



## BUDGET CRISIS

*How can Stormont manage the cuts?*

**NEW BENEFIT RATES**

**MENTAL HEALTH DETENTION**

**PUBLIC INTEREST LITIGATION**

Ombudsman

Northern Ireland



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## FRONTLINE 79

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# ANY CREDIT FOR UNIVERSAL CREDIT?

**T**he coalition government has finally published its Welfare Reform Bill to pave the way for the introduction of Universal Credit. The Bill was delayed by over a month, reflecting that areas of policy were being worked on right up to the last minute. In fact, critical issues continue to be worked on. For example, decisions on childcare have still to be taken which will impact on the core aims of Universal Credit, including simplification and improved work incentives.

The Bill provides a skeletal framework for Universal Credit and leaves significant detail to regulations yet to be published. Much of the Bill reflects the outline given in earlier Department for Work and Pensions consultation documents alongside other announced initiatives such as the replacement of Disability Living Allowance by the Personal Independent Payment and the reduction of payment of Contributory Employment and Support Allowance to twelve months. It also contains other less well trailed initiatives, including the replacement of jobseeker's agreements etc with a new 'claimant commitment' for Jobseeker's Allowance, ESA and Income Support. The 'claimant commitment' will come into effect before Universal Credit and become a condition of entitlement to benefit. Once again, the detail of how this will

**'The current danger is that the aim of a simple, readily understandable system which improves work incentives is in danger of being undermined by insufficient additional funds to make it work.'**

work is left to regulations. The accompanying increase in benefit sanctions up to a loss of benefit of three years in specific circumstances is also in the Bill.

An unheralded sting in the tail is the proposed new approach to recovery of overpayments of Universal Credit and other benefits. New general provisions provide powers to recover any overpayment of Universal Credit, JSA, ESA and the housing credit for Pension Credit save in circumstances prescribed in regulations. The current fair test (much cherished by welfare rights workers) of recovery of overpayments where the claimant fails to disclose information or misrepresents circumstances leading to the overpayment is going. It looks like something akin to the tax credit type approach to overpayments will be introduced.

In broader terms, the current danger is that Universal Credit's aim of a simple, readily understandable system which improves work incentives is in danger of being undermined by insufficient additional funds to make it work. The Centre for Social Justice prototype model for Universal Credit was costed at an extra £4 billion above current expenditure, with savings coming later from more people being in work. The Universal Credit scheme is coming in at an extra cost of half the sum, with a higher taper reducing the level of work incentives. This compares with social security savings of over £20 billion contained in the Chancellor's two statements in June and October 2010 and the inherited migration from Incapacity Benefit to ESA.

Moreover, the question remains: will the Universal Credit model work in Northern Ireland? Economists agree that economic recovery will take longer than in Britain. A childcare infrastructure is still lacking (the recent increase in funding was welcome but is not a substitute for a strategy). There are doubts whether the Work Programme



**Law Centre (NI) Director Les Allamby**  
Photo: Kevin Cooper

initiative will roll out in as comprehensive a form as elsewhere.

Added to these factors is the greater extent of mental health problems and other ill health and disability. There is therefore a strong argument for adjusting the approach to meet local circumstances. In effect, this could be a form of 'localism' in action as promoted by the coalition government. The architecture for Universal Credit is arguably fine but, there is no point in stinting on the foundations while the fixtures and fittings should suit the needs of the occupants.

On top of this is the question of making the IT work and learning the lessons from IT problems that dogged the introduction of Child Support and tax credits. Ministers and officials remain remarkably sanguine in public that it will be 'alright on the night'. Privately, there is less confidence and more holding of breath. This Bill is probably the most important piece of social security legislation for a generation. There's a lot to play for in the coming months.

**Les Allamby**

## Progress too slow on resettlement of people with learning disability

On 10 January 2011 Law Centre (NI) got leave to bring judicial review proceedings in the High Court to challenge the delayed discharge of patients from Muckamore Abbey Hospital in Antrim. In 1995, the Department took a policy decision that all long stay patients in learning disability hospitals should be resettled in the community. Targets set in 1997 to do this by 2002 were not met. The 2008 Programme for Government target is that by 2013 no-one should remain unnecessarily in hospital. According to figures published by the Public Accounts Committee in April 2010, there are over 250 long stay patients in learning disability hospitals

***For too long, people with a learning disability have not been able to enjoy the same rights others take for granted.***

The Law Centre is acting on behalf of clients who have been deemed fit for discharge and resettlement in the community but who have been waiting, in one case for more than three years and in another for over eight years, for a home in the community.

*'This is an important test case to establish the duties owed by the*



**Louise Arthurs with Law Centre apprentice solicitor Jonathan Simpson at the High Court.**

Photo: Catherine Couvert

*Department of Health and the Trust to resettle people with a learning disability in the community', said Louise Arthurs, legal adviser at the Law Centre.*

*Maureen Pigott, Director of Mencap Northern Ireland said: 'Mencap believes that no-one should have to live in a hospital. We are pleased that there will now be an opportunity to clarify the duties of the Department and Health, Social Services and Public Safety and Social Care Trusts towards this vulnerable, largely invisible*

*and sometimes forgotten population. For too long, people with a learning disability have not been able to enjoy the same rights others take for granted - like living in an ordinary house in an ordinary street, with the support they need provided by local community based services. Local and international evidence confirms that the lives of people with a learning disability improve whenever they leave hospital care and move into the community.' The case was heard on 29 March and 8 April.*

### Judicial independence conference

**The Law Centre, the Attorney General's Office and the University of Ulster School of Law will be organising a joint half-day conference on judicial independence on 24 June 2011, at the Inns of Court, Belfast.**

**Speakers include Anne Parr, a judge at the European Court of Human Rights and the Attorney General John Larkin QC.**

**For more information on the conference contact Ann Cartwright on: 028 9024 4401.**

### 100% say Law Centre is value for money

Members are happy with our work and value their relationship with us, according to the results of our recent membership survey. We are grateful for the feedback and suggestions which will help us to continue to improve our services.

Law Centre (NI) carried out a survey of its 393 members in November and December 2010. We also encouraged a response from people using our website or attending training and practitioner meetings.

126 people from 115 member organisations completed the survey. We received responses from across Northern Ireland and from the voluntary advice and community sector, the public sector and lawyers in private practice.

The feedback was very positive. The Law Centre management team has studied the feedback in detail and will carry forward a number of recommendations for change as a result.

The full results are published on the Law Centre's website at [www.lawcentreni.org](http://www.lawcentreni.org).

**Belfast Migrant Centre: a one-stop shop for advice and support**



The Northern Ireland Council for Ethnic Minorities has been providing advice and support services to ethnic minorities in Northern Ireland for the past ten years. In January 2007 joint research by NICEM, UNISON and the Irish Congress of Trade Unions resulted in the report 'Migrant Workers and their Families in NI'.

One of the key recommendations was the establishment of a migrant centre, where migrants to Northern Ireland could come for advice, support and advocacy for issues including general welfare, immigration and victim support services. A one-stop-shop to get the support they needed in a central location.

Since then, NICEM has continued to actively pursue resources and funding to establish such an advice centre. In 2008, NICEM, UNISON, ICTU and the

Polish Association of Northern Ireland formed a partnership to establish a one-stop-shop. Last year, the funding bid was finally successful and the Big Lottery granted us three year funding under its Reaching Communities programme to establish the Belfast Migrant Centre.

The Centre has been up and running since June 2010. The new premises were officially launched on 8 December. There are three bi-lingual advisers to help with enquiries regarding general welfare, benefits, housing, racial harassment and intimidation. There is an immigration adviser who assists with case-work and representation at the tribunal. Two drop-in general advice clinics and an immigration advice line are run.

The Big Lottery funding has allowed for more robust and efficient systems in place to effectively support people.

The aim is to develop the capacity of migrant communities and migrant community organisations, and increase awareness of the rights of migrants. The centre will also work towards building community cohesion and increasing the employability of migrants through volunteering, education and training.

The Belfast Migrant Centre will continue to work in partnership with groups and organisations to ensure that we provide the best possible support to migrants and their families.

**For more details visit:** [www.belfastmigrantcentre.org](http://www.belfastmigrantcentre.org) or contact Jolena Flett on 90438962 or [jolena@nicem.org.uk](mailto:jolena@nicem.org.uk).

**Drop-in advice clinics:** Tuesday 9am to 5pm at:

Polish Association NI (7 North Queen Street, Belfast), and Thursday 6pm to 8pm at 174 Trust (Duncairn Manse, Duncairn Avenue, Belfast).

**Immigration telephone advice line:** Wednesday, 2pm to 4.30pm.

**Photo above left: the launch of the new premises.** Photo: NICEM

**International Women's Day**

8 March 2011 was the 100th anniversary of International Women's Day.

Local women's groups led a 400-strong march and rally in Belfast to celebrate advances made and to reiterate the need for more work to be done to address inequalities and discrimination.

In the afternoon, Dawn Purvis MLA hosted a delegation of women's sector organisations into a Stormont lobby against budget cuts.

Events were held throughout the week across Northern Ireland to join in world-wide celebrations.

**Monica McWilliams addresses the International Women's Day rally in Belfast**

Photo: Catherine Couvert



**New housing law**

The Housing (Amendment) Bill (formerly known as the Housing (Amendment) (No. 2) Bill) has passed its final stage in the Assembly. Royal Assent is expected in May. A commencement order will then be made to bring the various provisions of the law into operation.

The bill had been broadly welcomed by Housing Rights Service, with a few reservations (see Frontline 77).

## New debt advice handbook

On 8 February, Citizens Advice launched *A Debt Handbook for Advisers in Northern Ireland* in the Stormont Long Gallery.

Produced with financial support from the Ulster Bank, the handbook contains essential information for debt advisers.

David McNarry, Deputy Chairperson of the Department of Finance and Personnel Committee said:

*'I am an unashamed supporter of CAB. Figures from CAB show increases in debt enquiries of seven percent on the previous year and this is a 'stop and take notice'. It is important to recognise how critical it is for people to be able to access debt advice - to be able to know that there is someone out there that can help them.'*

He continued: *'Government should be willingly paying for debt advice to be given where government is unable to provide it. The DETI contract for debt advice has been very valuable. It is now up for renewal and let me add my voice to those already urging the renewal of this contract. (...) This is going to be a hard sell but it is a priority which can be afforded at a small cost. In relation to the funding you need it, you deserve it.'*

A client of the Citizens Advice Dealing with Debt service told delegates how the help she received from her money adviser had made a big difference to her life.

Citizens Advice Chief Executive Derek Alcorn called for an integrated strategy on debt: *'We believe that the Northern Ireland Assembly could now usefully consider an integrated strategy on debt which would begin in schools and which would equip the public with the necessary skills to deal with financial issues. The finance industry in Northern Ireland has*



**Launching the Debt Handbook: Derek Alcorn, Citizens Advice, Paul Thompson, Ulster Bank, Alayne Kinver, Citizens Advice and David McNarry, MLA, Deputy Chairperson of Finance and Personnel Committee.** Photo CAB

*much to contribute to such a strategy and should follow the example of the Ulster Bank in making available the*

*finance to bring such a strategy to fruition.'*

**Siobhán Harding, Citizens Advice**

## CAB Royal British Legion Project builds on success

The Benefits and Money Advice Service, a partnership between the Royal British Legion (RBL), the Royal Air Force Benevolent Fund (RAFBF) and Citizens Advice, has been running in Northern Ireland since October 2009.

It offers advice on debt issues, benefits queries and general money worries to serving and ex-Service personnel, their families and dependants. The service won 'Best Partnership Award' at the Institute of Money Advisers Awards 2010.

An early review by the funders has resulted in an extension of the project for a further twelve months. A compelling case was made to provide a fourth bureau-based adviser. Because the three existing posts are in East Belfast, Craigavon and Enniskillen, clients in the North did not have access to locally based face to face advice. A dedicated

advice post has now been created in Causeway CAB in Coleraine.

The review recognised that advice on less complex cases could be effectively given over the phone. This has led to a proposal for a pilot 'triage' phone advice post. The triage adviser would pass clients on to the relevant bureau or advise as required. The triage adviser would also field requests for updates or other information.

It is a great opportunity for the Northern Ireland arm of the project to host the triage pilot and it will help to address an issue that is unique to Northern Ireland. For security reasons, care had been taken not to openly advertise advisers or the hosting bureaux. A non-area specific phone number makes it possible to advertise the service more widely to the eligible client base.

**Siobhán Harding, Citizens Advice**

**Help with debt and money issues**



Beat the Recession was set up by Citizens Advice, Advice NI and the Law Centre to help people affected by the recession in Northern Ireland. As well as an information road show and website, Beat the Recession has an online advice service.

**Email:** [info@beattherecession.me](mailto:info@beattherecession.me)

**Text:** 07587774973

**Chat with an adviser online:** Monday to Friday, 4pm to 8pm, Saturday 9am to 12pm. Go to: [info@beattherecession.me/dsp\\_contact.cfm/Ext/contact](http://info@beattherecession.me/dsp_contact.cfm/Ext/contact) and click on 'chat with an advisor online'

**Other useful contacts**

**Belfast Unemployed Resource Centre**

Help for people facing redundancy or reduced working hours : 028 9096 1111

**Housing Rights Service**

Help for people who are subject to re-possession proceedings: 028 9024 5640

**Consumer Credit Counselling Service**

Help for people with money and debt queries: 0800 138 1111

**North Belfast Advice Partnership**

Help for people living in the North Belfast area: 028 9039 1225

**Northwest Advice Services Alliance**

Help for people in the L'Derry area: 028 7136 0811

**Omagh Independent Advice Services**

Out of hours telephone help for people living in Omagh district council area: 028 8224 3252, Monday and Wednesday 7pm to 9pm

**Safeguarding vulnerable adults**

**Safeguarding Vulnerable Adults - A Shared Responsibility** sets minimum standards of best practice and guidance for organisations working with vulnerable adults.

Volunteer Now was commissioned by DHSSPS to develop this publication in consultation with a Safeguarding Vulnerable Adults Advisory Group.

The publication applies to voluntary, community and independent organisations working with vulnerable adults. Adherence to the standards will enable organisations providing Regulated Services to comply with the requirements for the Protection of Vulnerable Adults set

out in the DHSSPS Minimum Standards and in the Quality Assessment Framework under Supporting People.

Download **Safeguarding Vulnerable Adults: A Shared Responsibility** from [www.volunteering-ni.org](http://www.volunteering-ni.org) in the publications section.

Volunteer Now is running adult safeguarding training courses across Northern Ireland to support the standards and guidance. Details are in the training calendar on Volunteer Now's website.

Find out more from Ruth Mulholland on 9081 8321 or [ruthmulholland@volunteernow.co.uk](mailto:ruthmulholland@volunteernow.co.uk).

**Mock tribunal for CAB advocacy course**

The CAB Social Security Advocacy Course trains advisers who represent at Social Security Appeal Tribunals. Accredited by Staffordshire University, the course offers training on advocacy skills and relevant case law. Trainees visit the Appeals Service for first-hand experience on how a tribunal is conducted.

Trainees can now take part in a mock tribunal with Patrick McGrath, a solicitor from Rafferty McGrath & Co. Mr McGrath commented: *'The standard of the trainees was excellent and they showed a depth of knowledge of their case, an ability to clearly and concisely discuss the merits of the case, put forward reasoned points and respond to questions from the Panel. Thoroughly impressive!'*

Find out more from Janet Sproule: [sproulej@citizensadvice.co.uk](mailto:sproulej@citizensadvice.co.uk)

## LRA ready for new employment law



The Labour Relations Agency's new Code of Practice on disciplinary and grievance procedures came into effect on 3 April 2011.

The code provides for the repeal of the existing statutory workplace grievance procedures which were introduced in 2003. The statutory requirements

regarding dismissal and discipline, also introduced in 2003, remain unchanged. The code differs from the position in Britain where the statutory grievance and dismissal and disciplinary procedures were both repealed.

Most employers have procedures in place which comply with the existing

statutory workplace grievance procedures, so only minor amendments may be required.

The code has practical guidance for employers, workers and their representatives on the legal requirements relating to disciplinary and dismissal issues and on good employment practice when dealing with grievance issues.

Employers and employees should be aware that failure to follow any aspect of the statutory dismissal and disciplinary procedure will result in any industrial tribunal award being adjusted to reflect this failure. When hearing grievance cases, an industrial tribunal can take into account any unreasonable failure to follow the grievance aspects of the code and may financially penalise the employer or the employee.

The Agency is preparing an advisory guide - *Advice on handling discipline and grievances at work*. The code and the advisory guide will be available to download from: [www.lra.co.uk](http://www.lra.co.uk).

Paul Blease, LRA

### Pre-claim conciliation

To complement the new Code of Practice, the Labour Relations Agency has introduced an innovative service to help parties to resolve their dispute before it is lodged with the Office of Industrial Tribunal and Fair Employment Tribunal.

If someone believes they have a claim in connection with their employment rights, and either that person or their employer asks for our help, we can work with them to find a solution acceptable to both, so that they can avoid the need for the matter to be heard by a tribunal. This process is known as Pre-Claim Conciliation.

When a matter is referred to pre-claim conciliation, the person will be put in contact with a Conciliation Officer who will talk through the issues and options with them, run through the benefits of the service and answer any questions they may have.

We do not impose outcomes or make judgements on the rights or wrongs of the matter in dispute; we simply try to help people settle their differences on their own terms.

Maxine Murphy-Higgins, LRA

### Elderly care crisis in Western Health Trust

In March this year the Western Health and Social Care Trust asked for help from Derry City Council because it did not have the resources to meet the demand for home care packages for the elderly. There are currently around 200 people on the waiting list and the £18 million allocated had been overspent. The trust is working with the Health and Care Board to secure additional funding and hopes to work with Derry Council to come up with alternative solutions.

Age NI has expressed concern that trusts are running out of options and that there does not seem to be an agreed back-up plan. Age NI Chief Executive Anne O'Reilly said: 'We need to adjust the way our social care is delivered so that we don't have people waiting unduly for services. (...) In six years time, there will be almost 10,000 more people aged over 65 in the Western Trust area than there are currently.'

A recent successful judicial review by a Law Centre client illustrates the

problem. Kathleen McClean challenged the Western Health and Social Care Trust over the inadequacy of its provision for her. The 75 year old woman lives alone in supported housing. She has impaired mobility and receives daily care services on the basis of a trust assessment. She used to receive cleaning help once a week but this was withdrawn in 2008. This has led her to spend up to £48 a week on cleaning services and get into financial difficulties.

The judge ruled that her application for judicial review should succeed, saying that the trust had not taken proper consideration of Mrs McClean's income. In particular, her pensioner's disability related benefits had been included in the assessment of her income, even though this is not permissible. In assessing Mrs McClean's care needs, the trust had failed to follow departmental guidance. He called for a reassessment of need which would entail a full inquiry into all material facts.

The NI budget has been set against a backdrop of unprecedented public spending cuts and an impending election. Much remains to be decided. We asked for views from the voluntary sector, political circles and academia on what can be salvaged.

# PICKING UP THE PIECES

## NEW REVENUE NEEDED

### Putting the economy in reverse gear could destabilise NI society

**Mike Tomlinson** BA, Professor of Social Policy at Queen's University Belfast



The noise surrounding the Draft Budget has been dominated by political party point-scoring and a certain amount of special pleading for particular projects and sectional interests. In all of this, key issues are being lost including the depth of the Treasury's cut to the Northern Ireland budget, the disproportionate impact of the cuts and the question of what can be done to support the living standards of those worst affected.

Our own response to the Draft Budget (available at [www.qub.ac.uk/soc](http://www.qub.ac.uk/soc) under 'News') was written because we are engaged in a three year study

of poverty and social exclusion across Britain and Ireland, with a specific remit to examine the impact of the recession on living standards (see [www.poverty.ac.uk](http://www.poverty.ac.uk)). The research involves two surveys, the first asking for people's views on the 'necessities of life'. The second is a comprehensive survey of people's standard of living across a number of domains including income, health, housing and social participation.

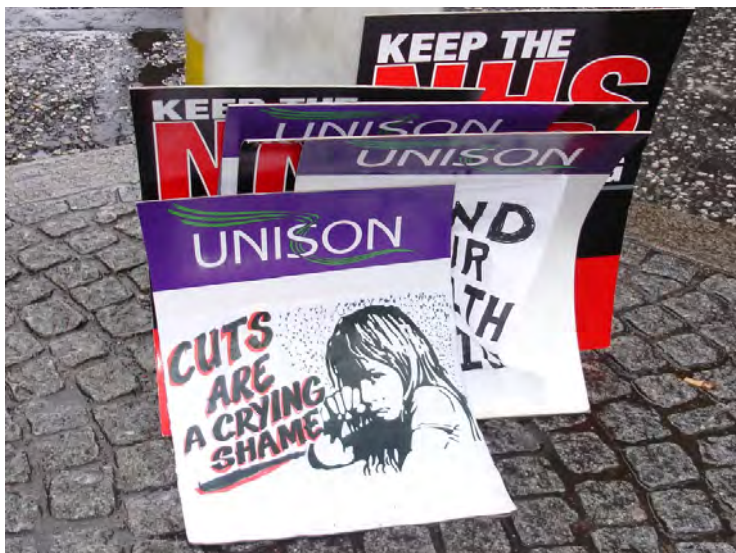
The consequence of the Treasury's Spending Review is that by 2014-15 Northern Ireland will be receiving 11.3 per cent less in real terms from the Treasury than it was in 2010-11 to pay

for current and capital departmental programmes. Given the importance of public spending to our economy and living standards, this amounts to putting the economy in reverse gear for at least four years with, as yet, no compensatory strategy for 'rebalancing' employment towards the private sector. The Draft Budget made no estimate of job losses – we say 38,000 – and makes little or no provision for whatever new economic strategy may emerge in future, aside from a token gesture towards the Green New Deal. We argue that cutting Corporation Tax provides no solution.

It is entirely predictable that the job losses, as well as the estimated £600m benefit cuts by 2014-15, will impact disproportionately on women, households with children and those receiving disability-related benefits. In our view, the Executive is open to legal challenge for failing to have due regard to equality of opportunity.

There is also the danger that the £4.5 billion shortfall in the 2008-2018 capital investment strategy linked to the St. Andrews' Agreement and the restoration of devolved government in 2007 will be socially and politically destabilising. The explicit objectives of that strategy included 'economic stability, tackling areas of social disadvantage, addressing poverty and promoting tolerance, inclusion, equality and good relations'.

We need to develop new revenue streams, whether these involve charges, investment funds, rates, or tax varying powers (both tax reliefs and impositions) alongside a public debate on principles and priorities. Our suggestion is that revenue raising should either be progressive (with the better-off paying more relative to income) or should have an identifiable social or environmental objective.



Trade Unions rally against budget cuts, Belfast 2011. Photo: Catherine Couvert

## KEEPING HEADS ABOVE WATER

### What next for the budget crisis?

**Seamus McAleavey**, Chief Executive, Northern Ireland Council for Voluntary Action

**F**irst things first, it's important to remember that cuts to Northern Ireland public expenditure are largely outside the control of the Northern Ireland Executive. The decision to cut eight per cent in real terms of revenue spending and 40 per cent of capital were taken by George Osborne. However, they do have to deal with the problem.

Now that we have had the consultation on the draft budget the Executive has a lot to do. In my view they need to take all the big decisions as an Executive not as single Ministers. They need a real Programme for Government and being realistic they can only do that after the May election.

**'To cope with the sheer scale of the financial squeeze the Executive will have to look to radically changing how services are planned and delivered'**

Everyone uses public services but the people who most depend on them are the young, the elderly, the disadvantaged and those on the lowest incomes. To cope with the sheer scale of



the financial squeeze the Executive will have to look to radically changing how services are planned and delivered.

People need help earlier when issues can be dealt with before they become bigger and more expensive problems. Prevention is better and more cost-effective than cure. That means in health we need to spend more on social care if we are to save on ever increasing medical costs.

Lastly, we need to ensure a vibrant voluntary and community sector in Northern Ireland is not a victim of unfair and disproportionate cuts. That would undoubtedly happen if the 'cuts are left to make themselves' by hundreds of hard-pressed budget holders in public agencies across Northern Ireland.

Over the next four difficult years, the public will need the services of voluntary and community organisations, particularly the independent advice services offered by organisations in our sector. For many people in tough times those advice services will mean the difference that helps them keep their head above water.

## PROTECT HEALTH AND ENTERPRISE

### Make savings through Stormont reform and efficiency drive

**Tom Elliott**, leader of the Ulster Unionist Party

**W**e in the Ulster Unionist Party believe that at a time when financial savings must be found due to the economic conditions the UK is facing, there is a need for compassionate, considered and practical politics.

For example, funding for health and social services must be retained at a level which does not undermine the absolutely vital work that goes on in those sectors and which affects us all. Likewise, we need to ensure education provision and colleges are supported so that we don't limit the potential success of the next generation. We must also work with business by keeping taxes at a minimum and by reducing bureaucracy which can stifle job creation. Undoubtedly, each department will have priorities,

but if we can avoid the 'silo-mentality' whereby each Minister resorts to defending their own patch without consideration for others, then we will be able to make progress.

Not everyone will be happy with every decision made or outcome reached. Various agencies and organisations across the country will feel severely pressured into making money work more efficiently, while families and individuals will notice a reduction in expendable income.

While nobody asks for hard times, and certainly no-one wants to make them worse, the reality is that failing to act appropriately now will only make the situation much worse in the months and years ahead. The politics of 'carve-up' which have divided the Assembly since 2007 must end. The DUP and Sinn



Fein cannot go on ignoring the wave of opinion which has consistently spoken out against the budget. To simply rail-road over the views of the people can only damage the political institutions which have taken so long to build.

The UUP has never been afraid of making tough decisions. We have already highlighted potential areas for savings, including reforming Stormont, the removal of inefficient North/South bodies and the option of private sector investment into areas of government such as the Forest Service. We want Northern Ireland to recover through a budget which removes waste, reduces government and puts the needs of people – such as health and enterprise – at the heart of the decision making process. What nobody wants to see is decision making being based on 'you take this part, we'll take that one.' That is short sighted, negative and deeply insulting to the people who put their trust in politicians to deliver effective, inclusive government. We can and must do better.

Let's not settle for a budget motivated by division. Let's have a budget driven by delivery.

## KEEP SIGHT OF LONG TERM GOALS

### Protecting priority public services in lean times

*Daithi McKay, Sinn Fein MLA and Chairperson of the Assembly Finance Committee*

**A**s Chairperson of the Assembly's Finance and Personnel Committee I am mindful of the impact that regressive public service cuts will have on the least well off in society, who rely most on these services. The protection of priority frontline public services is therefore a touchstone upon which the Finance Committee bases its scrutiny of the Executive's budgets and expenditure.

I recognise that the Executive has been presented with the unenviable challenge of developing its Budget 2011-15 in the face of swingeing public sector spending cuts arising from the British government's Spending Review, which applies to the local Block Grant without any assessment of relative need.

### 'my Committee has called on Departments to identify all possible options for raising revenue'

This challenge has been made all the more difficult because of the disproportionate impact of the cuts here, due to fundamental weaknesses in the local economy. In facing up to this, the Executive has indicated an intention to remain focused on the strategic priorities of protecting the most disadvantaged in society and growing the economy, whilst balancing its budget through a mix of savings, efficiencies, asset realisation, borrowing and revenue-raising measures.

In its recent Report on the Executive's Draft Budget 2011-15, the Finance Committee has pointed out that 'the success or otherwise of this approach will depend on the application and outworking of these measures across the twelve executive departments and other public bodies, combined with the ramifications for the private and third sectors'.

The Finance Committee has made a range of recommendations specifically



aimed at protecting priority frontline services and at supporting employment. Members have stressed the need for the Executive to set out clearly the essential services and strategic policies which should be prioritised. The Executive must ensure that the present focus on short-term budgetary savings does

not result in departments losing sight of the goal of improving efficiency and effectiveness in service delivery in the medium to long term. The Committee has highlighted areas where true efficiency gains can be achieved including in preventative spending, collaborative public procurement, shared services, government accommodation and better/more efficient working practices. My Committee has called on Executive ministers to ensure their departments expedite the identification and investigation of all possible options for raising further revenue in order to reduce the impact of the British Government's Spending Review on public services, thereby protecting the most vulnerable in society. It is my hope that this work, still ongoing, will come to fruition over the coming months.

## A STICKING PLASTER OVER A LARGE WOUND

### The answer is fairer taxes

*Les Allamby, Director, Law Centre (NI)*



**T**he underlying rationale of the coalition government in Britain is to 'rebalance the economy'. This is code for less reliance on the public sector and a greater focus on the private sector. For the voluntary sector in Britain the prognosis is bizarre, placing major reductions in funding as the fall out of local authority cuts alongside new opportunities through Big Society initiatives. In effect, this is a bi-polar disorder on policy.

In Northern Ireland, the rebalancing of the economy to the private sector will take up to 25 years while the reductions in public expenditure through social security savings and a reduced budget for Northern Ireland start now. Social security benefits fuel the local economy as payments are spent and not saved. Consequently, starting up local businesses in areas of high unemployment will become harder with £600 million leaving the economy in Northern Ireland through benefit cuts from now to 2014/2015.

The reality remains that those with the broadest shoulders are not proportionately bearing their burden. The fairest and most straightforward way to raise money is from a more progressive tax system. That means obtaining tax raising powers for the Northern Ireland Assembly and a will to utilize them progressively. The Assembly has the power to introduce water charges within rates alongside some specific improvements to the existing rate rebate scheme. The debate on water appears to forget that unlike in Britain we have a rebate scheme which can cover water charges. As a result, a progressive approach to taxation could be fostered. Instead we are left with a social protection fund of £20 million for one year only to put a sticking plaster over a large wound for many social security claimants.

It is time for a more mature debate on tax as no matter how much we might wish otherwise we cannot have 'American taxes and Swedish public services'.

## WHAT DEVOLUTION?

### The draft budget and the democratic deficit

Peter Bunting, ICTU



The trade union movement across these islands has forcefully argued for policies based on investment. We still hold firm in the belief that ‘promoting economic growth is the best way to restore the health of our public finances and this must be our overriding priority’, in the words of the Joint Statement signed by the Finance Ministers and First Ministers of Scotland, Wales and Northern Ireland last October.

It follows that a Programme for Government (PfG) which has economic growth at its core would drive the next Assembly after the May elections. Indeed, In Para 1.2 of the Draft Budget, the ‘emerging Draft Programme for Government’ is cited as government initiatives with which the Draft Budget is consistent. As the PfG is not expected to see the light of day until after the Northern Ireland Assembly elections in May, it is hard to evaluate any consistency, unless the Draft Budget is the PfG, regardless of the choices made by the electorate in Northern Ireland in May.

If the PfG states, *de facto* if not *de jure*, that its contents depend upon the

whims and wisdom of the Chancellor, then many will ask what was the point of thirteen years of hard talks and meaningful compromises between the political forces in Northern Ireland.

Nor does it help that the public consultation on the Draft Budget was a farce. Public input to the consultation has been truncated and legally dubious. Perhaps a one year budget, as agreed by the Government of Scotland, would have been preferable. As it is, we are going to have an election with most of the possibilities of the next PfG already determined by this four-year plan.

Placing responsibility for detailing their cuts onto individual departments seems to be either shifting the blame for unpopular decisions onto the individual ministers, or a failure of the basic principles of collective cabinet responsibility. Either way, this is a recipe for division which bodes ill for the effective functioning of the Executive. It also makes it more difficult for the Northern Ireland Executive to make a strong collective case to the UK Treasury against the cuts being imposed from above.

The structural weaknesses of the Northern Ireland economy have been cruelly exposed by the recession, and it is absurd to assert that a private sector which is too small and extremely fragile can take the reins of a ‘rebalanced’ economy, and create stable and sustainable employment.

In many ways the public sector is the backbone of the economy of Northern Ireland. Irresponsible cutting at that base will undermine the foundations of any economic recovery, and could plunge Northern Ireland into an economic trough from which it will take decades to recover.

The plan being espoused by the UK Coalition Government will almost certainly not work, even in its own narrow ideological terms. They have no right to impose such a radical plan upon a region of the UK which has elected not a single MP from either party in that coalition.

The process around this budget has made a mockery of the democratic promise of devolution. Any alternative must take this into consideration.

**‘it is absurd to assert that a private sector which is too small and extremely fragile can take the reins of a ‘rebalanced’ economy, and create stable and sustainable employment’**



## MEANS TESTED

### INCOME SUPPORT AND INCOME BASED JSA

#### PERSONAL ALLOWANCES

##### single

under 25	£53.45
aged 25 or over	£67.50
lone parent	
under 18	£53.45
aged 18 or over	£67.50

##### couple

both under 18*	£53.45
both under 18, with child	£80.75
one under 18 one under 25	£53.45
one under 18 one over 25	£67.50
both aged 18 or over	£105.95

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

dependent children (existing claimants)\*\*

birth to day before 20th birthday	£62.33
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#### PREMIUMS

family	£17.40
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##### pensioner

couple	£103.75
single (JSA only)	£69.85

##### disability

single	£28.85
couple	£41.10

##### enhanced disability

single	£14.05
child	£21.63
couple	£20.25
family (existing claimants)**	£17.40

##### severe disability

per qualifying person	£55.30
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disabled child (existing claimants)**	£53.62
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carer	£31.00
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\*\*people still receiving personal allowances and premiums for a dependent child may transfer to Child Tax Credit during 2011

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

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

gross income	
£122 - £179.99	£21.55
£180 - £233.99	£29.60
£234 - £309.99	£48.45
£310 - £386.99	£55.20
£387 and above	£60.60

Others, aged 18 or over and not in work or earning less than £122 or on IS or Income-based JSA and 25 or over or in receipt of Pension Credit or on main phase income related ESA (ie after 13 weeks) £9.40

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

#### DEDUCTIONS

child maintenance (standard)	£6.80
child maintenance (lower)	£3.40
finer (standard / lower)	£5.00 / £3.40
direct payment of fuel debt-5% rate	£3.40
direct payment of housing & rates arrears	£3.40
strikers	£36.00
recovery of ordinary overpayment	£10.20 (max)
recovery if convicted of fraud	£13.60 (max)

#### DISREGARDS

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

**voluntary and charitable payments, child maintenance, DLA and AA ignored in full**

#### CAPITAL LIMITS

disregard	£6,000
resident of care home, disregard	£10,000
upper limit	£16,000
child upper limit	£3,000
tariff income on capital between disregard and upper limit is £1 for every £250 or part thereof	

#### SURE START MATERNITY PAYMENT

£500 (where baby is the only child under 16 in the household)

#### COLD WEATHER PAYMENT

£25.00

### INCOME RELATED EMPLOYMENT & SUPPORT ALLOWANCE (ESA)

same as IS, except:

#### PERSONAL ALLOWANCES

##### couple

both under 18 (after 13 weeks)	£67.50
both under 18 with child (after 13 weeks)	£105.95
one 18 or over, one under 18	£105.95

#### PREMIUMS

pensioner	
single with work related activity component (WRAC)	£43.10
single with support component	£37.50
single with no component	£69.85
couple with WRAC	£77.00
couple with support component	£71.40
couple with no component	£103.75

#### COMPONENTS (from week 14)

work related activity	£26.75
support	£32.35

### HOUSING BENEFIT: RENT

#### APPLICABLE AMOUNTS - ie personal allowances and premiums

as for IS except:

##### personal allowance for:

couple - both under 18	£80.75
couple - one under 18	£105.95
single person on main phase ESA	£67.50

##### couple, claimant entitled to main phase ESA

£105.95

##### family premium

£17.40

##### baby addition (child under one)

£10.50

##### lone parent rate\*

£22.20

\*only if entitled to this premium prior to 1998

##### pensioner personal allowances

single aged 60-64	£137.35
couple - one or both 60-64	£209.70
single / one parent aged 65 or over	£157.90
couple - one or both 65 or over	£236.80

#### AMENITY DEDUCTIONS

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

#### MEALS DEDUCTIONS

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

each person aged 16 or over	£24.05
each child under 16	£12.15

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

each person aged 16 or over	£16.00
each child under 16	£8.05

##### breakfast only

each person (including children)	£2.95
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#### NON-DEPENDANT DEDUCTIONS

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

#### EARNINGS DISREGARDS

permitted work (lower)	£20.00
permitted work (higher)	£95.00
lone parent - not in receipt of IS where the claimant has a partner	£10.00
single claimant	£5.00
where carer or disability premium awarded	£20.00

#### CHILDCARE COSTS

1 child	70% up to £175.00
2 or more children	70% up to £300.00

#### OTHER INCOME DISREGARDS

maintenance	£15.00
child maintenance	ignored in full
war pensions	£10.00
Widowed Parent's Allowance	£15.00
student loan	£10.00
student's covenanted income	£5.00
additional earnings disregard	£17.10
income from boarders (plus 50% of the balance of the charge)	£20.00
income from sub tenants	£20.00
voluntary & charitable payments, DLA and AA	ignored in full

## CAPITAL LIMITS

same as IS, except:

Capital limit for Housing Benefit claimants above qualifying age for Pension credit is £10,000

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

## Pension Credit / Housing Benefit

where claimant or partner is of Pension Credit age or over no upper limit

## HOUSING BENEFIT: RATES

### PERSONAL ALLOWANCES AND PREMIUMS

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

### NON-DEPENDANT DEDUCTIONS

aged 18 or over, and in remunerative work

gross income

£387 or more £8.60

£310 - £386.99 £7.20

£180 - £309.99 £5.70

under £180 £2.85

others (for whom deduction made) £2.85

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

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

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

## PENSION CREDIT

### [KEY FIGURES ONLY]

### STANDARD MINIMUM GUARANTEE

single £137.35

couple £209.70

### ADDITIONAL AMOUNTS

severe disability

(per qualifying person) £55.30

carer £31.00

## SAVINGS CREDIT

threshold single £103.15

threshold couple £164.55

maximum single £20.52

maximum couple £27.09

## CAPITAL

disregarded £10,000

tariff income £1 for each £500 above

no upper capital limit

## HOUSING COSTS

deductions for non-dependants as for IS

## DISREGARDS

as for IS except:

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

## DEDUCTIONS

as for IS except no reduction for strikers

# NON MEANS-TESTED

### [KEY FIGURES ONLY]

### ATTENDANCE ALLOWANCE

higher rate £73.60

lower rate £49.30

### BEREAVEMENT ALLOWANCE

aged 45 - 54 £30.21 to £93.65

standard rate £100.70

WIDOWED PARENTS ALLOWANCE £100.70

Bereavement payment £2,000

### CARER'S ALLOWANCE

increase for adult dependant £55.55

(existing claimants only) £32.70

CHILD ADDITION\* £11.35

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

\* Reduced to £8.10 for eldest or only child where Child Benefit is paid.

### CHILD BENEFIT

only or eldest child £20.30

other child(ren) £13.40

lone parent rate has been abolished

### CONTRIBUTORY ESA

week 1 - 13 (assessment phase)

under 25 £53.45

25 or over £67.50

from week 14 (main phase)

with WRAC £94.25

with support component £99.85

### CONTRIBUTION BASED JSA

under 25 £53.45

25 or over £67.50

### DISABILITY LIVING ALLOWANCE

#### care component

higher £73.60

middle £49.30

lower £19.55

#### mobility component

higher £51.40

lower £19.55

### EARNINGS RULES

Carer's Allowance £100.00

permitted work earnings limit for incapacity for work benefits (higher) £95.00

incapacity for work benefits (lower) £20.00

GUARDIAN'S ALLOWANCE £14.75

### INCAPACITY BENEFIT

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

lower rate £71.10

higher rate £84.15

adult dependant £42.65

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

lower rate £90.45

higher rate £94.25

adult dependant £52.70

long-term £94.25

adult dependant £54.75

#### increase of long-term for age

lower rate £5.60

higher rate £13.80

### INVALIDITY ALLOWANCE (transitional)

higher rate £13.80

middle rate £7.10

lower rate £5.60

### INDUSTRIAL INJURIES DISABLEMENT PENSION

max lump sum £9,980.00

#### 18 or over or under 18 with dependants

from 100% assessment £150.30

to 20% assessment £30.06

under 18

from 100% assessment £92.10

to 20% assessment £18.42

reduced earnings allowance (max) £60.12

### MATERNITY ALLOWANCE

standard rate £128.73

MA threshold (for variable rate) £30.00

adult dependant (existing claimants only) £42.65

### RETIREMENT PENSIONS

single person (category A and B) £102.15

spouse\* or adult dependant (retirement) £58.80

spouse\* insurance (category B) £61.20

over 80 age addition (retirement) £0.25

category C and D £61.20

\* spouse = husband, wife or civil partner

### SEVERE DISABLEMENT ALLOWANCE

basic rate £62.95

adult dependant £32.90

#### age-related addition

higher rate £13.80

middle rate £7.10

lower rate £5.60

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

standard rate £128.73

earnings threshold £102.00

### STATUTORY SICK PAY

standard rate £81.60

earnings threshold £102.00

### WIDOWS PENSION / WIDOWED MOTHERS ALLOWANCE

Tax Credits

### WORKING TAX CREDIT (per year unless stated)

first threshold £6,420

second threshold £40,000

withdrawal rate 41%

basic element £1,920

30-hour element £790

couple and lone parent element £1,950

disabled worker element £2,650

severe disability element £1,130

#### 50-plus return to work element

16-29 hours £1,365

30 hours or more £2,030

additional income disregard £10,000

#### childcare element

70% of weekly cost for 1 child

up to costs of £175

70% of weekly cost for 2 or more

children up to costs of £300

#### CHILD TAX CREDIT (per year)

threshold (entitled to CTC but not WTC) £15,860

second threshold £40,000

family element £545

child element (per child) £2,555

disabled child element (in receipt of DLA) £2,800

severely disabled child element £1,130

(in receipt of DLA higher rate care component)

Housing Rights Service Policy and Communications Manager **Nicola McCrudden** reports on an important conference on household debt and affordable credit.

# AFFORDABLE CREDIT MATTERS

**Devolved government must tackle burden of high interest credit on the poorest**

**J**unior Minister Robin Newton MLA has addressed a conference organised by Housing Rights Service which discussed the issue of lack of affordable credit options locally. Through its free independent housing debt advice service, the organisation has noted increasing reliance on high cost credit from both legal and illegal sources. In some cases, interest rates can be up to 800 per cent APR.

Speaking at the 10 March conference, Minister Newton said: *'Affordable credit is key to reducing unmanageable debt to many households. The poor continue to pay more for many things but, often, it is the extra they pay for credit that puts the most unfair strain on their budgets. Our work must be to make a real and tangible difference to the lives of people who experience poverty and who are at risk of poverty.'* Janet Hunter, Housing Rights Service Director said: *'The servicing of these high cost loans can be at the expense of paying priority debts including housing costs. Some people have already lost their homes as a result. We don't want the situation to get worse and believe that devolved government could be doing more to tackle this issue head on.'*

A number of experts contributed to the conference including representatives from John Moore's University (Liverpool), Moneyline (Cymru) and Trading Standards Illegal Lending Money Team (Birmingham).

Participants overwhelmingly agreed that the problem is widespread and that tackling it needs to be a higher priority within the Northern Ireland Assembly.

It was also acknowledged that whilst financial education is crucial, it is as equally important to ensure lower cost credit options are accessible to households locally.

The event was organised as part of Housing Rights Service's Preventing Possession Initiative. Sid McDowell is Chairman of the partnership body which guides this work. It comprises representatives from government departments, lenders, credit unions, advice agencies, consumer groups and housing providers. The group has agreed to co-ordinate and move forward key recommendations identified by the conference delegates.



For more information contact Ruth Barry, Policy Officer (Financial Inclusion) 028 90245640, [ruthB@housingrights.org.uk](mailto:ruthB@housingrights.org.uk) or visit: [www.housingrights.org.uk](http://www.housingrights.org.uk).

**Photo above: Sid McDowell, Janet Hunter and Robin Newton MLA.** Photo: HRS

**'our work must be to make a real and tangible difference to the lives of people who experience poverty and who are at risk of poverty'**

## Innovation Fund to help benefit uptake

On 10 March, Social Development Minister Alex Attwood announced a £250,000 Innovation Fund to encourage benefit uptake and called on organisations right across Northern Ireland to avail of the fund.

Organisations across Northern Ireland will be invited to make applications for funding by coming up with innovative ways to encourage benefit uptake. £250,000 will be made available in the first year.

The Minister added: 'Offering this financial help to local organisations to support us in our business is an excellent way of harnessing the valuable skills and knowledge of these organisa-

tions who work day and daily with the people we are trying to reach. In this difficult financial climate, all those who qualify for benefits should be receiving what they are entitled to.'

Patrick Minne of Access to Benefits said: 'Helping people get what's due to them brings new money into the Northern Ireland economy. The Innovation Fund represents an exciting opportunity to establish new ways to connect people here to their entitlements, by tapping into the knowledge and creativity of the third sector.'

Details of the Innovation Fund, and how to apply for it, are available on [www.dsdni.gov.uk](http://www.dsdni.gov.uk).

*Mental capacity law reform continues to generate debate. In this issue, barrister **Michael Potter** argues caution on the implications of the Bamford recommendations for people who are perceived to be at risk of causing harm to others. Issue 80 will contain a response article and discussion of other issues surrounding mental health and learning disability legal reform.*



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# CIVIL CONFINEMENT

## Considerations when formulating future legislation

Following the upcoming May 2011 Northern Ireland Assembly elections, mental health legislative reform is likely to be on the agenda of a newly formed Executive<sup>1</sup>. Any proposals must address the complex and sometimes thorny issues arising in the areas of mental health and learning disability.

‘Civil confinement’ is one of the most difficult and contentious among them, particularly for individuals experiencing mental health problems and professionals and others working with them. Such confinement allows the lawful abrogation of a person’s autonomy and liberty, regardless of whether he or she has legal capacity.

This article seeks to contribute to future reform debate in this area. It discusses the applicable mental health law

and relevant recommendations from the Bamford Report<sup>2</sup>, and identifies considerations that may inform the formulation of future legislative proposals relating to civil confinement.

### Context

Where a person who has a mental disorder or disability exhibits behaviour which is unusual or socially unacceptable but is not in breach of the criminal law, health care professionals may form the view that the person concerned is ‘better off’ in hospital for a variety of reasons, including:

1. hospital treatment may be perceived as in his or her best interests; and,
2. confinement may obviate a perceived risk of harm to that person or others.

In this situation, the focus of health care decision makers is the patient’s medical best interests, which may militate in favour of confinement for treatment. This medical perspective is sometimes labelled ‘paternalistic’.

But to be lawful, any civil confinement decision must comply with statutory criteria prescribing the use of compulsory powers. The criteria contained in the mental health legislation safeguard the autonomy and liberty of the person concerned. This legal perspective affords greater weight to autonomy than a paternalistic view.

A tension arises from these two perspectives and it is often exposed in the Mental Health Review Tribunal when a detained patient legally challenges the decision of his or her treating professional. The Tribunal



**‘To be lawful, any civil confinement decision must comply with statutory criteria prescribing the use of compulsory powers’**



**Michael Potter.**  
Photo Law Centre (NI)

examines the lawfulness of the detention, which necessitates scrutiny of the treating professional’s judgement. The adversarial process can damage the therapeutic relationship between the person concerned and the treating professional. Discharge may expose the patient and/or others to the harm foreseen by the treating professional.

**Current law**

Under Article 12 of the Mental Health (Northern Ireland) Order 1986, people who have a mental illness or severe mental impairment warranting treatment in hospital can be compulsorily detained, if the failure to detain would expose the individual or others to a substantial likelihood of serious physical harm.

Recently the statutory criteria were clarified and explained in the High Court Judicial Review decision JR45<sup>3</sup>. Simply stated, the criteria require a real probability that leaving the individual in the community would pose a risk of not just harm, but serious and physical harm. This constitutes a reasonably high legal standard for compulsory detention.

Nonetheless, a person’s autonomy can be lawfully abrogated, and he or she civilly confined, even where he or she has decision making capacity.

**Bamford recommendations**

Departing from the prevailing statutory criteria, the Bamford Review recommends a ‘capacity based approach’ for decisions relating to civil confinement. Relevant Bamford recommendations state<sup>4</sup>:

*‘Where Decision-making Capacity is Not Impaired*

*7.21 Where a person is determined not to have impaired decision-making capacity, the Framework does not apply to that person and any decision that he/she makes, even if it appears to be unwise and even if, ultimately, it might bring about his/her death, must be respected.*

*7.22 This is the case irrespective of which (or both) of the two components of impaired decision making capacity (see above, paragraph 7.21) the determination is founded upon. Thus someone who has a mental illness, for example, but whose decision-making capacity is not impaired (ie the person retains the capacity to make a decision for him/herself), may not be included within the Framework (but see paragraphs 7.23 and 7.24). It is the case also irrespective of whether a particular decision or intervention relates to a person’s mental or physical health, and/or whether his/her behaviour presents a risk to the safety of self and/or of others.*

*7.23 Individuals suffering from a mental disorder (or a suspected mental disorder, which requires assessment) and who have been assessed as retaining decision-making capacity, should be able to access an appropriate professional service for their care and treatment on a voluntary basis. Should they refuse services, however, and their behaviour is such as to place either themselves and/or others at risk, they must take responsibility for the consequences of any decisions they might make: “A competent patient has an absolute right to refuse consent to medical treatment for any reason, rational or irrational, or for no reason at all, even when that decision may lead to his/her death” (Dame Elizabeth Butler-Sloss, 2002).*

*7.24 Any risk associated with a person with a mental disorder who presents*

*a significant risk to others only – not to self – but who has been assessed as having decision making capacity may need to be managed through alternative legislative provision within the Criminal Justice System’ (see above, paragraph 5.49).’*

In a nutshell, the recommendations restrict the use of civil confinement to people who have impaired decision-making capacity, leaving those who have capacity outside a statutory protective framework.

## Discussion

As highlighted earlier, the use of compulsory powers may be regarded as a pragmatic mechanism to ensure the individual concerned receives appropriate care and treatment, and/or to protect that person or others. This is especially the case where crime may be foreseeable, but no offence has actually been committed. Civil confinement serves a preventive objective in that it seeks to obviate a perceived risk, without needing to prove the commission of a criminal offence.

Bamford’s recommendations do not allow for civil confinement where the person concerned has capacity. If enacted, Bamford’s proposal would create a lacuna in the law, which potentially exposes the given individual and other people to harm from which they are protected under the current law.

Cognisant of this, the Bamford Report proposes that those people who are no longer civilly confinable by reason of their capacity ‘*may need to be managed through alternative legislative provision within the criminal justice system*’. (See paragraph 7.24 of the Report, as set out above.) At best, this proposal only partially addresses the issue: the criminal justice system cannot entirely plug the gap.

Criminality requires the commission of criminal acts, either actual acts or preparatory acts (eg criminal attempts or conspiracies)<sup>5</sup>. It is inconceivable that the law could prescribe a criminal offence solely consisting of an informed observer’s speculation about the risk of harm that discharge could create. Moreover, preventive detention without trial does not meet the standards of criminal justice and applicable human rights law.

## Conclusions

Arguably the present legal framework for civil confinement is the best that can be devised, given all the variables. It strikes an appropriate balance between liberty and protection of the public, regardless of the capacity of the person concerned.

There is a clear tension between the contrasting medical and legal perspectives on the one hand, and the need to ensure that the law facilitates appropriate decision making on the other. Therefore, a constructive debate should take place amongst the stakeholders to consider whether the present legal framework should be retained, or whether there really is a better way to deal with civil confinement.

Legislators should be aware that reform will be welcome in this area only if it provides a step forward, and not back.

## Footnotes

- 1 In 2003 the Department of Health and Social Services and Public Safety (DHSSPS) commissioned a Review on Mental Health and Learning Disability in Northern Ireland, resulting in the August 2007 publication of a report entitled ‘A comprehensive legislative framework’, commonly referred to as the ‘Bamford Report’. The report outlined both a need to transform the law governing mental health and learning disability in Northern Ireland and a reform blueprint. [www.dhsspsni.gov.uk/index/bamford/published-reports.htm](http://www.dhsspsni.gov.uk/index/bamford/published-reports.htm)
- 2 Ibid, paras 7.21 – 7.24.
- 3 3rd March 2011.
- 4 Supra 2.
- 5 There are three main types of ‘inchoate offence’, ie a criminal act preparatory to a further criminal act, incitement, conspiracy and attempt.

## Clarifying the ‘harm’ criteria in mental health detention

### Judicial review JR45 v Mental Health Review Tribunal [2011] McCI8107

Law Centre (NI) was successful in a judicial review in the High Court on 3 March in the case of JR45 v Mental Health Review Tribunal [2011] McCI8107. The judgment brings clarity to the phrase ‘substantial likelihood of serious physical harm’, which is at the very core of the legal grounds required to justify involuntary detention in a psychiatric hospital.

While he was in Britain, the client had sent unwanted messages of an amorous nature via Facebook to a woman. She had reported the matter to the local police. When he voluntarily attended the police station to explain his action, he was detained under mental health legislation. A tribunal reviewed his detention last October.

In order for the tribunal to direct that the patient should remain detained, it must be satisfied of the existence of both the two criteria as set out in Article 77 of the Mental Health (NI) Order 1986 (the Order). The first one is that a mental illness exists. This case dealt with the second criteria: ‘that his discharge would create a substantial likelihood of serious physical harm to himself or other persons.’

The judge quashed the tribunal’s decision and ordered that a new tribunal be held. He made some very important points, including:

‘I conclude that the expression ‘a substantial likelihood’ in Article 77(1) of the 1986 Order connotes a real probability.’ (para. 13)

‘The violence or apprehended harm belonging to the past [and as regards the future] must be physical in nature.’ (para. 14)

‘The apprehended physical harm as regards both the past and, by prediction, the future must be serious in nature: I construe this as harm which is more than trivial or minor.’ (para. 14)

‘Psychological harm or a state of mental anxiety or foreboding or a feeling of harassment on the part of a third party – as regards both the past and the future, as predicted – will not suffice.’ (para.14)

‘The evidence relating to the patient’s past conduct must establish not only that this engendered a fear of serious physical harm to some third party but that such fear was reasonable. In my view, this imports an objective element, which is designed to protect the patient from unfounded, irrational or ill motivated assertions of fear by some third party.’ (para. 14 – in reference to Article 2(4)(b)(ii) of the Order)

These points should be taken in consideration when applying the law from now on, not just by the tribunal, but also by health and social care professionals involved in detentions.

Seán McParland, mental health legal adviser, Law Centre (NI)

The Public Interest Litigation Support Project's **Marianne McKeown** explains how NGOs can spot a potential public interest case.

# THE LAW ON YOUR SIDE

**P**ublic interest litigation (PIL) can be a valuable tool for NGOs but it can be a difficult concept to understand. Law is complex and, at times, inaccessible but that does not need to be an obstacle that prevents NGOs from using it as a tool alongside policy work, campaigning and other advocacy methods.

Whether you are advocating for the provision of services for children with disabilities or campaigning against severe budget cuts, the law may be used to strengthen the arguments you are making and may provide a remedy when all else fails.

PIL can be defined as the use of legal action to create and sustain social change for the most vulnerable in our society. It contrasts with other legal cases in that it aims to achieve positive outcomes for a wide number or group of people, as well as the situation of the individual who has taken the case.

## How to spot a potential public interest case

Below are the key factors that the PILS Project sees as important in building a good PIL case.

It is important to note that there are no hard and fast rules when it comes to spotting a public interest case and there is no exhaustive checklist that can be ticked off which guarantees a successful outcome in the courts; each case is different.

Identifying a good PIL case can be a difficult task, even for experienced lawyers, so if you think the issue you are dealing with may fall within some of the headings below it is best to seek legal advice from the PILS Project's Solicitor, an advice service, an NGO with legal expertise, a solicitor or a statutory body,



Laganside Courts. Photo: Catherine Couvert

such as the Human Rights Commission, Equality Commission or the Commissioner for Children and Young People.

### 1. It has the potential to affect a wide number of people

The key feature distinguishing PIL cases from other legal cases is that they have the potential to impact upon other people in a similar situation to the individual taking the case.

There is no set number of people that must be impacted upon, it could be 50 or it could be 5,000, but generally they belong to a specific vulnerable group, such as older people living in residential care or people with a disability.

Alternatively, the issue could be one that impacts on the general public, such as the (now abandoned) proposals to introduce ID cards.

### 2. It raises issues of human rights, discrimination, equality or other injustice

PIL cases can involve a wide range of legal issues but they generally fall into one or sometimes all of the following categories.

**(a) It raises a human rights issue;** the rights of children, older people, ethnic minorities or other vulnerable groups have been violated.

For example, in 2010 the European Court of Human Rights ruled that a scheme which required immigrants who wanted to marry in the UK to obtain a 'certificate of approval' in order to prevent sham marriages, was in breach of their right to marry and was discriminatory. The result is that the scheme is to be abolished.<sup>1</sup>

**(b) It raises an issue of discrimination or inequality;** vulnerable or disadvantaged individuals or groups have been discriminated against or public authorities have failed in their duties under section 75 of the Northern Ireland Act 1998 to pay due regard to the need to promote equality of opportunity.

For example, in a recent successful discrimination case a gay couple challenged the refusal of Christian hotel owners to let them stay in the same bedroom because it offended their religious beliefs. The court found that the gay couple had been discriminated against because of their sexual orientation. The case has demonstrated to others that private religious beliefs cannot be solely used to justify denying services on grounds of sexual orientation.<sup>2</sup>

**(c) The law is unclear, has a gap or has been interpreted wrongly:** PIL can be used to clarify unclear laws, to address a gap in the law or to challenge incorrect interpretation or enforcement of the law.

A case recently heard in the UK Supreme Court aims to clarify what the term 'miscarriage of justice' means under the legislation governing the provision of compensation for 'miscarriages of justice'.<sup>3</sup> The decision, which is awaited, is likely to impact widely on those who seek compensation for wrongful conviction.

**(d) There have been unlawful, unreasonable or unfair actions or decision-making by a public authority:** Education and Library Boards, Health Trusts and government departments are part of a long list of public authorities whose decisions may potentially be challenged using judicial review for these reasons.

For example, in a 2010 case relating to a child with autism, the court found that the Western Health and Social Care Trust had acted in breach of its duty to carry out assessments and provide services to the carers of disabled children.<sup>4</sup> The impact of the case extended beyond the family involved after the judge declared that the trust has failed



Marianne McKeown. Photo: PILS

**'PIL works best when it is supported by a community or social movement, or the general public because it can demonstrate the 'public interest' in a case.'**

in its duty to provide assessments for 41 other families in similar circumstances.

### 3. It 'tests' the law

PIL cases often 'test' the law on a certain issue, ie ask the court to examine an issue it has not considered before, interpret an existing law, or determine whether the law complies with human rights standards.

In January 2010, for example, the European Court of Human Rights found that the stop and search powers contained in the Terrorism Act 2000 were too far-reaching and contravened Article 8 of the ECHR.<sup>5</sup> As a result the law will have to be amended.

### 4. The case has a reasonable prospect of success

The legal representatives in a case will evaluate this but it is important to know the type of factors that may be considered. These may include the factual merits of the case, what the courts have said on similar issues before (have they been positive or negative?) and the timing of the case.

### 5. Alternative resolutions have been exhausted

Generally, judges in judicial review cases are reluctant to hear cases if other relevant remedies have not been exhausted. Alternative resolutions may include meetings and/or correspondence with the person or body that has responsibility for the issue, internal complaints procedures or a complaint to the relevant ombudsman. The relevance of alternative resolutions will depend on the circumstances of the individual case.

### 6. It is supported by a community/ social movement or the general public

PIL works best when it is supported by a community or social movement, or the general public because it can demonstrate the 'public interest' in a case. It can also generate public debate and raise awareness that can help advance an issue even if the case itself is unsuccessful.

Community support is also vital in the aftermath of a court case; a positive legal judgment is of no benefit if it does not improve the lives of the people at the heart of the issue. Community groups, NGOs and the general public play a vital role in spreading information on the practical effects of the judgment and in making sure that it has been implemented.

For more information on the work of the PILS Project: [www.pilsni.org](http://www.pilsni.org).

### Footnotes

1. O'Donoghue and Others v. the United Kingdom ECHR (application no. 34848/07)
2. Hall & Anor v Bull & Anor [2011] EW Misc 2 (CC)
3. In the Matter of an Application by Raymond Pius McCartney and Eamonn MacDermott for Judicial Review (Northern Ireland) UKSC 2010/0045 and /0046. This case has been supported in part by the PILS Project.
4. An Application by JR30 (HN) (A Minor) by His Mother and Next Friend, 2010 NIQB 86
5. Gillan and Quinton v United Kingdom [2009] ECHR 28

Recent figures show an increase in incidents of racial prejudice and discrimination in the workplace. **Anne McKernan**, Casework Director at the Equality Commission for Northern Ireland, explains what the Commission is doing to address this.

# BLAMING THE OTHER?

**R**ecent research by both UNISON in 2009 and NICEM earlier this year shows that racism appears to have heightened during the recession. UNISON, for example, found that 54 per cent of their respondents had personally experienced racist attitudes among the general public, while 83 per cent reported that they had encountered it in the workplace. The Equality Commission's own Equality Awareness Survey, last published in 2009, shows an apparent rise in racial prejudice in Northern Ireland.

Over the past five years, the trend in numbers of calls to our legal staff about racial discrimination is up: in 2005-06, we took 328 and in 2009-10, we took 438.

There is clearly a continuing need to challenge racial discrimination, and the Commission is taking action on a number of fronts.

**'54 per cent of their respondents had personally experienced racist attitudes among the general public, while 83 per cent reported that they had encountered it in the workplace'**

## Challenge discrimination

We are key partners in the Unite Against Hate (UAH) campaign, supporting the campaign to create a more tolerant and peaceful Northern Ireland. Most recently we supported their campaign to address the under-reporting of hate crime and added a new 'Challenge Discrimination' button to the UAH homepage to make it easier for people to contact us for advice via email: [discriminationadvice@equalityni.org](mailto:discriminationadvice@equalityni.org)

## Seeking change to the law on race

One of our current priorities is to work towards changing the law here to keep pace with the Equality Act 2010, which came into effect in Britain on 1 October 2010, and ensure that people in Northern Ireland have the same protection from discrimination as people in Great Britain.

We have identified six proposals for urgent legal reform which include the harmonisation of the Race Relations (NI) Order 1997 so that colour and nationality has the same level of protection as other racial grounds. There was a commitment by OFMDFM to address this when they consulted on a Single Equality Bill for Northern Ireland in 2004 but it has not yet happened.

We met with OFMDFM junior ministers in 2009 to discuss our proposals for legislative reform and we have since then been raising awareness of our proposals for change with key stakeholders, including the Assembly All-Party



Anne McKernan. Photo: Equality Commission

Group on ethnic minority communities and the Black and Minority Ethnic Forum.

We have also been raising concerns with OFMDFM about the need for domestic legislation to comply with EU Directives.

Reforming the law in this way is in keeping with the aims and objectives of the OFMDFM Racial Equality Strategy for Northern Ireland 2005-2010.

## Monitoring the workforce

The Commission would like to see a change in the law on monitoring workforce composition, to require registered employers to collect monitoring information on the nationality and

ethnic origin of their employees and job applicants. They already monitor their community background and sex.

### Legal work

We have seen an increase in the overall number of enquiries from people who believe they have experienced racial discrimination, from just over 9 per cent of our calls in 2005/6 to a current level of 12.2 per cent of all calls.

Last year the Commission granted assistance in 38.5 per cent of the race applications made to it. We are currently legally assisting 24 cases of race discrimination. This covers all legal work in preparing the case, concluding a conciliated settlement or running the case in a court or tribunal. During the year 2009-10, we achieved successful settlements in five cases taken on grounds of race (two of which were on grounds of race and one other area of discrimination). Almost half (48 per cent) of those enquiries are about employment or the workplace and around 30 per cent of those involved racial harassment at work.

In 2009, we supported a Zimbabwean-born vet, Crispin Madavo, who had difficulties over a long period following initial complaints he made of racial discrimination at work. This resulted in disciplinary proceedings and penalties being imposed on him which his employer subsequently acknowledged should not have occurred.

Another 2009 case involved a Malaysian man whose complaint to the Industrial Tribunal that he was subjected to race discrimination, harassment on grounds of race and unfair dismissal, was upheld. Both were compensated.

### Enforcement

Our Strategic Enforcement Division also carried out a formal investigation into migrant workers and the role of recruitment agencies, which we published in June 2010. It examined the issues around equality of opportunity for newly-arrived jobseekers and also longer-established workers.

The investigation found that good practice exists in the recruitment sector and with employers. It made specific recommendations on addressing language barriers and on comparing equivalent qualifications so that there is equal opportunity for migrant workers who wish to use their qualifications, skills and experience to obtain suitable work.



### Advice and training for employers

To conclude, we provide free advice and training on race and the workplace for employers to help them comply with the law. Good employment practice protects businesses against risks and helps them grow and develop. That is true in times of expansion and prosperity. It is true also in times of recession.

For more information, contact Christina Martin, Equality Commission, 028 9089 0861. Our publications and website, [www.equalityni.org](http://www.equalityni.org), are accessible in a number of different languages. All our publications are available to view or to download free. If you feel you have been discriminated against, please ring our advice line 028 90 890 890 or email us on [discriminationadvice@equalityni.org](mailto:discriminationadvice@equalityni.org).

## Northern Ireland Ombudsman

### Roads Service and disabled parking

In this case the complainant believed that Roads Service did not properly handle his application for a disabled parking bay. In particular he considered that an objection from a member of the public had been given more weight than his own needs as a disabled person. A disabled parking bay in the proposed space had previously been applied for but Roads Service had offered two alternative solutions as a result of an objection, neither of which he considered to be suitable. He complained to Roads Service about how his application was handled and was also unhappy with how Roads Service dealt with this complaint.

The decision to provide a disabled parking bay is a discretionary deci-

sion and the Ombudsman is prevented, by the legislation that governs his Office, from questioning a discretionary decision unless it was taken with maladministration. Based on the evidence that he considered, the Ombudsman was satisfied that Roads Service followed their procedures when processing the application for a disabled parking bay, and when dealing with the complaint. Consequently, the Ombudsman did not find maladministration. However, as the complainant met the criteria for provision of a disabled parking bay, the Ombudsman urged him and Roads Service to continue to examine alternatives to ensure that the complainant is enabled to maximise his mobility.

# POLICY UPDATE

**Ursula O'Hare**, Assistant Director (Policy and Publications) at Law Centre (NI), rounds-up recent legal, policy and caselaw developments.



**Helen Ferguson, Carers NI, Judith Cross, Age NI, Ursula O'Hare, Law Centre (NI) and Quintin Oliver, Joseph Roundtree Foundation NI adviser.** Photo: Michael Beggs

## Rights in community care seminars

In March, the Rights in Community Care Group held the third in its seminars on 'A Vision for Community Care'. Professor Brendan McCormack from the University of Ulster and Geraldine Patterson from the Southern Health and Social Care Trust spoke about the single assessment tool, a mechanism for assessing the health and social care needs of older people in Northern Ireland.

Organised by Age NI, the seminar was chaired by Quintin Oliver, the new JRF adviser in Northern Ireland.

The final seminar will be held in June and organised by Carers NI on the theme of Carers and Caring. For information, please contact Laura Niwa at [laura.niwa@lawcentreni.org](mailto:laura.niwa@lawcentreni.org)

## Welfare Reform Bill at Westminster

The Welfare Reform Bill 2011 was finally introduced into Westminster in February. It paves the way for the introduction of a new benefit - Universal Credit - to replace a range of existing benefits. Leading advice groups have welcomed the government's intention to simplify the benefit system but there are concerns about the cumulative impact of the changes to the social security system that will precede the introduction of Universal Credit. There is also unease about how the new system will work in practice.

The editorial addresses noteworthy features of the Bill. The Bill cleared its second reading on 9 March and has moved to Committee stage. You can follow its progress at Westminster on: <http://services.parliament.uk/bills/2010-11/welfarereform.html>

## Social security changes

Last month also saw the start of the roll out of the migration to ESA of people who currently receive Incapacity Benefit. With the exception of those who

will reach the state pension age before September 2014, anyone who has been receiving Incapacity Benefit will have to undergo a work capability assessment (WCA).

Following a critical assessment by Professor Malcolm Harrington, the government has promised a series of annual reviews of the WCA. Professor Harrington has again been appointed to lead the second review. Despite the flaws in the assessment tool, the Government is pushing ahead with the migration.

In England, the Tribunals Service has reported a five-fold increase in the number of incapacity and ESA appeals since the new benefit was introduced in October 2008. A similar picture can be expected to emerge in Northern Ireland over the coming months.

The change to the uprating of benefits by the (lower) Consumer Price Index rather than the Retail Price Index, announced in the June 2010 Budget, looks like it will be a permanent one. The changeover takes effect from April 2011 and will mean a fall in the value of social security benefits. In February, speaking during a parliamentary debate on benefit uprating, the Work and Pensions Minister said that he can 'see no reason to change it [ie the new approach] in the future.' At present CPI stands at 4.4 per cent and RPI at 5.5 per cent.

## Access to justice & legal aid

The Access to Justice Review published its progress report in March.

In relation to civil legal aid, the progress report sets out a number of factors that are relevant to the review. These include the increasing demand for help and advice alongside levels of unmet need in some areas and concerns about current levels of capacity to advise and/or represent tribunal users.

The report gives an indication of the broad direction of travel. The review team will not, for example, take forward the possibility of establishing Community Legal Advice Centres. It will, however, review the operation of the green form scheme and will seek to develop models for supplementing existing services providing help and advice. Options for greater use of alternative dispute resolution models will also be a focus of the final report expected by June 2011.

Ahead of the completion of the review, the Justice Minister announced two significant reforms to the legal aid system. First, a change to the financial eligibility test for legal aid, announced in December 2010, will make it easier for victims of domestic violence to seek the protection of the courts. Second, the Minister announced in January 2011

that legal aid will be available without means testing for cases brought to the Mental Health Review Tribunal.

## Employment Act (NI) 2011

The Employment Law Act (NI) 2011 received the Royal Assent in March and took effect on 3 April 2011.

The Bill is the outcome of the DEL policy review of the system for resolving disputes in the workplace. The statutory grievance procedure is revoked and a new Labour Relations Agency Code of Practice on Disciplinary and Grievance Procedures also took effect on 3 April. Unlike in Britain, the statutory dismissal procedure has been retained.

The legislation repeals existing time limits for LRA conciliation, makes a number of changes to the powers of industrial tribunals and makes provision for the enforcement of tribunal awards without the need for a county court order. Provisions in the Act to allow time off to train are put on hold pending 'an improvement in the economic outlook.'

## A8 nationals get EU rights

From 1 May 2011, A8 nationals will have the same entitlements to benefits as other EU nationals.

The UK negotiated transitional arrangements for the A8 member states when they joined the EU back in 2004. Under these arrangements, A8 nationals were subject to different rules about access to social security assistance enjoyed by other EU nationals. A8 nationals had to register their employment under the Workers Registration Scheme and work continuously for twelve months before being entitled to benefits. Many A8 workers who failed to register their employment or who had breaks in their employment found that there was no safety net to support them when they became sick or unemployed. The impact was real hardship for significant numbers of migrant workers in Northern Ireland.

Transitional rules that exclude A2 nationals (Romanians and Bulgarians) from social security assistance will remain in force after May.

## Landmark ruling in immigration

In a landmark decision in March (*Zambrano* [Case C-34/09]), the Court of Justice of the European Union ruled that a third country national with dependent EU national minor children cannot be denied the right to reside with their child in the member state of the child's residence nor can a member state refuse to grant work permission to the third country national parent to enable them to support their child. The Court judgment is grounded in EU-national children's rights to enjoy their status as a citizen of the EU. The key part of the judgment is:

*'Article 20 TFEU is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen.'*

This is a significant judgment for the rights of EU-national children and their non-national parents to live together in their EU member state of residence. The full implications of the judgment will need to be carefully considered.

The Irish government has announced a review of cases affected by the decision while the Home Office has remained silent on its approach.

## Immigration detention of children

UKBA published its review into ending the detention of children for immigration purposes in December 2010. Simultaneously, the Government announced the immediate closure of family detention facilities at Yarl's Wood Detention Centre.

The outcome is a new family returns process that took effect from the 1 March this year. The new process makes provision for the establishment of an independent Family Returns Panel whose role in enforcement action cases is to 'ensure that individual return plans take full account of the welfare of the child involved.' Guidance published in March 2011 is available at: [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk).

Over the period of the review, 1 June to 30 November 2010, 78 children were detained with their families for immigration purposes.

Section 55 of the Borders, Citizenship & Immigration Act 2009 imposes a duty on UKBA to have regard to the need to safeguard and promote the welfare of the child. How the new process operates over time will be an important test of this statutory commitment.

## Advocacy – a human right?

Monday 18 April 2011, 10.00am – 1.00pm at:

UNISON Northern Ireland, Galway House, Belfast.

The seminar will consider:

- the role of an advocate;
- the importance of advocacy services for people with disabilities;
- the right to advocacy for people with disabilities; and
- how an advocate can help people with disabilities achieve their human rights.

Key note speaker: Dr. Eilionóir Flynn, Centre for Disability Law and Policy, NUI Galway.

This event will be of relevance to people with disabilities; their carers, family and friends; advocates of people with disabilities; representatives of disability and human rights organisations; as well as representatives of health, social care and legal sectors.

Register online at: [www.disabilityhumanrights.org/events](http://www.disabilityhumanrights.org/events)

Disability  
Action  
seminar

# SOCIAL SECURITY UPDATE

*Lee Hatton and Patricia Carty review two recent Law Centre victories in Incapacity Benefit cases, and an overpayment case which was lost but which clarifies an important point on overpayment recovery.*

## Temporary or permanent incapacity?

The Law Centre won a case for a Lithuanian woman on Incapacity Benefit who had lost her Income Support top up because the Department had wrongly applied European law on right of residence.

As the case did not go to the Social Security Commissioner, it is not caselaw. However, an AIT decision has essentially settled the issue and has agreed with the same arguments that we had raised in our social security appeal. FMB (EEA reg 6(2)(a) - 'temporarily unable to work') Uganda [2010] UKUT 447 (IAC)

We are still looking for decisions of this type as it would be beneficial to have a Social Security Commissioner decision which endorses the AIT decision.

## The case

Following a car accident, our client had metal pins inserted into her legs. She lost her job and claimed Incapacity Benefit. In order to be entitled to an Income Support top-up, she had to have a right to reside. European legislation states that a person who was working but is now temporarily incapable of work will retain a right to reside.

After she had been on Incapacity Benefit for around three years, the

Income Support office asked her when she would be able to return to work. She replied that her doctor was not able to tell but he had said it would likely not be in the near future. The Income Support office decided that she was no longer temporarily incapable of work and stopped her Income Support. There was no issue over her incapacity for work.

The Law Centre appealed on the basis that European law only allows for a person to be either temporarily incapable of work (retain a right to reside in some circumstances) or permanently incapable of work (can obtain a permanent right of residence). European law does not allow for a third category of persons who are neither temporarily nor permanently incapable of work. The Department was therefore wrong to find that she had lost her right of residence.

## The decision

The appeal was allowed, and our client was found to have been entitled to Income Support throughout. The tribunal pointed out that the statement from her that she could not return to work in the near future was insufficient evidence to supersede her entitlement to Income Support. As she was still in receipt of Incapacity Benefit, she was still incapable of work.

## Incapacity Benefit permitted work rules

### The case: C17/10-11 (IB)

This was an appeal against a decision that our client had been overpaid Incapacity Benefit because he did some part-time work. When he first claimed, he was given information about 'permitted work' rules. The leaflets explained that he could work up to sixteen hours per week and claim IB. They did not make it clear that he had to notify the Department within a strict 42 day time limit.

## The decision

Commissioner Mullan allowed our client's appeal against the tribunal decision that more than £4,000 had been overpaid to him. He directed that another tribunal consider the appeal. He reviewed the case law on overpayments and made the following comments:

- a tribunal considering an overpayment appeal will not be bound by the findings of fact of any earlier tribunal which considered a related 'entitlement' appeal;
- the mailshots which were issued by the Department to IB claimants in 2002 regarding permitted work rules are ambiguous;
- the Department's template for overpayment submissions does not deal with important case law developments and should be amended to do so;
- the further tribunal should carry out another review of the facts and law in order to consider whether the Department gave clear and unambiguous instructions to the person about his duty to disclose the material fact of starting work.



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## Notification of overpayment decisions

### The case: *Hamilton v Department for Social Development* [2010] NICA 46

The Law Centre had appealed a Social Security Commissioner decision. This concerned the right to recover an overpayment where the decision to supersede the original award was notified after the decision to recover the overpayment.

Where the Department is seeking to recover a benefit overpayment, Section 69 of the Social Security Administration (Northern Ireland) Act 1992 requires that at least two decisions are made. There must be a supersession or revision of the original decision which awarded benefit (an entitlement decision) and a decision that the overpayment is recoverable from the claimant (a recoverability decision).

The entitlement decision was made but it was not communicated to our client until after the recoverability decision had been made and sent to her. An appeal tribunal allowed her appeal on the basis that the entitlement decision had not been validly made as the Department could not show it had been sent to her. A Social Security Commissioner overturned the tribunal decision and found that as the entitlement decision had been made, it was a valid legal decision.

### The decision

The Court of Appeal agreed with the Commissioner, finding that the general principle stated in *R v Secretary of State for Home Department (ex parte Anufrijeva)* [2003] UKHL 36 that a decision does not have full legal effect until communicated to the person affected did not apply to this case. Social security legislation specifically states that certain decisions may take effect from a date different to the date on which it was made (Regulation 7 of the Decisions and Appeals (NI) Regulations 1999, for example).

The expected course of action would be for a claimant to receive the entitlement decision and the recoverability decision in separate letters. However, as the overpay-

## LIBRARY NEWS

### Books and reports

***Access denied – or paying when you shouldn't. Access to publicly funded medical care: residency, visitors and non-British/Irish citizens*** (Research Paper) NIHRC, 2011.

***Benefits for migrants handbook, 5th edition*** CPAG, 2011.

***Financial inclusion amongst new migrants in Northern Ireland: executive summary of report by ICAR in collaboration with CAB Belfast***, by Julie Gibbs. Information Centre about Asylum and Refugees (ICAR), 2010.

***The foundation years: preventing poor children from becoming poor adults. Report of the Independent Review on Poverty and Life Chances***, by Frank Field. The Cabinet Office, 2010.

***To no-one's credit: the debtor's experience of instalment and committal orders in the Irish legal system – executive summary***, FLAC (Free Legal Advice Centres), 2009.

***Transfer of undertakings***, March 2011. (IDS Employment Law Handbook)

***Voices from the global south: a research report on migration (to Northern Ireland)***, Centre for Global Education, 2010.

### Joseph Rowntree Foundation reports

***Local housing market volatility***, January 2011, by Ed Ferrari and Alasdair Rae.

***Monitoring poverty and social exclusion 2010***.

***Monitoring poverty and social exclusion in Northern Ireland***, September 2009.

***Older people with high support needs: how can we empower them to enjoy a better life***, October 2010, by Imogen Blood.

***A review of benefit sanctions***, December 2010, by Julia Griggs

ment letter gave some brief explanation of how the overpayment had arisen (our client was no longer entitled to Carer's Allowance and therefore to Income Support), the Court found that it also served to inform her of the entitlement decision. The Court held that there is nothing preventing the Department

giving notice of the two decisions in the same letter.

Advisers may need to be aware of this if the person they are advising wishes to appeal against both entitlement and recoverability as there may be cases where only one decision letter is issued which deals with both.

# SPRING TRAINING AT LAW CENTRE (NI)

## Belfast

Community Care and the Law	26 May
The Citizens Directive 2004/38/EC and the Immigration (EEA) Regulations 2006	9 June
European Law and Social Security	10 June
Immigration and Criminal Justice	17 June
Pregnancy and Benefits	22 June

## Derry

Community Care and the Law	20 May
Advising Migrant Workers	7 June
Pregnancy and Benefits	15 June

All Law Centre courses count towards CPD requirements for solicitors, barristers and CAB advisers.

Contact Law Centre (NI) training unit on 924 4401, or visit our website for more details: [www.lawcentreni.org](http://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](mailto:couvert@lawcentreni.org), to receive the booklets free of charge.

# 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	Non-members
£60 (half day)	£70 (half day)
£120 (full day)	£140 (full day)

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

## Available equipment

- overhead projector and screen
- powerpoint projector & laptop
- flipchart
- white board
- DVD player

## 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](mailto:ann.cartwright@lawcentreni.org)