Derek Alcorn said:

'Our message to the government is that we are here to help and the need for the services offered by CAB has never been greater. Spending cuts will undoubtedly contract public services and announcements about welfare reform will mean that more and more people will need a trusted third party intermediary like CAB. Citizens Advice provides an essential interface between the public and public services.'



L-R: Alayne Kinver, Director of Development, Citizens Advice, Derek Alcorn, Chief Executive, Citizens Advice, Minister for Justice David Ford and John Devine, Chair, Citizens Advice. Photo: Belfast Exposed

During the last year, Citizens Advice's continued work with key partners has realised significant achievements and gains for clients. The organisation completed the 2009/10 Benefit Up-take programme in partnership with the Social Security Agency. This helped vulnerable people identify and claim £6.1 million in social security entitlements. The impact of this money on the local economy in a recession cannot be understated; the £6.1 million pounds equates to more than £38.8 million over the average length of these claims. Over the same period, the Dealing with Debt service funded by DETI has helped over 2,500 clients with over £33 million of debt.

Demand for debt advice continues to grow

The unprecedented demand for the Dealing with Debt service continues to grow and shows no sign of easing. Dealing with Debt is a free and confidential money advice service offered by Citizens Advice across Northern Ireland. It is funded by DETI.

From April to September 2010, Dealing with Debt handled over £12.5 million of debt in Northern Ireland and helped over 1,200 new clients.

The biggest areas of enquiry continue to be credit cards and personal loans. However, the profile of debt has changed and continues to change. Over the last four years of the service, mortgage debt as a percentage of overall debt has increased from two per cent in 2006 to just under 20 per cent. In the July to September quarter, the amount of mortgage debt handled by the service increased by over 30 per cent on the previous three months.

Siobhán Harding, Information and Policy Officer, said: 'These figures show the extent of the debt problem in Northern Ireland and that demand is increasing as we approach our busiest time of the year following the Christmas period.'

'These statistics demonstrate the very real need that exists for the free and independent face to face debt advice offered by Citizens Advice. The benefits of good quality debt advice can be wide ranging for individuals and their families, often enabling them to stay in their own homes, to help them take steps to resolve their debt situations and lift the pressure and worry of debt which in some cases can impact on the health service. Good quality debt advice can help to save lives.'

21st Century Welfare and the role of advice services

Kevin Higgins, head of policy and research at Advice NI, reports on the independent voluntary advice sector's annual general meeting.

Advice NI explored the implications for Northern Ireland of 21st Century Welfare, with speakers including Minister for Social Development Alex Attwood MLA, Law Centre (NI) Director Les Allamby and Ian James Parsley, Media Consultant with involvement in the Centre for Social Justice 'Breakthrough NI' report. A panel discussion also took place which included Tommy O'Reilly, Chief Executive of the Social Security Agency, Anne McCleary, Director of Policy and Legislation DSD, and Elaine Burns of North Belfast Advice Partnership.

The role of the sector

Minister Attwood paid tribute to the work of the advice sector and said the sector would play a crucial role moving forward given the budget reduction, welfare cuts and increasing unemployment. Minister drew particular attention to the Incapacity Benefit reassessment programme which had the potential to increase the unemployment figures to 100,000. He also highlighted the need to maintain advice capacity, including benefit take up activity, with a view to mitigating the impact of welfare reform. In particular, the Minister said:

'I am taking forward particular work on mortgage arrears and repossessions. I want to acknowledge a very useful paper that was provided to me in October by Advice Northern Ireland and a letter that I received from the organisation in early November that encouraged me and the Department to go in certain directions. Arising from that information, I issued instructions that the Department should go in certain directions to deal with the issue of people in mortgage arrears and at risk of repossession, a situation that I think will become more acute.'

Welfare reform

Ian James Parsley highlighted his work with the Centre for Social Justice and in particular the publication of 'Breakthrough NI', a report which highlighted five key 'pathways to poverty' namely family breakdown, educational failure, economic dependency, addictions and indebtedness.

Mr Parsley disagreed with some aspects of the welfare reform proposals as introduced by the coalition government, including enforced work for some benefit claimants, benefit penalties, for example the Housing Benefit reductions, and ultimately the impression that welfare was subject to Treasury dogma.

Les Allamby gave a presentation on the implications of welfare reform for Northern Ireland and differentiated between three strands namely:

- proposals inherited from Labour, particularly migration of Incapacity Benefit claimants to Employment and Support Allowance; and cuts to the Support for Mortgage Interest scheme;
- social security expenditure savings - including Housing Benefit and tax credit cuts, review of DLA medical assessment, reduced benefit uprating formula and others;

- radical changes to Welfare Reform from October 2013 onwards.

Mr Allamby drew attention to the unique circumstances in Northern Ireland including the lack of a childcare strategy and poor childcare infrastructure; higher extent of health problems in particular mental health problems; larger numbers of benefit claimants in receipt of Incapacity Benefit, Employment and Support Allowance and Disability Living Allowance in Northern Ireland; and the gloomier economic prospects for Northern Ireland.

At the panel discussion a number of points were made in relation to the unique circumstances of Northern Ireland, not least the legacy of the conflict. Responses from the panel highlighted the ongoing issues in relation to conflict and cultural difference. Also, the Social Security Agency has collated Northern Ireland-specific case studies from the current DLA caseload and forwarded these for consideration by the medical panel considering the DLA issue.

Membership profile

Advice NI also launched its Membership Profile report 2010 with latest information on the workload of members and how members have striven to help people affected by two quite separate phenomena, namely recession and welfare reform. Some headline information included:

- total enquiries: 247, 778 (representing an increase of 9% on previous year);
- key areas of demand: social security (55%), housing (13%), employment (7%) and debt (9%);
- tribunal representation: 1, 329 hearings (representing an increase of 43% on previous year).

For more information on the work of Advice NI go to www.adviceni.net.



Kevin Higgins. Photo: Belfast Exposed

No to Larne immigration detention centre

The Refugee Action Group (RAG) has stepped up its campaign against the opening of an immigration detention centre in Larne as the UK Border Agency presses ahead with plans for the centre. This would be the first such centre in Northern Ireland, possibly housing 22 detainees at any one time.

In 2008, the Council of Europe urged the government 'to consider the possibility of drastically limiting migrants' administrative detention'.

Instead of locking up asylum-seekers in expensive administrative detention, RAG believes that Northern Ireland should welcome them in their time of need and give them due credit for the value they bring to society.

RAG argues that it is much better for race relations for newcomers to be based in the community. There, they can become integrated into local society. Even for those facing removal or deportation, there are many preferable, community-based alternatives to detention. Paul Kazadi, Chair of RAG and himself a refugee from the Democratic Republic of Congo, says:

'Being detained is a very frightening experience. You are isolated from your family, friends and community, and the detention centre staff may not even speak your language. Once you are inside the UK immigration detention system, you can be moved from detention centre to detention centre at the whim of the UK Border Agency, and it can be very hard for family and friends to maintain contact with you.'

RAG is urging local politicians and councillors to oppose the proposed facility. Even though decisions on immigration are



made by Westminster, local decisions will be made about planning and resources for the centre.

Meanwhile the government has announced that the detention of children of failed asylum seekers will end by May this year throughout the UK. Parents awaiting deportation will still be held in secure houses but their children will be assigned minders so they can move around freely.

Immigration cap unlawful

In December, the Joint Council for the Welfare of Immigrants won a Judicial Review against the temporary cap on the Points Based System introduced by the government in November. The High Court ruled that the cap, which had been introduced in the summer, was unlawful because it had side-stepped Parliament scrutiny. The cap is therefore not in force at present, although it is likely that government will introduce new measures when Parliament reopens. The Law Centre understands that the Home Office is considering an appeal.

Advantage training on age issues

Advice NI is recruiting participants for the January to April 2011 run of the 'Advantage' training courses (accredited training on age issues). The courses have been developed in partnership with Age NI and A2B. The Law Centre provides part of the community care training. They are aimed at those who work in an advisory capacity with older people, other groups working on age sector issues, and those working within the subject areas.

The courses are accredited with Open College Network Northern Ireland at level 3. Learners can attain accreditation for individual modules or for the full course. Accreditation is optional. Courses include the following short courses and the full Older Person Adviser Course (all six courses):

- Age Awareness and Working with Older People - 25 January and 1 February
- Introduction to Older People's Benefits - 8 and 15 February
- Understanding State Retirement Pension - 22 February and 1 March
- Health Rights and Services for Older People - 8 and 15 March
- Community Care and Older People - 22 and 29 March



- Housing and Older People - 5 and 12 April

The courses are designed to enable participants to expand their skills and knowledge base in the subject areas, including areas of policy, legislation, good practice, and use of relevant tools, enhancing both general and professional skills.

Costs for courses vary depending on organisational status (eg statutory/voluntary), accreditation option and number of modules required. Contact Advice NI for further information about course fees and packages available.

To participate in any of the courses or for further information, contact Emma Murphy at Advice NI (emma@adviceni.net or tel: 028 9064 5919).

Making a difference with public interest litigation

Held on 15 November in Belfast, the PILS Project's first major conference, *Developing Public Interest Litigation; the International Experience*, brought together a panel of eminent international speakers with broad ranging experience of public interest litigation. The conference attracted a wide audience of legal practitioners, NGOs, academics and public sector representatives. In his welcoming remarks Paul Mageean, the Chair of the PILS Project, reiterated its central aim of advancing human rights and equality in Northern Ireland through public interest litigation and its commitment to working closely with others, in particular NGOs working on behalf of the most vulnerable groups in society, to achieve that aim.

The conference was formally opened by the Lord Chief Justice, Sir Declan Morgan, who acknowledged the important role of the voluntary sector in identifying patterns of inequality and injustice that might give rise to public interest cases.

The keynote address was delivered by the Honourable Michael Kirby AC CMG who at the time of his retirement in 2009 was Australia's longest serving judge. He provided valuable insight into the historical 'caution' about public interest litigation amongst the judiciary focussing in particular on the issues of 'standing', interventions and costs.

Delegates then heard from a panel of international experts (chaired by Inez McCormack of the Participation and Practice of Rights Project) including Dr Ann Skelton of the Centre for Child Law in South Africa who has appeared in a number of the leading cases on children's rights before the South African Constitutional Court.

This was followed by Brad Seligman, one of the best known class action lawyers in the US, being co-lead counsel in the largest class action in US history, *Dukes v Wal-mart Stores Inc*. Speaking of his own litigation experience he highlighted that '*litigation standing alone is rarely going to lead to lasting change*' and the need to combine it with other campaigning strategies.

This was echoed in the concluding presentation by Michael Farrell, Senior Solicitor with FLAC (Free Legal Advice Centres), who has many years experience of working on human rights issues, most recently as the solicitor who represented Dr Lydia Foy in her successful challenge to the Irish government's failure to grant legal recognition to transgender people. One of his central themes was the importance of developing strategies to secure the *implementation* of successful court decisions and



Speakers and members of the PILS project at the Public Interest Litigation Conference. Photo: PILS

the critical role that NGOs can and must play in this if public interest litigation is to bring about real change in the lives of those affected.

Transcripts of the speakers' presentations will shortly be available on the PILS Project's website www.pilsni.org.

Sinead Mulhearn, PILS project

Great response to our members' survey

The Law Centre conducted an online membership survey in November/December to find out how we can improve our services. We are very grateful to our members for the high number of responses (218 answers). The results will be analysed and published in the near future. Congratulations to the winners of our survey draw:

Aidan McCrea, the Resource Centre Derry

Maxine Orr, Worthingtons Solicitors

Marian Murphy, Northern Trust

PUTTING CHILDREN FIRST

Child maintenance enforcement changes

Denise Ferguson from the Child Maintenance and Enforcement Division of the Department for Social Development explains what the Division does to secure money for children.

Over 101,000 children in Northern Ireland do not live with both of their parents. Although nearly everyone agrees with the principle that separated parents have a responsibility to support their children financially, it is well known that not all separated families actually have arrangements where money is flowing for their children.

Financial responsibility does not end when the parents' relationship does. Separated parents have several options for supporting their children, but not supporting a child is never an option.

Rule changes made in 2008 mean that parents are free to choose the maintenance arrangements which best suit their needs. That could mean a private arrangement or, if parents cannot sort it out themselves, an application to the Statutory Maintenance Service managed by the Child Maintenance and Enforcement Division. The difference when the Division is involved is that we can take action to ensure that the parent who does not live with the child meets his or her obligation to the child.

When parents miss payments and build up maintenance arrears, they are effectively 'robbing their child'. Ensuring that arrears are promptly repaid is the job of the Division's legal enforcement team.

Enforcing child maintenance

The legal enforcement team pursues those arrears of maintenance that have built up where a non-resident parent has not fully met his or her obligations to pay.

The Division has a number of enforcement powers that it uses to collect arrears. We would prefer not to have to use these powers, so we always try first to negotiate an acceptable way for parents to pay maintenance for their children. If we cannot come to an arrangement, we try using a Deduction from Earnings Order.

Deduction from Earnings Order

A Deduction from Earnings Order (DEO) can be used to deduct ongoing maintenance and/or any arrears from a parent's

wages if he or she is employed. It is the main enforcement tool when an employed parent refuses to co-operate. An order is sent to the parent's employer saying what deductions should be made and how often. We do not need to go to court to do this, and employers are required by law to deduct maintenance from wages when instructed to do so by the Division. Some parents choose to pay their maintenance in this way - this is called an elective Deduction from Earnings Order.

Deduction from accounts

The Division can instruct a deposit taker (usually a bank or building society) to deduct amounts from a parent's account and pay them to us. Again, we do not need to go to court to do this.

Taking action through the courts

Taking court action is not our preferred course of action, but we will take parents to court if they do not pay for their children. Legal proceedings against non-paying parents can be expensive and the par-

ent can end up paying his or her own and the Division's legal costs as well as any maintenance owed. Court action could potentially result in parents going to prison.

Where a parent fails to make regular payments of child maintenance and it has not proven possible to reach an agreement that will see the arrears cleared in a reasonable time, the enforcement team can apply to the Magistrates Court for a liability order. A liability order is legal recognition that there are arrears to be paid. In Northern Ireland, a liability order is essential before the enforcement action below can be taken.



Photo: Department for Social Development

Enforcement of Judgements Office

We can ask the Enforcement of Judgements Office to take possession of an individual's belongings and sell them to obtain maintenance money owed.

Third party debt order

The Court can make a third-party debt order to tell an individual or an organisation who holds money or assets that belong to the non paying parent to freeze them from a given date. Once the money is frozen, the non paying parent cannot use it without the permission of the court.

Charging order

We can apply to the court to make a charging order. If the non paying parent owns a house, land or shares or has an interest in a valuable asset with a realisable value, we can register the arrears against the property at the Land Registry. If the property is later sold, we can recover what the parent owes from the proceeds. We can also ask the courts to force the sale of a property with an Order for Sale. Indeed the Division had a real success with this action during 2009 and 2010, when we managed to secure arrears of around £50,000 each for two parents with care.

The last resort

If a parent wilfully refuses to pay, and none of the enforcement measures mentioned above have allowed us to recover the maintenance owed, we can consider asking a court to send that person to prison. This really is a last resort, because our ultimate goal is to get money flowing to children.

The future

For the future, a new system of child maintenance is being developed. This will be simpler, quicker, accurate and easy to understand. We hope to use the latest tax year information provided by Her Majesty's Revenue and Customs (HMRC) as the basis for working out how much child maintenance should be paid. Existing clients of the Child Maintenance and Enforcement Division will be kept advised of what these changes mean for them.

For information and guidance about the options for securing child maintenance, contact the Information and Support Service on 0800 028 7439, or visit our website at www.nidirect.gov.uk.

Executive consults on budget

Lisa McElherron, Policy Development Manager at the Northern Ireland Council for Voluntary Action, outlines the main elements of the draft budget.

The Executive's draft budget is out for consultation until 9 February. The budget outlines the amount that will be available for each department. At time of writing there is no information on how this money will be allocated within departments. This crucial detail is to be provided and consulted on by individual departments. NICVA has been in contact with departments and will be agreeing dates for consultation meetings with the voluntary and community sector in early January. Details will be posted on NICVA's website.

- The health elements of the DHSSPS budget are to be protected. This amounts to 77 percent of the department's budget. The social services elements of the budget will not have the same protection.
- A Social Protection Fund, located in OFMDFM, is to be established, with £20 million allocated for 2011/2012. Continued funding depends on income generated from the new revenue generating measures proposed by the Executive. It is believed that this is a version of the Hardship Fund proposed by the DSD Minister to offset some of the impacts of Welfare Reform proposals.
- A Social Investment Fund will be established in OFMDFM, with £20 million per year over the four years. The Fund is part of the Executive's commitment to tackle disadvantage. The budget notes that:

'this disadvantage is most acute in those interface communities where the problems are many and complex'.

- The rates paid by households will rise in line with inflation. Water charges will not be introduced.
- The Green New Deal will be supported with £4 million per year.
- A charge on plastic bags will be introduced.
- The Executive will borrow £175 million from the Treasury for an assistance package for Presbyterian Mutual Society savers and make a further contribution of £25 million to match the £25 million already secured from the Treasury.
- Civil servants earning over £21,000 will have their cost of living pay increase frozen. Annual wage increments will continue to be paid.
- Changes to legislation regarding Belfast Port will be made to allow the Executive to receive an ongoing share of the Ports profits.
- Reserves belonging to housing associations may be used to top up the cost of building new houses.
- All quangos, including NIHE, are to be reviewed and Ministers will prepare recommendations on their future by May 2011.
- There will be an £18 million package of initiatives to address unemployment, mostly implemented via DETI and DEL. This will include support for social enterprises and business start up grants for Neighbourhood Renewal Areas.

Read the draft budget on:

www.northernireland.gov.uk/index/budget2010/draft-budget2010-consultation.htm

Welfare reform bites

Northern Ireland hit hard by tax and benefit changes

Commissioned by the Law Centre, the IFS research on the impact on Northern Ireland of planned tax and benefit reforms was launched on 10 December, ahead of the Northern Ireland budget. **Les Allamby** explains the main findings.

The Law Centre recently commissioned the Institute for Fiscal Studies to analyse the impact of tax and benefit reforms to be introduced between 2010/2011 and 2014/2015 in Northern Ireland. The research examines a series of changes to the tax and benefit system announced by both the last government and the current coalition which are being implemented across the UK between January 2011 and April 2014.

Some changes involve increases in tax payments affecting those on higher incomes, others reduce benefit entitlements. Their impact on the regions of the UK will depend on the incomes of the regions' residents

and the degree of their dependence on benefits.

The reforms will reduce incomes in Northern Ireland by more than those in any other region except London. The average losses, by region, from tax and benefit measures to come into effect between now and 2014-15 are shown in Figure 1. The overall impact is split by measures originally announced by the last Labour government that the new government is choosing to go ahead with, measures announced in the June 2010 Budget and measures announced in the October 2010 Spending Review.

The relatively large average losses in Northern Ireland reflect two aspects of the changes announced by the coalition

government. First, an unusually high proportion of Northern Ireland residents receive Disability Living Allowance. Northern Ireland is therefore likely to lose disproportionately from the new tighter test for eligibility that was announced in the June Budget. Second, a relatively high proportion of households in Northern Ireland contain children. Such households will on average lose more as a percentage of income from the benefit cuts than will those without children. By contrast, Northern Ireland is less affected by the tax increases announced by the previous government that are yet to come into effect. This is because relatively few of the UK's

richest households are in Northern Ireland, and this is the group that will lose the most as a percentage of income from these measures. These households are relatively more likely to be found in London and the South East of England, which explains why these regions lose more from these tax rises.

The research also examines how the distributional impact of tax and benefit reforms between income groups is different in Northern Ireland compared to the UK as a whole. Because those on lower incomes in Northern Ireland are relatively more likely to receive DLA and more likely to have children, they lose more as a proportion of their income than those in the same part of the UK income distribution. On the other hand, the richest in Northern Ireland are not as well

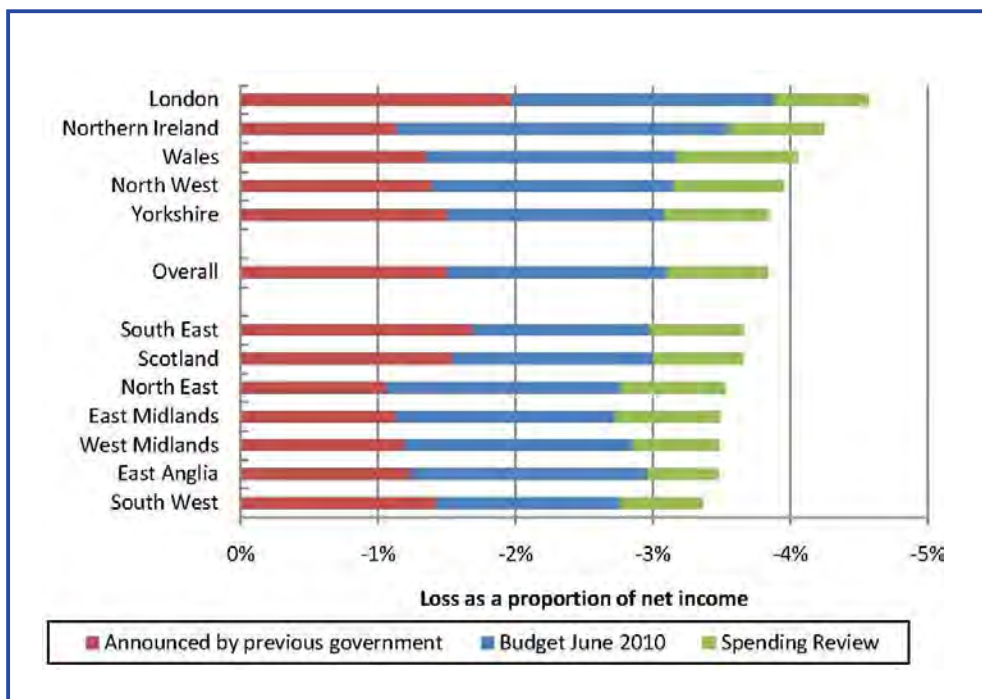


Figure 1: The effect of all tax and benefit reforms to be introduced between January 2011 and April 2014 by region (IFS report)

special feature: who pays for the recession?



Les Allamby discusses the report at the Law Centre's AGM. Photo: Kevin Cooper

Britain, there is no statutory duty on public authorities to provide adequate childcare, no lead Department responsible for childcare and no agreed strategy. Moreover, economic forecasts suggest that recovery from the recession may not begin until 2012. In addition, in Northern Ireland, 8.6 per cent of the working age population are receiving Incapacity Benefit compared to 5.2 per cent in Britain. Department of Work and Pensions estimates suggest almost one in four claimants will fail the Work Capability Assessment test in migrating to Employment and Support Allowance. In this context, welfare reform ambitions to get lone parents and others back to work more quickly look problematic.

The IFS report reinforces the message that the social security changes announced by the new government alongside those already in the pipeline will have a particularly severe impact on low income households here. It illustrates further why there is a need to campaign vigorously for welfare reforms which recognise local circumstances and will actually work in practice.

off as the highest earners in the rest of the UK and so the highest income fifth of households lose somewhat less than their counterparts across the UK as a whole.

In effect, what the research helps to illustrate is that the changes announced in the emergency budget in June 2010 and in the October 2010 Spending Review announcement will lead to a far greater percentage drop in income among the poorest 20 per cent of the population than the richest 20 per cent. While the rhetoric of the Chancellor that everyone must contribute to the recovery and take the pain appears accurate, it fails to equate with any notion that those with the broadest back should bear the greatest burden.

Alongside examining the distributional impact of the changes, there is also a need to take account of other significant differences in Northern Ireland. In particular, these include the relative lack of childcare provision in Northern Ire-

land, the prognosis that the economic recovery will be slower and the higher proportion of people of working age reliant on Incapacity Benefit due to be migrated to Employment and Support Allowance from February 2011. Unlike in

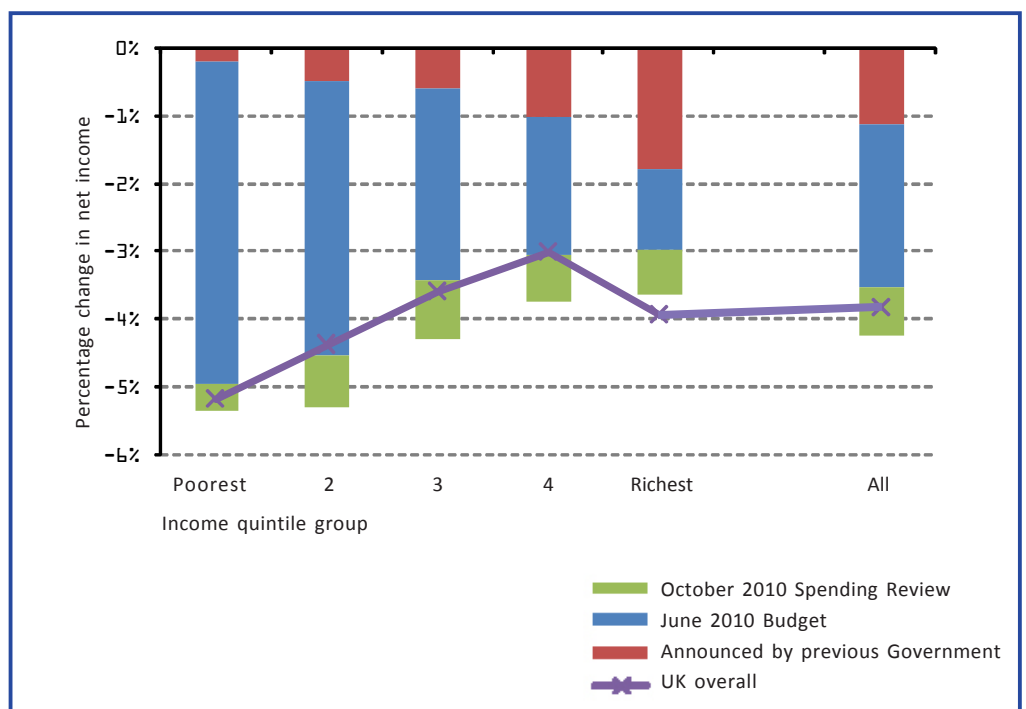


Figure 2: The effect of tax and benefit reforms to be introduced between 2010-11 and 2014-15 by Northern Irish household income quintile group (IFS report)

Universal Credit

Too many questions left unanswered

Kevin Higgins, head of policy and research at Advice NI, outlines concerns that welfare reform proposals do little to help people who need to rely on the welfare system.

The White Paper *Universal Credit: welfare that works*, published on 11 November 2010, sets out the Coalition Government's plans to introduce legislation to reform the welfare system by creating a new Universal Credit. Universal Credit aims to radically simplify the system to make work pay and combat worklessness and poverty.

The House of Commons Work and Pensions Committee held a short inquiry into the proposals. The deadline for written evidence was 16 December. In Northern Ireland, the Department for Social Development has also launched a consultation which is due to close on 31 January 2011.

Advice NI has engaged on the welfare reform debate over the past number of years and is part of the Northern Ireland Welfare Reform Group, an umbrella grouping of organisations which aims to campaign for positive changes to policy, service provision and legislation for those in receipt of social security.

profile of person will be worse off as new claimants to Universal Credit.

3. It is difficult to accept that government is genuinely interested in protecting those already on benefits who might lose out with introduction of Universal Credit, when one considers the raft of welfare cuts proposed in the June and October announcements.
4. The proposed penalties/sanctions/increased conditionality are too draconian in the context of limited employment opportunities. Penalties and sanctions which reduce Universal Credit will impact on the household unit (Universal Credit is purported to be a household benefit) therefore will impact on the family unit and in particular children and child poverty.
5. Research published by the Joseph Rowntree Foundation which questioned the effectiveness of benefit sanctions in terms of:
 - differential impact on most disadvantaged households;
 - impact on benefit take-up; and
 - lack of consistency in applying sanctions.
6. The unique circumstances of Northern Ireland need to be factored into the implementation of Universal Credit. Specific examples include:
 - the fact that parts of the current benefits system are administered by different Departments within the devolved administration;
 - the weak childcare infrastructure in Northern Ireland and the lack of any childcare strategy;
 - the growing problem of unemployment in Northern Ireland, for example, the Northern Ireland claimant count has increased by 8.9 per cent (4,800) in 2010 compared to a decrease of ten per cent in the UK as a whole;
 - the fact that society in Northern Ireland is emerging from a period of conflict and many people are still suffering as a result (for example post traumatic stress, trauma to limbs, addiction rates, mental health issues).
7. There is an urgent need to clarify how housing costs will be calculated and administered within Universal Credit. Advice agencies are already seeing clients who are unable to meet mortgage and private rented costs as a result of cuts to Support for Mortgage Interest (SMI) and shortfalls between private rent and Housing Benefit. Cuts to housing support appear to be purely punitive and unfair given the economic situation in Northern Ireland and across the UK.
8. There is apparent confusion in the White Paper between Pension

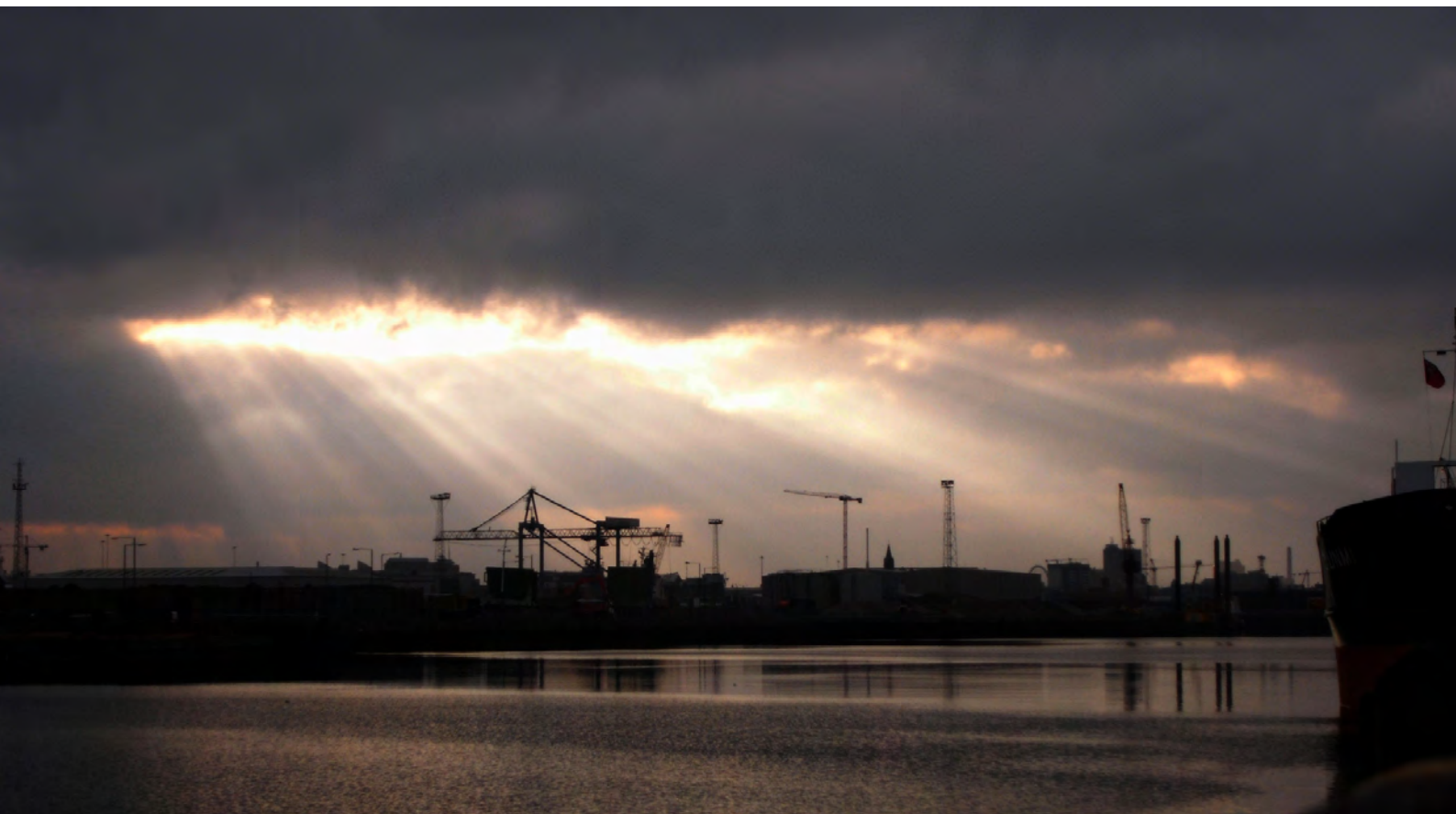
Advice NI has compiled the following list of issues which summarise specific concerns in relation to the *Universal Credit: welfare that works* White Paper.

1. There is a general lack of detail and we have concerns that the figures and projections may not prove to be sufficiently robust.
2. We need more information on who will require transitional protection under the transfer from existing benefits to Universal Credit. After all, if there is a need for this protection, then this

- impact on crime rates;
- impact on household hardship;
- factors such as claimants' understanding and awareness of how their responsibilities and the consequences of not meeting them limit the potential effectiveness of sanctions;
- lack of awareness amongst claimants of why sanctions are imposed and how they could be reversed;
- how sanctions could punish a lack of awareness rather than the deliberate flouting of the rules;

“*The proposed sanctions are too draconian in the context of limited employment opportunities.*”

special feature: who pays for the recession?



Society in Northern Ireland is emerging from a period of conflict and many people are still suffering as a result.

Photo: Geraldine Gallagher

Credit and Universal Credit. It seems that older people who remain in work will have to claim Universal Credit instead of Pension Credit. If there is any differential between Pension Credit and Universal Credit, this will undoubtedly cause confusion for both claimants and decision makers and undermine arguments in relation to the simplification of the system.

9. Universal Credit marks the beginning of the end for working age contribution based benefits. Many people pay National Insurance contributions with the expectation that should they become unemployed or ill they will be supported by the benefits system. The introduction of Universal Credit (with an associated reduction in contributory benefit payments) will lead many to question the use of National Insurance, as potential benefit recipients see the qualifying criteria for contributory benefits tightening with a view to restricting expenditure and as the direct link between contributions paid and accessibility to working age contributory benefits is broken.
10. We are very concerned about how people with work-limiting health conditions are currently treated and will be treated under Universal Credit. Undoubtedly more people are failing the Work Capability Assessment (the medical test for Employment and Support Allowance). More people with moderate to severe work limiting health conditions are having to claim JSA and so may be subjected to an inappropriate level of conditionality under Universal Credit. There needs to be a fundamental review of the needs of people with work-limiting health conditions and how they can be properly supported within the Universal Credit system.
11. In the current Northern Ireland economic climate, we would question the rationale and cost effectiveness of imposing greater conditionality on people with disabilities, older people, lone parents and others; not to mention the associated punitive measures regarding Housing Benefit and Support for Mortgage Interest cuts when people are unable to progress from benefits to work.
12. The White Paper proposes 'stronger', 'personalised', 'targeted' conditionality on some job seekers. This has the potential to be inconsistent and contrary to the vision of a 'universal credit'.
13. We are concerned that access to Universal Credit will 'normally be through the internet'. We have already raised concerns about how HMRC appears to be driven by the need to increase efficiency savings by

special feature: who pays for the recession?



Northern Ireland has a weak childcare infrastructure and a lack of any childcare strategy. Photo: Marina Dyakonova

believe this is unfair and claimants should not be held liable for the failure of others.

reducing face to face access points. We fear that face to face channels will be undermined due to cost considerations. Online channels and telephony are not appropriate for many vulnerable clients.

14. The White Paper states that claims for Universal Credit will be made on the basis of households rather than individuals and both members of a couple will be required to claim. It goes on to say that the HMRC real-time information system will be used to identify earnings and to calculate the net Universal Credit payment. This approach is problematic: as HMRC systems operate on the basis of the individual not the household, there is scope for dysfunction and inaccuracy to develop between the DWP-administered Universal Credit and the HMRC-relevant information used for income tax purposes.
15. The White Paper sets out the intention to introduce a £50 civil penalty administered quickly to those who fail, without good excuse, to report changes to personal circumstances. Before any attempt is made to introduce this draconian and punitive measure, the government needs to be

certain that claimants are made fully aware of what constitutes a relevant change in circumstances and appropriate access channels must be set up to allow claimants to easily report changes. Also, in the interests of fairness, a penalty should only apply to changes which significantly affect the amount of Universal Credit payable.

16. We are opposed to the proposal to increase the maximum rate at which fraud debts can be recovered through deduction from benefits (proposed to increase by almost 25 per cent). We are concerned that this will reduce the household income below that set for that family and so impact upon the family unit and children.
17. The proposal to 'seek powers to enable us to widen the range of debts we can recover, to include those resulting from official error' is worrying. The introduction of such radical reform may be susceptible to inherent error (for example due to inadequate IT systems). This approach is effectively passing the risk of error within the new system on to the shoulders of claimants. We

18. We are concerned that with the introduction of Universal Credit, the current criteria for access to a range of passported benefits (for example, free school meals and health benefits such as exemption from prescription charges) will no longer exist. Passported benefits are a vital source of help and support for low income households. We would want re-assurances that passported benefits are not subjected to additional cuts.

19. We have no doubt that people will be anxious about Universal Credit and what it will potentially mean for them. Advisers have already been inundated with requests for help from people affected by the welfare cuts announced in the June and October statements. Despite the claims that Universal Credit will simplify the system, we envisage that advice providers will see increased demands on their services from people seeking clarification about how the new system will work. Additional resources would need to be made available to the advice sector as the new system is introduced.

Conclusion

Advice NI believes that, while there is merit in Universal Credit, some fundamentals must be borne in mind.

Welfare expenditure has already been cut by approximately £20 billion, one could argue that this is quite a negative approach to making work pay.

In terms of increasing conditionality and punitive sanctions with the stated aim of moving people into work, Advice NI notes a recent forecast which estimates that at least one in ten people will be unemployed in half of UK regions by 2015 (the Centre for Economics and Business Research). Even the most optimistic of forecasts question the strength of the economic recovery over the short to medium term. One has to doubt that any reformed system can support people to make the move into employment if there are no job opportunities available.

University fees

Students call on NI political parties to reject Browne Review

The National Union of Students - Union of Students in Ireland (NUS-USI) has called on Northern Ireland political parties to reject Lord Browne's proposals to double university tuition fees in England as a model for consideration in Northern Ireland. NUS-USI rejects both the content and spirit of the Browne Review and argues that Northern Ireland's education system can not be made competitive through the debt-driven misery of its students and their families. Lord Browne is dangerously out of touch with the pressures faced by students and their families. The Northern Ire-

land Assembly and government must categorically reject these proposals and recognize that higher fees would be a disaster for students and families.

Students and hard working families already face living with the long-term consequences of the recession and the subsequent spending cuts, as well as pressure on housing, pensions, health and social care. They simply will not tolerate local politicians loading an entire generation with additional debt to pay for others' mistakes.

The Minister for Employment and Learning commissioned a comprehen-

sive review which examined the same questions as in Lord Browne's report using Northern Irish statistics and information. A leaked draft of the report reflects what NUS-USI has been repeating for years - that the money raised from tuition fees has not been properly accounted for, that the link between increased fees and institutional quality is unproven, and that no increase in fees can be reasonably contemplated until this link is proven.

**Clarnan Helferty,
NUS-USI President**

Queen's University wants a Northern Ireland solution

The coalition government has proposed changes to the funding of higher education in England to include deferred student fees of up to a maximum of £9,000 per year. In Northern Ireland, higher education is a devolved matter and it will be up to our locally elected political representatives in the Executive and the Assembly to determine how higher education here will continue to be funded.

Queen's strongly supports the need for continued public investment in higher education so that we can continue to offer high quality provision in Northern Ireland which is nationally and globally competitive.

We believe that the future funding of higher education should be based on three simple, but compelling, principles: first, that higher education should remain free at the point of delivery; second, that graduate repayments should be linked to earnings, not debt; and third, that the threshold at which graduate repayments begin should be raised.

We remain firmly committed to fair participation and widening access. We believe that all subjects should receive some element of public funding, in contrast to the proposals of the coalition government. The current economic climate and associated budgetary pressures facing all government



Queen's University. Photo: Robert Mayne

departments cannot be ignored. If public funding of higher education is cut in the forthcoming budget, the shortfall will have to be met through increased graduate contributions.

The debate on the future shape of higher education funding will focus on the balance between contributions from

the public purse and from graduates: finding a fair balance should be a priority for everyone.

Queen's is committed to working constructively with all stakeholders to ensure that we find the best solution for Northern Ireland.

Queen's University Belfast

Viewing budgets through a human rights lens

Budget analysis and the advancement of economic and social rights

Anna McCarthy, intern at Law Centre (NI), explains the work of Queen's University's Budget Analysis Project

Organisations and individuals with an interest in social justice in Northern Ireland will be particularly interested in the progress of the QUB Budget Analysis Project.

Funded by Atlantic Philanthropies, the project analyses public expenditure in Northern Ireland from a human rights perspective. The aim is to advance economic and social rights and to develop a method of budget analysis which will strengthen advocacy for disadvantaged groups and those supporting them.

The project's recently published case study '*Budgeting for Housing in Northern Ireland: A Human Rights Analysis*' suggests that the provision of social housing in Northern Ireland does not comply with international human rights standards. The report examines public expenditure in Northern Ireland with particular reference to the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR requires that states move towards full realisation of the right to adequate housing as quickly as possible, that no retrogressive measures are taken and that use is made of the maximum available

resources. There is also an obligation not to discriminate, which may mean taking particular steps to ensure that disadvantaged groups have equal enjoyment of the right to adequate housing.

The report points to the trend over the last decade with, on the whole, increases in waiting lists, housing stress, homelessness, and a lack of affordable housing. The authors argue that this represents a failure to progressively realise the right to adequate housing and that inadequate resources are being made available for social housing in Northern Ireland. In particular, there is insufficient investment in new builds.

Another issue is that, currently, the construction of new social housing depends on income from house and land sales, which means that the social housing budget is vulnerable to the unpredictability of the housing market.

The report questions whether the way in which housing associations finance social housing is the most effective use of resources and suggests that there are issues of transparency and accountability in the housing association model. It points out that reliance on the private

rented sector means that rent paid is not reinvested in social housing and suggests that this is arguably a failure to use the maximum available resources for progressive realisation of the right to adequate housing. The many recommendations include:

- increase expenditure on social housing in order to reduce homelessness and the waiting list for social housing;
- do not link the budget for social housing to the sale of houses and land; and
- rely less on the private rented sector and invest more in social housing.

The report is significant, not only in highlighting the areas in which budget decisions on housing fail to comply with international human rights standards, but also in demonstrating the value of assessing public expenditure according to international socio-economic rights obligations.

The project published more reports during the last part of 2010, including a Human Rights Framework paper, a mapping review of best practice in budget analysis, a background paper on the Northern Ireland budgetary process and a second case study.

These resources could prove valuable for those seeking to promote social justice in Northern Ireland, especially at a time when Executive Departments are looking at how to make budget cuts.

The Project Team consists of QUB Law School staff members Colin Harvey, Aoife Nolan (now at Durham Law School as a Senior Lecturer) and Rory O'Connell, research assistants Mira Dutschke and Eoin Rooney (who has just joined NICEM) and clerical officer Jennie Finlay. Full details of the project are on: www.qub.ac.uk/schools/SchoolofLaw/Research/HumanRightsCentre/ResearchProjects/BudgetAnalysis



Derry skyline. Photo: Catherine Couvert

HOUSING RIGHTS

Challenging homelessness decisions

Sharon Geary of Housing Rights Service explains the new process for challenging Housing Executive (NIHE) homelessness decisions.

In one of the most significant changes to the Northern Ireland homelessness legislation, homeless applicants now have the right to bring an independent appeal of their homelessness decision to the county court.

Section 5 of the Housing (Amendment) Act (Northern Ireland) 2010 creates a new Section 5 creates a new two-stage procedure for challenging homelessness decisions made on or after 1 December 2010.

Housing Executive review

The first step is for the applicant to request a review of the decision in accordance with the new Articles 11A and 11B of the Housing (NI) Order 1988, (the 1988 Order). This must be done within 28 days of the date of notification of the homelessness decision, unless the Housing Executive agrees to extend this limit.

This statutory right to review applies only to decisions regarding:

- the applicant's eligibility for assistance;
- the duty owed to the applicant under Articles 10 and 11 of the 1988 Order, ie the provision of temporary accommodation, the offer of a tenancy and the right to advice and assistance (determining what duty, if any, is owed will necessitate an examination of the applicant's homelessness, priority need and intentionality status); and
- the suitability of accommodation offered to the applicant by NIHE in discharge of its duty under Articles 10 or 11 of the 1988 Order.

If the decision does not fall within the type of decisions which can be reviewed, the applicant will have to go through NIHE's internal complaints procedure and/or take a judicial review, depending on the seriousness of the situation. For example, if there is a risk of the applicant be-

coming street homeless, judicial review may be the best option.

At the time of writing, the regulations giving effect to the review process are at draft stage² but it is understood that:

- reviews of decisions on eligibility will be determined by NIHE's area manager, area principal officers will carry out all other reviews;
- a review decision will be made within eight weeks from the date of request for review.

Although the right to a review is an unfettered right which does not require grounds, it is advisable to submit as much relevant information as possible in support of the case. The review essentially gives NIHE an opportunity to make a fresh decision and to correct any errors made in the homelessness decision. The applicant should seek advice and help on taking the review.

County court appeal

An applicant who is dissatisfied with the review decision or has not been notified of the decision within the prescribed period may be able to bring an appeal to the county court. This would be on a point of law arising either from the review decision or from the original decision.³

The application to the county court should be made within 28 days from notification of the review decision or the date on which notification should have been given. An appeal can be brought outside that time limit only if the court is satisfied that there is a good reason for doing so.

The appeal must be based on points of law; the county court appeal will only explore the same issues as the High Court would in judicial review proceedings. The applicant will need to seek legal advice on taking the appeal and on applying for legal aid. On appeal, the court may decide to confirm, quash or vary the decision.⁴



Belfast street.
Photo: Catherine Couvert

Temporary accommodation

An important issue will be accessing temporary accommodation while waiting for the outcome of the review or appeal.

Applicants in this situation will not have a right to temporary accommodation. Instead, NIHE will have a discretion as to whether to provide it. NIHE must exercise this discretionary power in a fair way based on the individual circumstances of each case.⁵

Failure to provide temporary accommodation pending a review may be challenged by making a complaint to NIHE or taking a judicial review. The new Article 11D of the 1988 Order gives a right to appeal to the county court against such a refusal. The court may confirm or quash NIHE's decision.

Further information

Housing Rights Service's comprehensive guide to the new review and appeal process costs £9.95 (or £5 to members of Housing Rights Service). Contact Adele Pound on 028 9024 5640 or email adele@housingrights.org.uk.

Notes

- 1 as inserted by section 5 of the 2010 Act
- 2 Homelessness (Review) Regulations (Northern Ireland) 2011
- 3 Article 11C(1) of the 1988 Order
- 4 Article 11C(4) of the 1988 Order
- 5 R v Camden ex parte Mohammed [1998] 30 HLR 189, the 'Mohammed test'

A VISION FOR COMMUNITY CARE

Towards sustainable funding for adult social care and support

Georgina Ryan-White, policy officer at Law Centre (NI), reviews a meeting on rights in community care which addressed government plans for the future of funding for adult social care and support.

Part of the Coalition Government's programme for government in July 2010 was a commitment to forming a long term commission in Britain under the leadership of the economist Andrew Dilnot. The Commission on Funding of Care and Support has been tasked with reporting by July 2011 on how to achieve an affordable and sustainable funding system for adult social care and support, judged against the four criteria of choice, fairness, value for money and sustainability. The Commission's work comes in the aftermath of extensive consultation throughout 2008/9 by the Labour government of how to fund a system of long term care. This culminated in the White Paper, *Building the National Care Service*. It is anticipated that the outcomes of the Dilnot Review will have local repercussions for services in Northern Ireland.

Against this backdrop, the Rights in Community Care Group* (RICC), convened by the Law Centre, held the first in a series of seminars on the theme of 'A Vision for Community Care.'

Broadening the debate

A strong concern of the group is the need to broaden the debate about funding care services to address future lives and opportunities. RICC believes that there should be a greater focus on preventative strategies and measures to assist people in living independent and fulfilled lives. In addition, RICC recommends that priority be given to increased investment in community care as a long term effective means of providing better health outcomes for individuals rather than the current focus on care in acute care settings.

In Northern Ireland, there are over 300,000 people of retirement age, representing seventeen per cent of the population. By 2030 it is anticipated that this percentage of older people will increase to almost a quarter of the population (24 per cent) and that the largest increase will be in the 'older old'. As life expectancy increases, a growing number of older people and disabled people may be living longer with conditions that seriously affect their quality of life and who will therefore rely on health and social care services to maintain and support their independence.

Funding priorities and the delivery of services

The seminar focused on *Facing the Funding Challenges*. Professor Derek Birrell and Gerry Maguire spoke about funding, expenditure, priorities and delivery of services in community care. Derek Birrell, Professor of Social Policy at the University of Ulster and author of 'The Impact of Devolution on Social Policy in the UK' outlined how the Barnett Formula allocation of funding converts to budget expenditure for health and social care. He discussed the impact of the Comprehensive Spending Review on the allocation of this funding. Problems with current policy and service delivery, he argued, include a lack of

joined up thinking and little user and carer participation in the process. A key message of Professor Birrell's presentation was the need to evaluate Scottish, English and Welsh social care policy with a view to the lessons for implementation here in Northern Ireland. He also stressed the need to prioritise areas of action including personalisation of the system, user participation, integration of Health and Social Care, increased governance co-operation and increased resources for social work.

Gerry Maguire, Social Care Commissioning Lead (Older People and Adults) of the Health and Social Care Board focused on the challenges facing regional boards in delivering community care and social services. Boards are responsible for translating the strategic Public Service Agreements intentions into a commissioning plan, with each trust taking responsibility for its own delivery plan demonstrating how it will deliver services in their area. Current priorities in commissioning include:

- a shift to supporting people at home and away from use of residential and nursing care;
- assistance to individuals to better manage their long term conditions;
- carer support; and
- delivery of financial targets.

Future seminars

The seminar highlighted the concerns many have about the provision of sufficient funding for the delivery of high quality and effective community care services. RICC's three further seminars are scheduled for January, March and June and will explore workforce issues, assessment of need and care and caring.

For more information on the seminar series, email georgina.white@lawcentreni.org.

* RICC is an umbrella group comprising Law Centre (NI), Carers NI, Unison, Disability Action and Alzheimer's Society who have come together in support of an equality and human rights based approach to the delivery of community care services and support.



Georgina Ryan-White. Photo: M Beggs

Equality Commission

FOR NORTHERN IRELAND

The changing trends in fairness at work

The Equality Commission has published its annual Monitoring Report which focuses on the community composition of employment across Northern Ireland. Chief Commissioner **Bob Collins** reflects on the changes seen over the last 20 years of monitoring.

Monitoring the composition of the workforce in Northern Ireland is probably the best known aspect of the revised fair employment legislation introduced in 1990. Through the annual Monitoring Report, we have been highlighting trends in that composition for two decades now.

A remarkable amount has changed since 1990. At that time we still lived in a cold war, two-bloc world; globalisation was still just a speculative phrase, rather than a description of pervasive economic

reality. In Northern Ireland, society was still enmeshed in campaigns of violence and political stalemate. Manufacturing, then dominated by heavy engineering and textiles, accounted for 47.6 per cent of the private sector workforce - now it accounts for 22.7 per cent.

That was the context in which the Fair Employment Act 1989 introduced innovative proposals to tackle one problem which had long been identified as central to community tensions and divisions - fair participation in employment.

As well as introducing compulsory annual monitoring by employers of the community composition of their workforce, by reporting on the number of Protestants and Roman Catholics they employed, the Act also introduced two other important provisions - three yearly equality reviews and affirmative action measures.

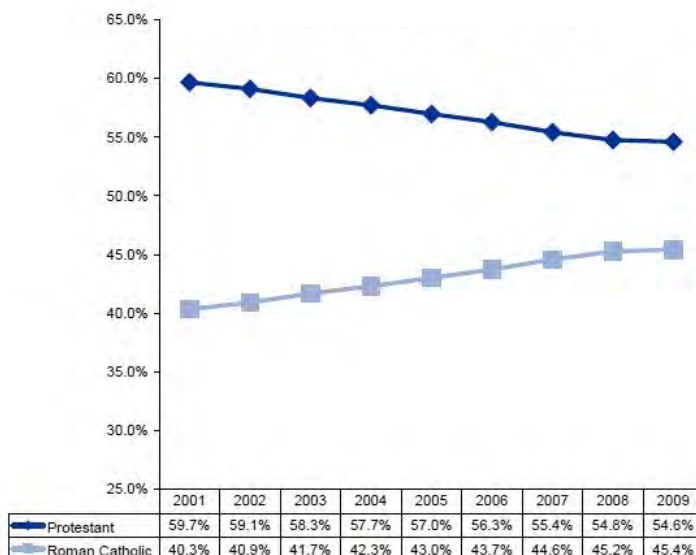
Employers in both the public and private sectors have been implementing these provisions over the past 20 years working with, firstly, the Fair Employment Commission and, since 1999, the Equality Commission. There have been positive changes in the degree of fair participation in the overall Northern Ireland workforce within that period.

In 1990, when the Monitoring Report covered firms of more than 25 employees, Roman Catholic employees were 34.9 per cent of the monitored workforce for whom a community background was identified, which was 5.1 percentage points less than the estimated 40 per cent of those available for work who were Roman Catholics. Twenty years on, that overall imbalance no longer exists. Today's report, based on firms of more than ten employees, shows that Roman Catholics constitute 45.4 per cent of the monitored workforce, which matches the current estimated percentage of Roman Catholics available for work.

The report also reveals a continuation of a trend which has been developing throughout the past decade - a change in the community composition of applicants for jobs. The Roman Catholic proportion of all monitored applicants has been rising steadily since 2001 when it stood at 44.8 per cent. In 2007, applications by Roman Catholics exceeded those from Protestants, albeit by a small number and the 2009 returns show a continuation of this trend. There were 10,465 more applications from Roman Catholics, who now represent 51 per cent of applicants, than from Protestants, who represent 49 per cent.

Overall figures, of course, do not and cannot give the entire picture. There are still quite a number of workplaces where there is under-representation of one or other community. And there are changes in patterns of participation such as, for example, reductions in the numbers of Protestants entering employment. Not every such change is a mark of unfairness but the legislation gives us an opportunity to pay careful attention to what the data show.

Composition of monitored Northern Ireland workforce by community background 2001 - 2008



continued on page 27

policy update

Ursula O'Hare rounds up law and policy developments in social security, employment, immigration, community care and mental health.

Benefit cuts

The last edition featured a special analysis of the impact of benefit cuts announced in the emergency budget in June. Since then, a further £7bn of savings made by cuts to the welfare budget were announced in the October Comprehensive Spending Review, in addition to the £11bn announced in the June budget.

Proposals to achieve this include limiting entitlement to Employment and Support Allowance for those in the work related group to twelve months; cuts to the amount of childcare costs covered by Working Tax Credit; ending the mobility component of Disability Living Allowance for those in residential care; cuts in Housing benefit and the headline grabbing proposals to withdraw Child Benefit from families where one parent is a higher rate tax-payer.

The Institute for Fiscal Studies report featured in this edition forecasts the impact of tax and benefit cuts in Northern Ireland.

Universal Credit

Against the backdrop of cuts, the government last month published its vision for radical reform of the welfare system. The White Paper, *Universal Credit: Welfare that Works* (see editorial and pages 14 to 16 of this edition), prefaces a Welfare Reform Bill in Westminster in January 2011 which will provide the legal framework for reform. The reforms themselves are not due to be implemented until October 2013.

Since social security is a devolved matter, the Assembly and Executive will have to grapple with how to handle such sweeping reforms in Northern Ireland. The Department for Social Development has started its own consultation on the White Paper that runs to the end of January.

The Work and Pensions Committee in Westminster launched an inquiry into the White Paper following its publication. The Welfare Reform Policy Group, comprising Law Centre (NI), NICVA, Age NI, Advice

NI, Council for the Homeless and Gingerbread submitted evidence of the potential impact on Northern Ireland.

Work Capability Assessment

Meanwhile, an independent review by Professor Malcolm Harrington of the operation of the Work Capability Assessment for Employment and Support Allowance found that the system is impersonal and mechanistic and lacks clarity. The review also found that it does not allow for particular difficulties in assessing mental health and other conditions that can be more difficult to assess.

Campaigners have highlighted a number of problems with the system, arguing that some of the descriptors used in the assessment do not properly measure a person's capability to work. The report confirms this.

The report sets out a series of recommendations to make the process fairer and more effective. It is available at www.dwp.gov.uk/wca-review/

The end of DLA

Speculation about the future of Disability Living Allowance was put to bed with the publication in December of plans for reform of the benefit. DLA will be replaced by a Personal Independence Payment. Northern Ireland has a higher proportion of recipients of DLA than any other region in the UK. More than 180,000 people in Northern Ireland receive DLA so these changes will potentially hit hard in local communities. DSD has issued a Northern Ireland consultation document.

Child poverty

The Northern Ireland Child Poverty Strategy was published in December. It coincided with the launch of two major reports.

Frank Field's review of poverty highlighted the need for a focus on the factors that affect life chances, including parenting, home learning and child care

during the early years (*The Foundation Years: Preventing Poor Children Becoming Poor Adults* available at povertyreview.independent.gov.uk).

The Joseph Rowntree Foundation found that more than half of all children in poverty in the UK belong to working families, drawing attention to the real problem of in-work poverty (*Monitoring Poverty and Social Exclusion 2010*, available at jrf.org.uk).

The Child Poverty Strategy is out for consultation until 6 February 2011. It is available at www.ofmdfmi.gov.uk/index/improving-public-services/ofmdfm-consultations/ofmdfm-consultations-current-forthcoming.htm

Employment law reform

The Employment (No. 2) Bill was introduced into the Assembly this autumn to implement the outcome of the policy review into the system for resolving disputes in the workplace. The Bill will revoke the current statutory grievance procedure.

The Labour Relations Agency has prepared a new draft Code of Practice to give guidance on how disciplinary and grievance procedures should be handled in the workplace.

Legal aid reform

The fundamental review of legal aid promised by the Justice Minister in June got underway this autumn.

Part of the Access to Justice Review's remit is to make proposals to achieve value for money within the available budget and to identify possible future savings. The legal aid budget will be reduced from its current £104m in 2010/11 to £79m in 2013/14. The Review will operate in the framework of a number of overarching guiding principles to review criminal and civil legal aid arrangements.

A discussion paper is available from the Northern Ireland Court Service's website at www.courtsni.gov.uk/en-GB/AboutUs/A2JReview/p_A2J_Discussion_Paper.htm. The Law Centre

policy update

will be hosting a seminar for the Review Team in February 2011.

Community care and mental health

The Older People's Commissioner Bill received final consideration at the Assembly in December. Work is underway with the Older People's Advisory Group to develop a new older people's strategy for Northern Ireland. This is expected in 2011.

Meanwhile at Westminster, the government has published its vision for adult social care in England. This is part of a broad reform agenda that will be reflected in a White Paper in England at the end of 2011. It follows the work of the Law Commission for England and Wales in developing a legislative framework for adult social care and the appointment of the Dilnot Commission review into the funding of long term

care. The *Vision* sets out seven principles for a system of social care: prevention, personalisation, partnership, plurality, protection, productivity and people. There is every likelihood that the outcomes of this work will resonate locally in debates, yet to be had, on the future of social care. *A Vision for Adult Social Care* is available at www.dh.gov.uk

In December the Finance Minister announced proposals to increase rate relief for carers, regardless of their age. The low income rate relief scheme will be increased by 20 per cent for all carers and the Minister expects that 2,500 carers will benefit from the scheme.

Immigration

There had been silence from the government about what steps it will take to end the immigration detention of children as promised in the Programme for Govern-

ment in June. The Review led by Damien Green closed in July. An announcement was finally made just before Christmas that the detention of children would end in May 2011.

As the government's immigration cap appears to be coming under pressure from a diverse range of interest groups, in December, UKBA launched a consultation on how to cut overseas student numbers. The government intends to restrict entry to degree and post-degree level studies only, with tougher language requirements and rules about working. The consultation runs until 11 January (www.ukba.homeoffice.gov.uk/student-consult-online). An earlier cap was ruled unlawful due to the failure to properly consult Parliament (see page 8).

Finally, the coalition government is consulting until January on increasing fees for immigration appeals (www.justice.gov.uk/consultations/consultations.htm).



Advice Services Alliance Chairperson Reverend Harold Good, Ursula O'Hare and Law Centre (NI) Chairperson Ciaran McAteer with the Institute for Fiscal Studies report at the Law Centre's AGM. Photo: Kevin Cooper.

Supporting disabled children and their families

Eamon McNally of the Children's Law Centre analyses a judicial review which sets out trusts' duties to provide services to carers of disabled children.

Ref : TRE7929

An Application By JR30 (HN) (A Minor) By His Mother and Next Friend (HP) for Judicial Review

The following judicial review was brought to the High Court on behalf of HN, a child, by Children's Law Centre (CLC) following a referral from the National Autistic Society. Mr Justice Treacy gave his judgment on 3 September 2010. He declared that the Western Health and Social Care Trust acted in breach of its duty to carry out assessments and to provide services to the carers of disabled children.

HN had a confirmed diagnosis of Autism Spectrum Disorder and ADHD. He had psychotic tendencies and an intense dislike of women. This dislike manifested

in an intense hatred of his younger sister. Both children had been placed on the child protection register as a result of the dangers that HN posed to them both.

HN's mother was his primary carer throughout most of his life. In 2008, a carer's assessment was carried out which recorded that the mother's caring role had led to her having a complete breakdown. The report detailed the urgent need for respite. Despite this, she heard nothing more for four months. She then received a letter from the Trust in March 2009 informing her that there was no budget available to meet her assessed needs. By then, the family's circumstances had changed significantly. In late 2008, HN had made a number of threats to his sister and on Christmas Day he tried to hang himself. He was hospitalised in a

CAMHS facility for a period of time and returned home at weekends. His mother had difficulty coping with his needs at the weekends and was referred to CLC by the National Autistic Society.

CLC wrote to the Trust in January 2009 requesting a reassessment of both the carer's assessment and the children's needs assessments (known as UNOCINI assessments) previously carried out. Despite several reminder letters, the Trust did not respond to the request and CLC lodged a formal complaint.

Mr Justice Treacy stated that, from 29 January to 15 May 2009, when CLC was informed that the Trust hoped to be in position to reply, no service was provided to help the family deal with the problems faced by HN and his family during his weekends at home. He pointed out that HN was a child in need and as a consequence the Trust had a general duty to safeguard and promote his welfare through social care appropriate to his needs. He also said that the legislation recognises that the family of a child in need is the best vehicle for securing the child's welfare. He made a declaration that the duty on the Trust imposed by Article 18 of the Children (Northern Ireland) Order 1995 includes a duty to provide a range and level of personal social services to the children in need within its area *and* to the families and carers of those children in order to safeguard and promote the welfare of the children and the upbringing of those children by their families.

He then looked at the trust's assessment of the child's needs. He stated that the duty to carry out such assessments is a mandatory statutory obligation, subject only to the trust being satisfied that the family are persons for whom it may provide services for under the



Photo: Martin Lladó.

Children's Law Centre

The Children's Law Centre (CLC) is an independent charitable organisation which works towards a society where all children can participate, are valued and have their rights respected and guaranteed without discrimination, and where every child can achieve their full potential.

CLC offers training and research on children's rights, makes submissions on law, policy and practice affecting children and young people and run an advice, information and representation service. CLC has a dedicated free phone advice line for children and young people called CHALKY. The organisation is founded on the principles enshrined in The United Nations Convention on the Rights of the Child.

Children Order. He concluded that the trust had an unconditional statutory obligation to carry out the assessments requested in January 2009.

The court was informed by affidavit that the Head of Service for Children's Mental Health for the trust had acknowledged the receipt of the 2008 carers assessment but had stated in correspondence that the trust had 'no dedicated budget ... for Children's Mental Health and Disability Service to provide a service relating to children with Autism.' The Assistant Director of the Trust contested the accuracy of this statement. He said there was a misunderstanding: the Trust has a specific budget for autistic children services but any carer's needs which are identified in carer's assessments do not come from within its dedicated children's autism budget but are funded, where possible, from the general budget.

Mr Justice Treacy stated that the budget a service comes from is irrelevant to children with autism and their carers; where a service is assessed as both necessary and urgent, it should be delivered in a timely way when it is needed. In this case, the Trust had failed to deliver any service from any budget to meet the assessed needs of HN's mother.

The judge added that, once HN's mother had requested a fresh assessment, the Trust had failed to reply to her request or to further letters despite the unconditional statutory obligation to conduct the assessment. He said: '*Given the crisis situation this family faced, the failure to respond ... was simply shameful (...)* What the trust has done in this case has been to relegate the carer's position as something inferior or secondary to that

of the autistic child...this was an incorrect approach to carer assessments. (...) the Trust failed to recognise that the needs of the carer, the child and indeed the family are interlinked.' He made a further declaration that the Trust was in breach of its duty under Article 18a of the Children (Northern Ireland) Order 1995 by failing to carry out an assessment on the applicant's mother as the carer of a disabled child within a reasonable time following her request on 29 January 2009.

He acknowledged that CLC provided a considerable body of evidence to show that the failure to respond in this case is only one example of the systematic failure

of the Trust to conduct such assessments in its area. He commended CLC for its diligence in bringing together a compelling picture of the scope and intensity of the difficulties in this field.

He referred to a trust letter of 23 July 2009 which gave information about carer's assessments. This stated that, from 1 April 2007 until 23 July 2009, there had been 73 requests to carry out such assessments, of which 32 had been dealt with and 41 had not. In respect of those 32 assessments, 54 unmet needs had been identified and thirteen of those 54 had been addressed, leaving 41 outstanding. Reference was also made to a letter sent to 41 families indicating 'a lack of current capacity to carry out carer's assessments.' Mr Justice Treacy then made a declaration that the Trust acted in breach of its duty under Article 18a of the Children (Northern Ireland) Order 1995 by failing to carry out assessments within a reasonable time of carers of disabled children who had requested such an assessment during 2007-2010.

Copies of the judgment in full are available from www.courtsni.gov.uk. For more information, contact: Eamonn McNally, Mental Health Solicitor, Children's Law Centre, Philip House, 123 - 137 York Street, Belfast BT15 1AB. Phone 028 90245704. Email: eamonmncally@childrenslawcentre.org.



Child Maintenance and Enforcement Division

In this case a lady wrote to the Ombudsman expressing her deep frustration at the financial hardship that she and her children had to suffer due to the fact that Child Maintenance and Enforcement Division (CMED) had failed to ensure that the Non Resident Parent was providing sufficient funds for the children over the past two years.

In response to the Ombudsman's enquiries CMED acknowledged and offered its apologies for the fact that the complainant's case was not more robustly monitored and action taken more promptly. The Ombudsman secured an agreement for CMED to make an advance payment to the complainant of the outstanding arrears amounting to £4,184.77 together with a consolatory payment amounting to £250 for the deficiencies acknowledged by CMED in its dealing with the complainant's case. CMED also agreed to issue the complainant with a written apology in recognition of those deficiencies and the distress caused to the complainant by its actions.

The Ombudsman regarded this as a satisfactory outcome.

Right to marry victory for Derry couple

In a judgment on 15 December, the European Court of Human Rights found that the UK's scheme requiring those subject to immigration control to get approval to marry and to pay a sizeable fee to do so breached the right to marry and was discriminatory.

Welcoming the Court's judgment, Anna Morvern, immigration adviser at Law Centre (NI), said '*This is an important victory which shines a light on some of the difficulties faced by those subject to immigration control in Northern Ireland. The landmark ruling from the European Court of Human Rights should ensure that other couples do not face these barriers in the future.*'

The case concerned the UK's scheme which required persons subject to immigration control to obtain a certificate of approval to marry outside the

Church of England and pay a fee of £295 to do so. The Derry based couple wished to marry in the Catholic Church but were unable to obtain the certificate because of the husband's immigration status and because they could not afford the fee.

In 2006, the House of Lords found that the scheme interfered with the right to marry. The government then amended the scheme but would not waive the fee in this case. The couple finally married in 2008 after friends paid the fee. The European Court has ordered the UK to pay compensation to the couple.

The government has until March 2011 to request a referral to the Grand Chamber of the European Court of Human Rights. The scheme is to be abolished in early 2011.



Sinead O'Donoghue and Ossita Chris Iwu.
Photo: Maurice Thompson

Equality Commission: continued from page 21

We have to consider these changes in the context of the changing demographics in the population. The 2001 Census showed that, in every five-year age group of those under 25, Roman Catholics represented over 50 per cent. That works its way up the age scale in succeeding years and it is a reasonable estimate that, of those now in the 16-34 age groups, Roman Catholics represent some 52 per cent. One cannot, of course, assume that this trend is the complete explanation, for example, of the shift in applicant composition, but it is likely to be an important factor.

Assumptions, however robust, are not enough. We have to consider how substantially our society has changed, in almost every respect, when we consider the composition of the workforce. A great many workers from other countries now make their careers and their homes here.

New, knowledge-based industries are growing in our economy. Economic forces can have an important influence on workforce composition. So, too, can educational attainment. It is important that we obtain as much factual information as possible to give us a greater understanding of these changing patterns.

This underlines the importance of the other initiatives introduced 20 years ago, which complement the monitoring provisions. Using the three-yearly comprehensive equality reviews, employers look at employees, at applicants, at appointments and at those who leave. This regular analysis gives them a deeper insight into the dynamics of their own workplaces and offers the basis for affirmative action measures if, for example, they identify an under-representation of either community, or

evidence of "chill factors" in the workplace. Affirmative Action programmes are a feature of around 200 workplaces and indicate the continuing engagement of employers with this important issue.

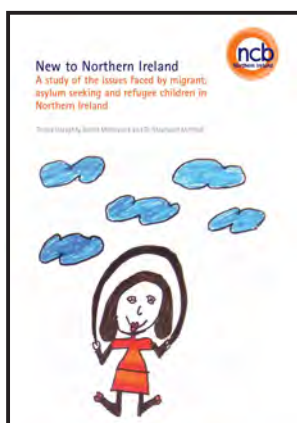
We know that these measures have had an impact on fair participation in workforces in Northern Ireland. Workplaces where that focus has been applied through an equality review, and where affirmative action measures have been taken, have been more effective in increasing fair participation. There is a continuing need to be alert to the question of fair participation, especially in a time of economic and demographic change and in a time when unexpected patterns may emerge. The legislation has an enduring relevance to the issues and challenges now facing us in the 21st century.

book review

New to Northern Ireland

A Study of the Issues Faced by Migrant, Asylum Seeking and Refugee Children in Northern Ireland

By Teresa Geraghty, Celine McStravick and Dr Stephanie Mitchell. Published by Triarchy Press, 2010. This National Children's Bureau Report is available at www.ncb.org.uk/pdf/NTNI_final.pdf.



● Since the 1970s, the myth of 'welfare scrounging' by migrants has been to the forefront of debates on immigration control. Despite the significant re-trenchment of the British welfare state since the 1980s, the popular press is full of stories of the 'generous' welfare system being abused. The increasingly reactionary headlines become even more so when issues of migration are intermingled with debates on social support.

Exclusion, poverty, degradation and rights denial seem to be at the heart of UK policy towards various groups of migrant children. The Convention on the Rights of the Child (CRC) was 21 years old in September 2010. This international convention provides for the minimum legal rights which all children in a state party should receive. The NCB's study on issues faced by various migrant children makes for stark reading. This study utilises and gives prominence to the voices of migrant children living in Northern Ireland. Supplemented with views of NGOs and health, educational, migrant and child protection professionals, it paints a bleak picture relating to the denial of core civil, political, social, economic and cultural rights for

library news

Books and reports

Bennion on statutory interpretation, 5th ed. by Francis Bennion. Butterworths, 2010.

Breakthrough Northern Ireland. September 2010. Centre for Social Justice.

The Equality Act 2010 (Employment Law Guide, November 2010), IDS 2010.

Factsheet on the expulsion of homeless EEA nationals. August 2010. Aire Centre, Immigration Legal Practitioners' Association (ILPA) and Migrant Rights Network.

Life as a stranger: the personal stories of migrants to Northern Ireland, by Ruth McAreavey QUB, 2010.

New to Northern Ireland: a study of the issues faced by migrant, asylum seeking and refugee children in Northern Ireland, by Teresa Geraghty and others. NCB Northern Ireland, 2010.

Processing an asylum application from a child. UKBA, 2010.

Your inflexible friend: the cost of living without cash. Asylum Support Partnership, November 2010.



On the shelves of the Law Centre library

Photo: Catherine Couvert

migrant children. Problems with language and communication, issues faced by migrant children in education, poor quality accommodation and risk of poverty all contribute to the denial of fundamental human rights.

Unaccompanied asylum seeking children face even more obstacles to overcome when settling in Northern Ireland. The lack of a child focused asylum process, the trauma of being away from family (who in many cases may no longer be alive) and, for older children, the prospect of having to fend for themselves within hostel or hotel accommodation are core issues raised within NCB's report. Coupled with issues of racism and prejudice which some of the participants in this study have recounted, the denial of the rights of those perceived as

different appears to be the response of government and some of the general public in Northern Ireland.

The recommendations of the NCB report, which place the rights of the child at its core, will provide a base line for those campaigning on children's rights, to argue for a fairer, more humane and less dehumanising system within the broad area of social and societal care for migrant children.

Liam Thornton

Liam Thornton is a lecturer in law at University of Ulster, Magee campus. Liam's main research interests are in the areas of welfare law, social control and asylum seekers. Liam regularly blogs on www.humanrights.ie.

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

18 January

20 January - 10 March

25 January

8-9 February

16 February

23 February

Mental Capacity and Decision Making

Welfare Rights Adviser Programme (eight days)

Industrial Injuries Benefits

Employment Law

Identifying Errors of Law

Legal Research Skills for advisers

DERRY

16 February

8-9 March

Legal Research Skills for Advisers

Employment Law

CONTACT

For courses run in Belfast, contact Deborah Hill:

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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 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.

