

FRONTLINE

Law Centre (NI) social welfare law quarterly

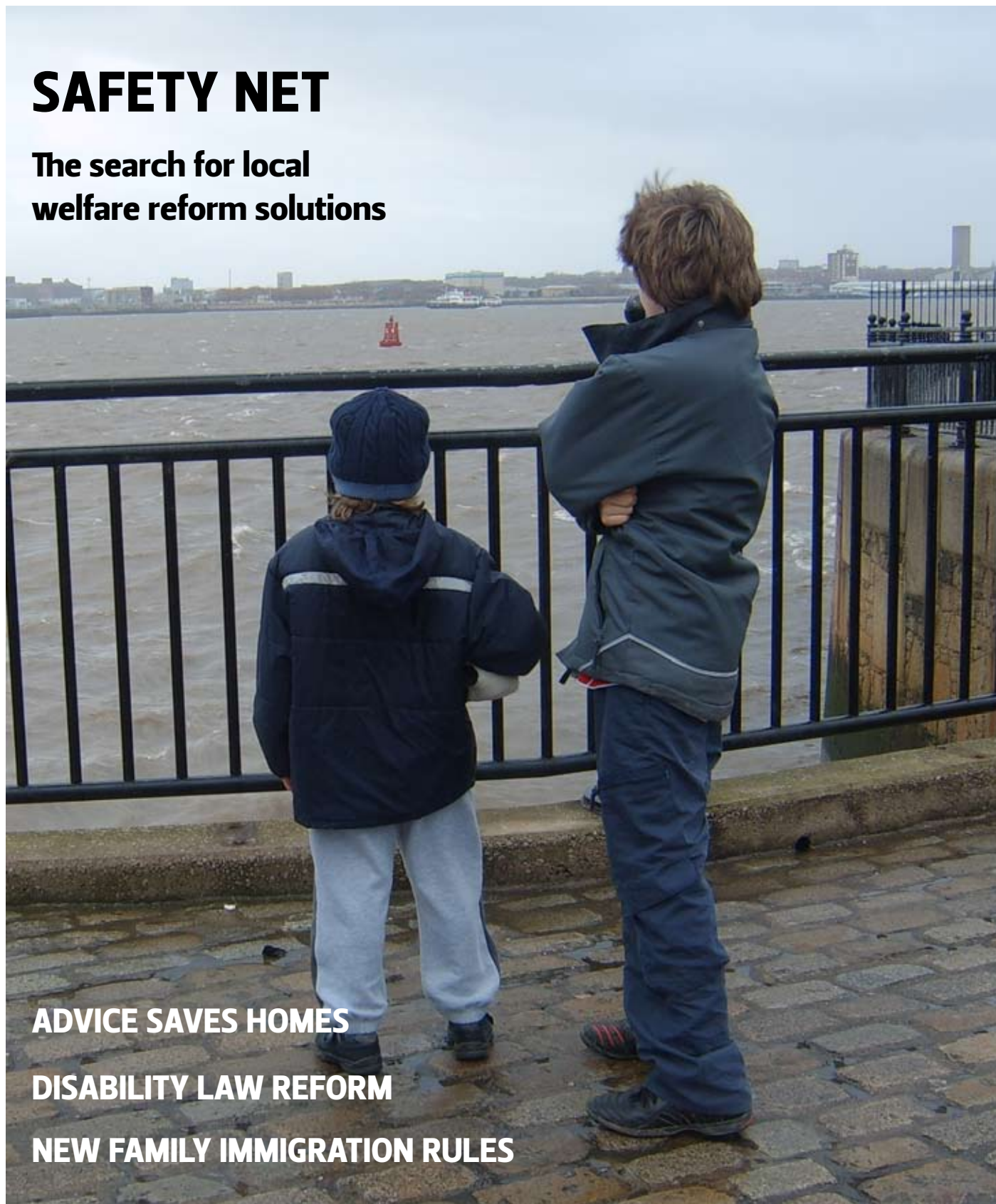
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FRONTLINE 85

editorial

Universal Credit	4
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news

Integration and participation	5
Migrant guides launched	6
Economic masterclasses	7
Housing possession advice	8

features

FOCUS: Welfare reform at Stormont

1. A busy agenda	10
2. Scrutiny needed	11
3. Wish list from carers, disabled, women, children's groups	12-14
4. WCA and Atos	15
5. Cuts hurt real people	16

practitioner

Disability law reform	18
Immigration and family relationships:	
1. Changes to UK rules	20
2. Dual nationality	22
Tax credits, ESA news	24

reviews

Mediation, mental health, community care	26
--	----

14



FRONTLINE 85

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UNIVERSAL CREDIT AND DEVOLUTION



Where do things stand with Universal Credit and the introduction of the Welfare Reform Bill in the Northern Ireland Assembly?

At the time of writing, the Bill has still not been through the Northern Ireland Executive. The original timetable had envisaged publication of the Bill in early 2012.

At present, the DUP and Sinn Fein are working out what changes will be made to the approach taken in Britain (apart from those reflecting current differences around the rates system and retention of some form of Social Fund). Both parties have their reasons for wanting a different approach. For Sinn Fein, there is the ideological motivation of not wanting a British social security reform replicated wholesale alongside little appetite for the reforms themselves which implement further savings to social security. For the DUP there is also unease with some of the reforms; the party endorsed the benefit cap in Westminster but also voted against many parts of the Bill. The DUP recognises that some parts of the Bill play well in their political heartland while other parts play badly.

One issue on which there is common ground is the need to show that devolved government makes a real difference to people on the ground. As a result, there is a need to come up with sufficient differences to the Act in Britain to allow both parties to demonstrate that locally devolved politics actually works. This must be done in a way that also recognises the current financial realities. If a deal is done then the parties' MLAs must be

whipped into line to ensure the published Bill is passed at the Assembly. Any 'back corridor' deal is unlikely to be welcomed by the other parties in government or other MLAs outside the Executive altogether.

An added complication is that crucial parts of Universal Credit still remain to be finalised in Britain. There is considerable tension between the Department for Work and Pensions and both the Treasury and HMRC. This culminated in the attempt to move Ian Duncan Smith to the Ministry of Justice in the recent Cabinet reshuffle. There are two schools of thought behind the move.

First, that the move was designed to pave the way for Chris Grayling to become the Secretary of State at Work and Pensions, leaving someone in place who would be more amenable to Treasury concerns about Universal Credit and further savings to social security from 2015/2016 onwards.

'There remains an enormous amount still at stake. The voluntary sector and other stakeholders have a vital role to play in ensuring proper scrutiny and accountability.'

A second theory is that the move would have presaged an attempt to shelve Universal Credit. Personally, I doubt that the latter is on the cards. Nonetheless, concerns about the cost, timetable and delivery of Universal Credit are very real.

The second uncertainty lies in the fine detail of Universal Credit. Regulations have been published and both the Social Security Advisory Committee and the Work and Pensions select committee have undertaken consultation exercises – the former at the behest of the Department itself. From the regulations, it is clear that important key questions have

still to be decided. These include the level of the assumed minimum income floor which will be set for the self-employed and the appropriate arrangements for reporting self-employed income for Universal Credit purposes. The regulations also reveal a number of anomalies, including Universal Credit treating certain types of self employment expenses differently from current HMRC arrangements. Evidence given by Ian Duncan Smith and Lord Freud to the Work and Pensions Select committee has already provided some clarity on the self employed issues. The question of whether to pay fortnightly or monthly has also not been finally determined. These and other issues can, of course, be relatively straightforwardly remedied. Nonetheless, time is tight to meet the existing timetable in Britain. Already the original plan to introduce the Personal Independence Payment in April 2013 has slipped.

In Northern Ireland where the timetable is tighter still, there is likely to be an attempt to try to concertina the process to approve the Bill and the regulations. The welfare reform changes are likely to last for a generation and such an approach will prove counter-productive.

Despite the legislation in Britain having been passed, there remains an enormous amount still at stake. The voluntary sector and other stakeholders have a vital role to play in ensuring proper scrutiny and accountability of the future of social security when the Bill finally sees the light of day.

STOP PRESS ...

Nelson McCausland MLA, Minister for Social Development, formally introduced the Welfare Reform Bill at the Assembly on 1 October. The Bill is available on the NI Assembly's website and will reach the committee stage from 9 October.

Belfast Integration and Participation Project

Run by Belfast City Council, Gems (NI) and Law Centre (NI), Belfast Integration and Participation Project (BIPP) aims to improve the integration and participation of migrant and ethnic communities.

BIPP was launched at Belfast City Hall on Tuesday 31 July. Speakers included Lord Mayor Gavin Robinson, Nick Garbutt of Asitis Consulting, Alan Morrow, Chair of the project's steering committee and speakers from participating organisations. Jennifer Greenfield, Assistant Director Casework and Training, presented the Law Centre's role in the project.

As part of the project, the Law Centre will develop an online guide on migrant workers social security rights and train advisers on:

- right to reside test within social security;
- access to health, social care and housing for persons from abroad;
- Universal Credit, its rules on right to reside and access of Romanian and Bulgarian nationals.

The Law Centre will also run practitioner focus groups identifying current and emerging issues for advisers and other practitioners working with migrant and minority ethnic people.

GEMS NI will work at fostering integration and participation through developing economic opportunities, while South Belfast Roundtable will concentrate on the social aspect of integration and on awareness training.

BIPP dates for your diary

Practitioner focus group

The next meeting of the practitioner focus group will be held on Monday 10 December 2012, 11am to 1pm at the Law Centre's Belfast office. To register, email: patricia.carty@lawcentreni.org



Law Centre (NI)'s Jennifer Greenfield speaking at the launch of the project. Photo: Tony Mair

Free training on right to reside

A two day course on right to reside rules for access to social security, health and social care and housing will run twice - first on Thursday 18 and 25 October and then again on Thursday 8 and 15 November 2012, at the Law Centre's Belfast office.

To register for the course, download a training application form on: www.lawcentreni.org/application-forms/short-form.html or email noreen.hyndman@lawcentreniwest.org. For more information visit: www.bipp.gemsni.org.uk or www.lawcentreni.org

Newtownabbey CAB celebrate quality mark

Staff at Newtownabbey CAB have been celebrating the result of an independent audit which gave 100 per cent score to their frontline advice service.

Each Bureau has to undergo a rigorous audit every three years to ensure it can remain a member of the national Citizens Advice association and that it can retain the highest quality Mark, equivalent to the Legal Aid Kite Mark.

Pat Hutchinson MBE, Manager of Newtownabbey CAB, says: '100% score is incredibly rare. This is a real vote of confidence in the bureau.'



Photo: Citizens Advice

Overcoming language barrier to migrant rights

The latest translations of Your Rights in Northern Ireland, the online guide to the rights of migrant workers, were launched by OFMDFM Junior Minister Jonathan Bell MLA, Law Centre (NI) Director Les Allamby, and Michael O'Flaherty, Chief Commissioner of the Northern Ireland Human Rights Commission, on 13 August at the Law Centre's offices in Belfast.

The documents, on www.law-centreni.org, www.nihre.org and NI Direct, help migrant workers and their families understand their rights, entitlements and responsibilities while in Northern Ireland and ensure that they receive the right advice if they encounter any problems.

Originally published by the Law Centre and Northern Ireland Human Rights Commission in 2008-2009, the guide has been updated to reflect important changes, notably in immigration, and made more user-friendly for migrant workers.

Thanks to further support from OFMDFM, Belfast City Council and Northern Ireland Strategic Migra-



L-R: Michael O'Flaherty, chief commissioner, Northern Ireland Human Rights Commission, Hazel Francey, Belfast City Council, Jonathan Bell MLA, OFMDFM junior minister and Les Allamby.

Photo: John Rush

tion Partnership, it has now been translated into the nine languages

most used by migrant workers. In response to demand, 2,000 copies of the Polish document have been printed, and they are being distributed through Northern Ireland Housing Executive offices and support organisations. The other guides are online only documents.

Michael O'Flaherty, NIHRC Chief Commissioner, said: 'Migrant workers are identifiable as one of the most vulnerable and marginalised groups in our society today. The Human Rights Commission is aware of the invaluable resource the guides provide in Northern Ireland. They contain key information on how best to access your rights and public services. We are therefore pleased to continue to work in partnership with the Law Centre in the production of the latest versions.'

If you would like to help disseminate this information, our Publications Unit can send you free copies of the Polish guide and a multilingual poster signposting the online versions. Contact catherine.couvert@lawcentreni.org or ring 9024 4401.

Mental health learners trained on benefit entitlement

Nearly 150 mental health service users at NIAMH have received accredited training on the benefits they are entitled to, thanks to an innovative partnership between NIAMH, Citizens Advice and the Open College Network funded by the Big Lottery.

The trainees, service users of NIAMH's Beacon centres, received their Open College Network NI (OCN NI) Level 2 qualification in 'Understanding Your Benefits' at a ceremony on 5 September at Queen's University, Belfast.

Citizens Advice identified the need for the project as changes began to take place in the benefits system over the past two years and Beacon service users became anxious about their impact.

The three week course, written and delivered by Citizens Advice, helps people with mental health issues become aware of how their benefits work for them and their families.

Peter McBride, Chief Executive of NIAMH, said 'It is important that welfare support is not removed from those who need it as a safety net when they are unable to work due to ill-health. The changes to the system have caused many of our service users anxiety and confusion, which has impacted on our work with them to recover their mental health.'

Derek Alcorn, Chief Executive of Citizens Advice said, 'The ongoing effect of welfare reform is having a real impact on people's lives and this will only increase as the replacement to DLA and the introduction of Universal Credit take effect in the next couple of years. It is therefore essential that people are aware of their rights and changing entitlements.'

NICVA economic master class: building the good economy

NICVA's **Seana McAuley** presents a programme of discussions on economic issues that will bring together the voluntary sector and leading economists.

NICVA's Centre for Economic Empowerment (CEE) has launched its second masterclass series for voluntary and community organisations.

The series will examine some of the key economic issues we face today and give the sector a chance to exchange ideas and develop its capacity to influence economic policy debate.

Building on the success of last year's series, the masterclasses will seek to give up to date analysis of relevant economic subjects and provide interesting and innovative ways of addressing topical issues.

The series will be delivered by leading academics and practitioners

from across the UK. Attendee participation will be placed at the heart of each seminar, delivered on the premise that 'there is no such thing as a stupid question'.

Peter Hutchinson, CEE Co-ordinator said: 'This series is about getting leading opinion formers and practitioners into a room with people from the sector and exploring together some of the topical economic questions that we are facing. We have been able to attract some leading thinkers. I believe this shows enthusiasm for the format and reflects on the presence the sector is developing in this area.'

'Previous participants really valued the opportunity to build understanding and contribute to debate. Our guest speakers also took a lot from the sessions – being extremely interested in the practical contribution the sector can make to debate and the standard of analysis.'

Examining Corporation Tax – Tuesday 30 October, 10am to 12.30pm.

Moving Northern Ireland towards a low carbon economy – Friday 23 November, 10am to 12.30pm.

Making work pay – delivering a living wage – Friday 25 January 2013, 10am to 12.30pm.

For more details or to book a place please visit: www.nicva.org/events

CEE conference 2012: date for your diary: 'Creating the good economy through job creation'

The Centre for Economic Empowerment's second annual economic conference will seek to examine in detail how we might boost job creation and further develop the good economy in Northern Ireland. Join the debate on 4 December at Stormont Hotel, Belfast.

Justice Minister sets out reform programme

In a statement to the Assembly on 2 July, David Ford MLA set out his Department's plans for reform of the Northern Ireland justice system. Over the life of this Assembly, the Minister intends to implement more than 40 projects to improve access to justice, save £8 million a year on legal aid costs and improve accountability within the justice system.

David Ford said: 'Since being elected Justice Minister, I have emphasised the need to devise a justice system which meets the specific needs of the people of Northern Ireland. (...) I am committed to the principle that people should have help with their legal problems and that they will be protected under these reforms. What may change is how they receive that help, and how public funding is used to provide it.'

'I have already agreed to fund a project with the Housing Rights Serv-

ice to help homeowners under threat of repossession. The review recommended that my Department should seek to develop partnerships with the voluntary and advice sectors and I intend to develop similar projects in the future.'

'I have also commissioned work to explore the current use of alternative dispute resolution in the justice system. There is scope for better use of such approaches, both to avoid time-consuming and expensive court proceedings and, where appropriate, to support those proceedings.'

The Minister confirmed that savings will include civil legal aid: 'I have already implemented measures to make significant savings in criminal legal aid, and I now propose to take forward significant reforms to reduce expenditure in civil legal aid. Reviews of the level of legal representation and remuneration in legally aided civil cases will deliver an estimated £7m in annual savings.'



He also outlined measures to improve accountability and governance within the justice system.

The Departmental action plan is on: www.dojni.gov.uk/index/publications/publication-categories/pubs/criminal-justice/departamental-action-plan-2012-15.pdf.

Emergency advice saves homes

*Housing Rights Service legal information officer **Sharon Geary** reports on the Housing Possession Court Duty Scheme, a new pilot service based at the High Court which offers emergency advice to people facing the imminent threat of repossession.*

It is widely acknowledged that having access to independent advice and representation when facing possession proceedings can significantly increase the prospect of saving the home. However, many people facing possession proceedings as a result of mortgage or rent arrears are not in a financial position to pay for legal advice and, consequently, do not attend their court hearing or go along without representation.

Recent efforts by the Department of Justice, Legal Services Commission and Housing Rights Service have begun to address this.

No legal aid for debt cases

Despite acknowledging the key role of advice and representation in the prevention of homelessness, the provision of publicly funded court representation services in Northern

Ireland has been extremely limited in comparison to the rest of the UK. This is because of the interpretation given to the Legal Aid Advice and Assistance (NI) Order 1981 that legal aid funding is precluded for the 'preparation for, and/or representation in court proceedings' for admitted debt type proceedings. This has never been the case in the rest of the UK.

The inequity of the legal aid situation was recognised in the Report of the Independent Commission on the Future of Housing in NI (May 2010) which stated: 'the absence of legal aid for those facing eviction from their home is unacceptable. In England and Wales legal aid is available and has prevented many thousands of households from being rendered homeless' and went on to recommend that 'government should rectify the absence of legal aid for those facing eviction from their home'.

DoJ funds for housing debt cases

After much advocacy on the part of Housing Rights Service, important progress has been made. The Lord Chancellor has issued a Department of Justice Authorisation under Article 10A(2)(a) of the 1981 Order which

allows the Legal Services Commission to provide funding for the defence of admitted debt proceedings:

- based on mortgage arrears in respect of residential property in the High Court; or
- based on rent arrears in respect of residential property in the County Court.

LSC funds new scheme

To this end, the Legal Services Commission has provided funding for the Housing Possession Court Duty Scheme, on a twelve month pilot basis. The scheme, managed by Housing Rights Service, was recently launched by Justice Minister David Ford and Social Development Minister Nelson McCausland.

The scheme is part of Minister Ford's commitment to ensure Access to Justice to those who need it. It represents a new approach to publicly funded legal services. It also complements the work already being done by the Mortgage Debt Advice Service (funded by the DSD and managed by Housing Rights Service) in the prevention of homelessness as a result of debt.

How it works

The scheme employs two specialist legal advisers who provide emergency advice and assistance to people facing the imminent threat of repossession, on the day of their court hearing, where they do not have representation or have not previously received advice.

The advisers are on hand to help clients in all High Court Chancery proceedings in respect of mortgage debt proceedings and, for the first time, in all rent possession proceedings in each of the County Courts throughout Northern Ireland. This ensures help is at hand for anyone needing it, regardless of where they live in NI.

Since the project began in April 2012, the advisers have had an 85 per cent success rate in helping people keep their home.

Further information on the Housing Possession Court Duty Scheme is available at: www.housingrights.org.



Janet Hunter (director Housing Rights Service), David Ford (Minister for Justice), Eamonn McLaughlin (adviser), Maria McNally (adviser), Nelson McCausland (Minister for Social Development), Gráinne Walsh (vice-chair, Housing Rights Service). Photo: Housing Rights Service

WELFARE REFORM BILL

A busy agenda

Georgina Ryan-White, policy officer at Law Centre (NI), sets out the background to the long awaited Assembly debates on welfare reform.



As anticipation for the Northern Ireland Welfare Reform Bill's publication grew over the summer months, it proved to

be a busy period in which to respond to consultation exercises on other aspects of welfare reform.

Social Fund

In June, DSD published its new policy for Discretionary Support encompassing Discretionary Housing Payments. It provides the foundation for the son or daughter of the Social Fund which will be subject to separate consultation later in the year.

There is concern that this policy represents a shift towards meeting extreme circumstances and that the threshold for assistance may be set too high in terms of the qualifying criteria for support.

Although a welcome intention to widen the policy to those in employment, additional resources will need to be provided in order to accommodate this group and ensure the scheme is effective in meeting need.

Work Capability Assessment

The DSD also issued a call for evidence for Professor Harrington's Year 3 Independent Review of the Work Capability Assessment in August. Despite the timeframe being considerably shorter than its counterpart in Great Britain, it provided a key opportunity for Northern Ireland specific concerns to be highlighted.

There has been much debate in recent months about the WCA and Atos' efficiency as an assessment provider. This has included the publication of statistics revealing high levels of decisions overturned at appeal, claimants being turned away from their medical examination in Royston House and increasing GP workloads.

This year's focus on the customer's experience examined the areas of communication, decision making and the face to face assessment.

Nonetheless, DWP and DSD do not, yet, appear to have fully grasped the cultural change being called for in response to the Review, instead focusing on making isolated recommendations to the assessment.

Universal Credit

Both the SSAC and the Work and Pensions Select Committee carried out consultation exercises on the draft Universal Credit regulations. This

presented further occasions to make the case for legislative and operational differences to GB to reflect specific Northern Ireland circumstances with regards to welfare reform.

Cross-border workers

Concern is arising about the co-ordination of social security systems for cross border workers and classification of Universal Credit for European law purposes as Northern Ireland is the only part of the UK to land border with another EU member state. The intention to treat Universal Credit, as a whole, as social assistance goes against the grain of European law cases. It will have significant ramifications for people on low incomes living in Northern Ireland but working in the Republic of Ireland.

Guidance

It is important to note that, in line with promoting alternatives to primary and secondary regulations, guidance is increasingly being used as a means of securing broad policy objectives. It is therefore vital that the guidance is subject to the same level of scrutiny and that it contains clear, consistent and unambiguous terms.

What lies ahead?

The NI Welfare Reform Group's response to the Work and Pensions Select Committee can be found on www.publications.parliament.uk/pa/cm201213/cmselect/cmworpen/writew/576/m72.htm.

What changes will be made to the Northern Ireland Bill and corresponding regulations from Britain remain to be seen.

Following a broad introduction by Alex Maskey MLA, Chair of the Northern Ireland Assembly Social Development Committee, the subsequent articles present NI Welfare Reform Group members and others' insight into how welfare reform impacts on their client groups, and what may be done to soften the impact of the changes.

PROPER SCRUTINY NEEDED

A Bill that only considers costs not social impact is flawed

Alex Maskey MLA, chair of the Social Development Committee, calls for time to properly scrutinise the Welfare Reform Bill and come up with workable proposals.



There has been so much discussion and consultation, reports produced and stakeholder events held on welfare reform that one could

easily think that the scrutiny process for the Welfare Reform Bill is actually coming to a close. However, at the time of writing the Bill has not yet been introduced to the Assembly.

Perhaps some people thought that due to issues regarding parity it would simply be a case of transposing the Westminster Bill here as soon as it gained Royal Assent in GB. However, given the radical redrawing of the welfare system that the Bill initiates, this was never going to be the case.

Local circumstances

Prior to formal consideration, time needed to be spent with a number of people including Department for Work and Pensions Ministers to explore the potential scope for changing the Bill, to address our specific local circumstances.

Indeed, I and the Committee's Deputy Chair met with Lord Freud earlier this year to discuss the Committee's concerns about the Bill.

To be fair, the Minister listened intently and appeared to recognise that there are specific issues requiring further consideration if the legislation was to proceed through the Assembly in a timely fashion. However, he did not commit to any particular flexibility regarding the Bill.

Social impact concerns

My Committee has already taken a number of briefings from key stakeholders and we have real concerns, particularly about the potential impact on women and children, people with disabilities and those already on a low income.

A Welfare Reform Bill that simply considers cost and does not take social impact into consideration is flawed.

Purse versus wallet

For example, in my view the issue of the 'purse versus wallet' in respect of payment of Universal Credit is an exercise in social engineering that smacks of sexism and misogyny.

My Committee will give serious consideration to alternative payment options including the potential for payment to be made to the person with the main caring responsibilities who even in this day and age is usually a woman.

Bedroom tax

The 'bedroom tax' for under-occupancy has the potential to disrupt

'Many people will live with the consequences of this Bill. We owe it to them to take the time to get it right.'

social networks and family support for those who are forced to move to a smaller dwelling in another area because they cannot absorb the fourteen per cent cut in Housing Benefit if they have one unused bedroom or the 25 per cent cut as a result of having two unused bedrooms.

This will not contribute to a stable and cohesive society.

Childcare strategy

The requirement for lone parents to claim Jobseeker's Allowance or Employment and Support Allowance (if they have a disability or health condition) once their child reaches the age of five might be more palatable if we had a childcare strategy that detailed the path towards affordable and accessible childcare.

We need this strategy urgently and we need long term investment in childcare to develop the necessary childcare support infrastructure.



Protesting against arrangements for Work Capability Assessment at Royston House, Belfast, August 2012. Photo: Catherine Couvert

This should be seen as an economic imperative if a key aim of the Bill, moving people off benefits and into work, is to be realised.

Work programme

Associated with this is the need for a Work Programme that addresses our specific local situation. A Work Programme that suits the south of England will not suit the North of Ireland.

Greater local involvement in the development and operation of a Work Programme is required if it is to stand any chance of success.

Workable changes needed

The question therefore for the Committee, given the context of the principle of parity, is how do we make this more applicable to the circumstances of people locally?

In our formal consultation with stakeholders we will focus on the

‘In our formal consultation with stakeholders we will focus on the changes required to minimise the impact on the most vulnerable.’

changes required to the legislation to minimise the impact on the most vulnerable. These will need to be clear, specific and workable.

Taking the time to get it right

It is my expectation that the Social Development Committee’s formal consideration of this Bill will be underway in the near future.

While I recognise that the Department has concerns about the timetable for implementation of the Bill’s

provisions, the committee has been universally called upon by stakeholders to take the time necessary to scrutinise it in full.

Many people will live with the consequences of this Bill and we owe it to them to take the time to get it right.

KNOCK ON EFFECT

Carers and those they look after need full protection

John McCormick, campaigns and communication officer at Carers NI, is concerned at the planned reduction in disability benefits which will hit disabled people, their carers and families.

Welfare reform cuts will compromise the dignity and independence of disabled people and those with long-term conditions who are able to live independently. Given that the fraud rate for Disability Living Allowance is 0.5 per cent, it is clear that the threatened 20 per cent cut to DLA would result in the reduction or removal of disability benefits for large numbers of legitimate claimants.

Wider impact of disability benefits cut

It's easy to assume that because Carer's Allowance – a benefit currently worth just £58.45 a week – remains outside of welfare reform, carers will be unaffected by the changes. However this is far from the case. While disabled people will clearly feel the greatest impact, the knock on effect of the loss of benefits will also hit carers and their families hard.

For example, as disabled people become less independent through the loss of income from DLA/Personal Independence Payment, they will rely more heavily on support from family members, increasing the pressure on carers. This is likely to increase the risks to carers' health, social inclusion and ability to juggle work and care.

Two thirds of carers already use their own incomes to pay for care for the people they look after. Reductions in income from disability benefits will only increase the pressure on carers to dip into their own finances.

The loss of a disability benefit also has a direct effect on Carer's Allowance claimants whose entitlement is dependent on someone receiving PIP/DLA.



Universal Credit and carers

Caring responsibilities can severely restrict someone's ability to find work. While Government has said that people with 'regular and sub-

stantial' caring responsibilities will not have to look for work, the Universal Credit regulations are unclear about this.

Furthermore there is no recognition that disabled people can themselves be carers as Universal Credit will force people to choose between their disability and their caring responsibility to determine their benefit entitlement.

Make sure carers are no worse off

We call on the Assembly to ensure that carers and the people they look after are fully protected under the new benefits system. With their unpaid caring already saving the local economy £4.4 billion a year, making sure carers are no worse off is the very least that should be done.

THE WIDER CONTEXT

Reforms ignore barriers to disabled people's independence

*Disability Action's policy and information manager **Karen Hall** argues that the planned welfare reform fails disabled people by focusing on individual responsibility rather than collective disadvantage.*



The budget outlined by the Coalition government in 2010 stated that it planned to reduce spending on social security benefits by £11 billion and aimed to 'reduce dependency and promote work'.

A disabled person may, in some cases, be better off in work under Universal Credit but that does not mean that an employer will offer them a job or that the appropriate supports will be available.

None of the measures outlined by the government to date have looked at the fundamental social and economic factors which exclude disabled people from the work place and from living independently in

their own community. By focusing on individual responsibility rather than collective disadvantage the government is ignoring the societal barriers which most disabled people face everyday.

If the Assembly is to mitigate the impact of these reforms then it must look at the wider context and not just in terms of welfare reform. These proposed changes will have a significant impact on disabled people living independently in their own community and the Assembly must work to protect that right. It has been a long hard fought for right that has not yet been fully realised.

WAITING ON THE BROWN ENVELOPE

Welfare reform and mental health

Iris Elliott, Head of Public Affairs and Policy at Niamh, the Northern Ireland Association for Mental Health, sets out the impact of welfare reform as identified through NIAMH caseload and calls for a collective response to maintain the social security safety net.



- long processing times;
- administrative failures (undated letters seeking time limited responses); and
- low or zero assessment points being overturned after lengthy appeals.

Collective response needed

There is a direct relationship between a person's mental health and their experience of the social security system. It is essential that welfare reform is not an individualised and isolating experience. Rather, we must develop collective responses: creating dynamic, progressive partnerships between the mental health, advice, trade union and political sectors in order to robustly protect social security.

There is widespread recognition that persons experiencing mental ill-health will be particularly impacted by welfare reform. The title quote comes from Niamh service users expressing their anticipatory fear about receiving a letter regarding the reassessment of their benefit. It communicates the manner in which government policy on welfare reform has become an individualised and isolating experience that significantly heightens anxiety amongst vulnerable groups. This article describes their experiences to date.

Niamh services

Niamh is Northern Ireland's largest independent mental health organisation. Since the 1950s our charity has delivered community based services.

In 2011-2012, Beacon provided supported housing (351 places), day and floating support (1,139 people) and advocacy (5,600 cases). Seventy five per cent of housing users and 79.1 per cent of day service users receive Disability Living Allowance; the figures for Income Support are 50 per cent of housing users and 50.3 per cent of day service users.

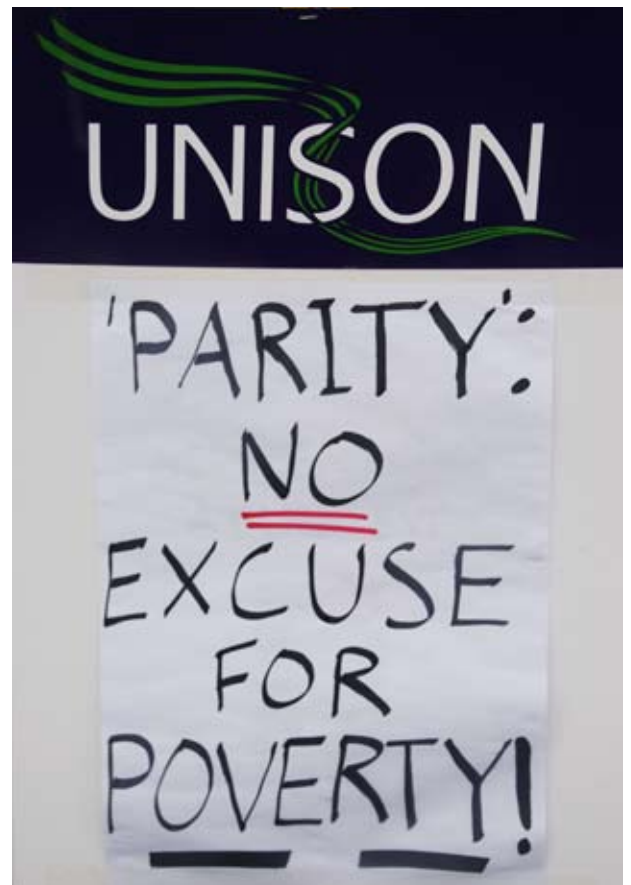
From September, Beacon service users are graduating from an innovative welfare rights programme, a Big Lottery funded partnership between Niamh, Citizens Advice and Open College Network. Our other service, Carecall, covers 511,000 lives, providing access to therapeutic support and mental

health and wellbeing programmes in work and education settings.

Issues identified

Through this extensive service network we are generating case studies and identifying common issues around welfare reform. These issues include:

- widespread fear and distress combined with inadequate information about the impact of welfare reform on standard of living;
- significant negative impacts on mental health recovery;
- channelling of health resources away from service delivery to social security advocacy;
- lack of regard for voluntary and statutory health practitioners' opinions;
- administrative, assessment and decision-making staff who are un-/ill-trained in mental health;
- inappropriate assessment procedures;
- inconsistency between geographic areas;



UNIVERSAL CREDIT AND FAMILY BUDGETS

Small tweaks make a big difference

Lynn Carvill, women's sector lobbyist, Women's Resource and Development Agency hopes that Stormont will seize the opportunities afforded by devolution to mitigate the detrimental effect of welfare reform cut on women and children.

Following the Coalition Government's Emergency Budget in 2010, it has become quite clear that as a cohort, women (and children) will disproportionately bear the brunt of cuts and changes to the welfare system. In a recent Observer newspaper editorial we were reminded that one-fifth of the female wage consists of benefits/tax credits to compensate for low wages, while benefits make up only one-tenth of male wages.¹

While WRDA is very concerned about the cuts to social protection and the detrimental impact these are likely to have on some of the most vulnerable people in our society, we have strategically decided to focus our lobbying efforts on more 'op-

erational' issues around Universal Credit, where minor alterations or tweaks could potentially make a huge positive difference to the lives of women across NI.

Women's autonomy, children's needs

It is planned to introduce the new composite benefit, Universal Credit in 2013. Our first concern in relation to this is that Universal Credit will be paid to one nominated person in a family.

The societal default position is that, in couple households, Universal Credit will be paid to the 'male head of household'. While this notion may appear outdated, for many households it is reality. Paying Universal

Credit to the man will result in a substantial transfer of resources from the purse to the wallet.

As well as our dismay at the further erosion of the economic autonomy of women; evidence points to the fact that money from the purse is more likely to be spent on children and family needs than money from the wallet.

As tax credits are subsumed into the new Universal Credit payment, many women will lose direct access to financial resources.

Essentially, Universal Credit will not safeguard personal access to welfare support for women in couples.

Thus, we are asking: that Universal Credit be paid to the 'second earner' or 'carer' in the household.

Budgeting on a low income

It is proposed that Universal Credit be paid monthly with the rationale that monthly payments resemble paid wages.

This proposal raises a huge amount of anxiety amongst women who are living on low and very low incomes. Women speak about how difficult it is to budget on a low income on a fortnightly basis and how impossible this would be if benefit was to be paid monthly. It is easier to stretch food and money over a couple of days at the end of a fortnight than eke out resources over a week at the end of a month.

Thus we are asking: that people can choose the frequency of payments, therefore taking account of their own household needs

Consolidating devolution

These 'asks' relate to how Universal credit is operationalised in this region. They do not affect 'parity' but rather consolidate devolution. While paying Universal Credit to the 'second earner' or 'carer' in a household and allowing recipients a choice on frequency of the payment may not 'rock the administrative boat' hugely, it would make a huge and beneficial difference to the lives of many women, children and their families. Will our devolved government 'step up to the plate' on this issue?



Representatives of women's groups hold an 'empty purse' protest at Stormont.

Photo: Jonathan Porter/Presseye.com

ATOS AND THE WCA

Society should be judged by how it treats its most vulnerable members

Brian Pelan is the editor of *VIEW*, an online magazine for the voluntary and community sector. Here, he relates people's stories that should serve as a wake up call on the impact of the Work Capability Assessment.



I first heard of Cecilia Burns when the news was announced recently that she had died. She was 51 when she passed away. She lived in Strabane, Co Tyrone.

What brought her story to public attention was that she suffered from cancer and that she had been declared fit for work by Atos – the French private company who carry out Work Capability Assessments.

She was not prepared to keep quiet about what had happened to her and voiced her anger at her

treatment and the decision to reduce her benefits by £30 a week.

Before her death, Ms Burns said

'The difficulties in the lives of the disabled and those suffering illnesses have been compounded by the stress of Work Capability Assessment.'

that dealing with the side effects of the treatment was bad enough, but she had been angered by the cut in benefit after she went for a medical.

'I know there's other people out there and they're all scared to come forward,' she said.

Shortly before she died Ms Burns won her appeal and her benefits were reinstated.

The difficulties in the lives of the disabled and those suffering illnesses have been compounded by the stress of Work Capability Assessments. Christine McDonnell, who lives in Belfast and who suffers from multiple sclerosis, recently told *VIEW* about her real fears that her benefits may be taken away and that she could also be declared fit to work – even though she is obviously not.

During my interview with her in her home, Christine became visibly upset as she talked about Atos. Her own words that 'a society should be judged by how it treats its most vulnerable members' should serve as a wake-up call to what is happening to disabled people and the sick.

VIEW can be found on www.viewdigital.org

CUTS HARM CHILDREN

Welfare reform from a child poverty perspective

Anne Moore, policy and Assembly coordinator at *Save the Children*, suggests measures Stormont could take to alleviate the impact of welfare reform.



Notwithstanding the Executive's commitments to meet its targets to end child poverty by 2020, the budget and welfare

cuts are predicted to result in child poverty figures surging to 34 per cent by 2020 unless something is done.

The Executive can grasp this opportunity to prevent regression by mitigating the worst effects of welfare reform on children and their families. But it must also challenge the mantra that work is always the best route out of poverty.

Approximately half of all low income children live in families where one parent is working. This means that jobs must pay better and the welfare proposals must reduce barriers to making work pay.

Therefore *Save the Children* calls on the Executive to commit to:

- providing adequate, affordable and quality childcare;
- taking the best interests of the child into account and retaining exemptions for lone parents;
- designating the person with main caring responsibilities as the main applicant for Universal Credit;
- providing a choice of payment method rather than enforced monthly payment;
- retaining the facility of direct payments of the Housing Benefit element of Universal Credit to landlords;
- pressing the UK government for a reduced taper rate and sufficient earnings disregards for second earners so that more working mothers and lone parents keep more of their earnings.

BENEFIT CUTS HURT REAL PEOPLE

The impact of ongoing welfare reform

*Advisers' concerns about the Welfare Reform Bill are compounded by witnessing the adverse impact of benefit changes on users of their services. Housing Rights Service legal information officer **Sharon Geary** and NIAMH's head of public affairs and policy **Iris Elliott** share case studies that tell a story of devastating consequences.*



Changes to mortgage support put home at risk

*Case studies from Housing Rights Service legal information officer **Sharon Geary***

Mr and Mrs R have two young children. They were able to maintain the mortgage on their home until Mr R suffered an injury at work, leaving him unable to work for an indefinite period. The couple claimed Income Support and received £113 per week help with housing costs through Support for Mortgage Interest (SMI).

They got into difficulties with the mortgage in 2009. They attended court in October 2009 but had no representation and a Suspended Possession Order (SPO) was granted.

They received a notice to attend court again in June 2011 on the ground that they had broken the agreement. They could not understand why and assumed that there had been a mistake.

On the day of the hearing, a Housing Rights Service adviser met with them and offered advice and assistance.

Further enquiries by the adviser revealed that there was a breach of the SPO because their entitlement to SMI was affected by changes intro-

'He can only pay a very small amount of his mortgage interest and the lender has indicated that it is likely to apply for a new eviction date.'

duced on 1 October 2010 as part of welfare reform. The rate of interest at which SMI is paid was reduced from 6.08 per cent to 3.63 per cent. Their SMI fell from £113 to just £69 per week and they were not keeping up with their agreed monthly instalments.

The Department for Social Development had not informed them of the change in their payment. If they had known, they could have rearranged their finances to make sure the SPO was adhered to.

With the help of Housing Rights Service, the SPO was varied to a monthly amount which they could afford and they were able to keep their home.

104 week limit

Mr B is 59 and single. He lost his job in 2009 and began to experience mortgage difficulties. Enforcement proceedings for a possession order on his home had reached an advanced stage.

In 2010, on advice from Housing Rights Service, he applied for Support for Mortgage Interest (SMI) and was successfully assessed as eligible as he was on Jobseeker's Allowance. The mortgage lender agreed to stop eviction proceedings on the basis that SMI

would be paid and Mr B would make up the shortfall on the contractual monthly instalment.

Mr B sought advice again in early 2012 as his contractual monthly instalment had increased and he could no longer meet the shortfall. Housing Rights Service successfully negotiated with the lender to convert the mortgage to 'interest only'. This ensured that while SMI payments were maintained Mr B could adequately meet his mortgage payments.

Later, in July 2012, Mr B's SMI payments came to an end due to the 104 week limitation period for recipients on JSA. He can only pay a very small amount of his mortgage interest and the lender has indicated that it is likely to apply for a new eviction date.

As a result of the 104 week rule, he is in danger of losing his home very soon.



Photo: Catherine Couvert

Separated parents

Mr V is 33 and has two dependent children for which he shares equal custody with his ex-partner. To facilitate overnight access to his children, he lives in a two-bedroom private rented property with a £127 weekly rent.

He lost his job six months ago and now receives Jobseeker's Allowance (JSA). He is only entitled to the shared accommodation rate of Local Housing Allowance (LHA). This amounts to £43 per week, leaving him with a shortfall of £84 per week.

Under the Housing Benefit (Amendment No. 2) Regulations (NI) 2011, the definition of a 'young individual' - only entitled to the shared accommodation rate of LHA - has changed to include single people under the age of 35 (instead of under 25).

Although Mr V has shared responsibilities for his children, he is treated as single because the children are not under his care all of the time and because he is not in receipt of Child Benefit (the Child Benefit is paid to his ex-partner). This means that technically, as a young man under 35, his accommodation is deemed too big for his needs.

Housing Rights Service was able to secure a Discretionary Housing Payment (DHP) of £40 per week to help safeguard the tenancy but he still

has to make up £44 per week out of his weekly £67.50 JSA. This is 65 per cent of his weekly income. He is now in substantial arrears and at risk of losing his tenancy. He is looking for alternative accommodation and may have to present as homeless to NIHE.

Prior to the changes brought about

by the welfare reform agenda, he would have been entitled to the one bedroom rate of LHA, approximately £84 per week. This, together with a possible award of a DHP, would have enabled him to afford his home. Instead he is now facing homelessness.



Work Capability Assessment heightens anxieties

Case study from NIAMH's head of public affairs and policy **Iris Elliott**

This Beacon resident, a 58 year old woman diagnosed as having bipolar disorder, had been sent an appointment for a Work-Focused-Interview. Her fear was compounded by the letter stressing that she will have 'to attend a series of interviews with a personal adviser'.

In addition to having an enduring mental health issue, she has complex physical difficulties including a double mastectomy, chronic obstructive pulmonary disease and a propensity

to self harm by scratching at various locations on her body.

This latter condition is usually of a low level but the receipt of this letter has greatly increased the frequency and intensity of this issue to the point where the wounds are open and suppurating.

She has spoken to her GP about this and he is writing to the relevant government department but this has done little to reduce the impact of receiving the letter.

DISABILITY LAW REFORM

*The need for reform of the disability equality laws in Northern Ireland was the focus of a recent seminar organised by the Equality Commission for Northern Ireland. **Roisin Mallon**, senior policy officer in the Commission's Legal, Policy and Research Division explains the need for change and sets out the Commission's proposals.*



The Equality Commission has made a number of recommendations for changes to disability law in a paper - Strengthening Protection for

significant inconsistencies within the disability legislation itself.

In addition, the situation is now compounded by significant differences between disability equality law in Great Britain and Northern Ireland, following the implementation of the Equality Act 2010 in Great Britain. This causes difficulties for disabled people and others who are faced with the challenge of understanding the complexities of the disability equality law in Northern Ireland and may no longer be able to rely on case law in Great Britain to help them interpret Northern Ireland disability equality law provisions.

It also presents difficulties for UK-wide employers who operate in both Northern Ireland and Great Britain and have to keep pace with different equality legislative frameworks between the two jurisdictions.

Strengthen equality

In the Equality Commission's recent Equality Awareness Survey 2011, more than three quarters of respondents (77 per cent) agreed that Northern Ireland equality law should be strengthened to match those in Great Britain.

The Commission considers that disabled people in Northern Ireland should not have less protection against disability discrimination either in employment or when accessing goods and services, compared

to disabled individuals in other parts of the UK.

Malcom v London Borough of Lewisham

Rights which disabled people once had under the disability legislation had already been weakened due to the House of Lords decision in 2008 in the Malcolm v London Borough of Lewisham case. Catherine Casserley BL, a former senior legal adviser to the Disability Rights Commission and an expert legal adviser on disability law, considered the impact of this case in a legal briefing paper commissioned by the Equality Commission. She concluded that it has had a significant effect upon disabled people and disability law. She presented her findings at a recent Commission seminar on the issue.

High level of complaints

This strengthens the Commission's view that reform of the legislation is needed. The need for robust protection against disability discrimination is reinforced by the high level of complaints that the Equality Commission receives on this issue. For example, we received 1,112 enquiries from individuals alleging disability discrimination in the last reporting year (April 2011 - March 2012). We receive more complaints on disability than on any other equality ground.

Recruitment

One of the changes we propose is aimed at helping disabled people to gain employment by limiting pre-employment health enquiries. In particular, the Commission is recommending that employers are prohibited from asking questions about a job applicant's health or disability prior to making a job offer, except in certain specified circumstances.

Employers could still ask health-related questions in certain circumstances, for example, in order to enquire about reasonable adjustments, or whether the applicant is able to undertake a function that is intrinsic to the job, or to monitor diversity in the workplace.

Disabled People, Proposals for Reform.

This sets out the need to address inconsistencies within the disability equality legislation and to strengthen the rights of disabled employees, customers, pupils in school and tenants, against unlawful discrimination and a failure to make reasonable adjustments.

The proposed changes would also give additional protection against discrimination for those who care for disabled people.

Harmonise and simplify

One key reason for the changes is to help harmonise and simplify the legislation; making it easier for disabled people to understand it and for employers and others to comply with their responsibilities under the legislation. There are, at present, not only inconsistencies between disability law and anti-discrimination law on other equality grounds, but also

Schools

Another proposed change aims to support disabled children through the introduction of an additional duty on schools to provide auxiliary aids and services, where reasonable.

Disabled children without an identified special educational need currently have no right to auxiliary aids and services under the disability equality legislation, even if they experience substantial disadvantage at school for a reason related to their disability. Auxiliary aids and services could include, for example, extra equipment or support, such as an adapted computer keyboard.

Since 1 September 2012, when a measure in the Equality Act 2010 came into effect in Great Britain, disabled schoolchildren in England, Scotland and Wales have more rights to auxiliary aids and services in schools than disabled children in Northern Ireland.

The Equality Commission has raised the issue with the Department of Education and will continue to press for this particular shortfall in our law to be dealt with.

Harassment

The Equality Commission also wishes to strengthen protection against harassment so that disabled people could effectively challenge degrad-

ing or offensive treatment when they are accessing day-to-day goods and services.

Unlike in Great Britain, there is no free-standing protection for people against harassment related to their disability when accessing goods and services by private clubs or in schools.

Landlords

The Commission also proposes that landlords be required to follow a specific process if a disabled tenant requests an adjustment to a common part of residential premises, such as stairs and hallways, in circumstances where it is putting the disabled tenant at a substantial disadvantage. Currently, landlords are not required to make such adjustments and our proposals could enable disabled people to live more independently in rented accommodation.

Carers, families, people perceived as disabled

The Commission also proposes strengthening protection for carers of disabled people or others who are discriminated against due to their association with a disabled person, as well as individuals who are wrongly perceived to be disabled. This would ensure that Northern Ireland law complies with case law

from the European Court of Justice).

Definition of disability

Finally, the Commission is seeking changes to the definition of disability so as to make it easier for disabled people to fall within the definition.

In particular, it is recommending that the list of capacities (mobility, manual dexterity, etc) is removed in total from the definition of disability within the disability legislation.

The Commission is also seeking a fundamental review of the definition of disability in order to reflect the social model of disability.

Disability law reform must be prioritised

The Equality Commission considers that the proposed changes are in keeping with the UK government's international obligations under the UN Convention on Rights for Persons with Disabilities as well as the anticipated requirements of the draft European Commission Directive on the provision of goods and services.

We have raised disability law reform as a key action for the Northern Ireland Executive as part of its Disability Strategy and we will continue to proactively engage with all key stakeholders to raise awareness and secure support for our proposals.



Roisin Mallon (right) and Catherine Casserly BL at Equality Commission seminar on Strengthening Protection for Disabled People.

Photo: Equality Commission

IMMIGRATION UPDATE

Major changes to immigration and family relationships



Part 1 UK rules

The Immigration (European Economic Area) (Amendment) Regulations 2012 SI 2012/1547

Karen Mercer, immigration legal adviser at Law Centre (NI), explains the most important changes contained in the recent Statement of Changes in Immigration Rules.

On 9 July 2012, significant changes to the UK Immigration Rules affecting family migration were laid before parliament. The changes are set out in the Statement of Changes in Immigration Rules (HC 194) which introduces a new 'Appendix FM' to Part 8 of the Immigration Rules. The unique structure of Appendix FM does not lend itself to easy reading therefore anyone attempting to navigate the changes would be advised to refer also to official Home Office documents¹. The key changes are as follows.

Article 8 of the European Convention on Human Rights (ECHR)

Significantly and ambitiously, the Home Office Statement of Intent notes that 'The new Immigration Rules will unify consideration under the rules and Article 8 of the ECHR, by defining the basis on which a person can enter or remain in the UK on the basis of his or her family or private life'².

The Home Office has attempted to set out specific requirements relating to Article 8 which also reflect the government's position on proportionality. The statement of intent notes that 'the rules will state how the balance should be struck between the public interest and individual rights ... and thereby provide for a consistent and fair decision-making process. Therefore if the rules are proportionate, a decision taken in

accordance with the Rules will, other than in exceptional circumstances, be compatible with Article 8.'³

Practitioners should note that discretionary leave will no longer be granted under Article 8 if a person does not meet the requirements of the rules and according to the Statement of Changes, 'only in exceptional circumstances' will a refusal of leave breach Article 8. Where leave is granted on Article 8 grounds alone, applicants will enter a ten year route to settlement, with an initial grant of leave of 30 months and consisting in total of four periods of 30 months' leave, plus a fifth application for indefinite leave to remain.

Anyone potentially affected by the recent changes to the Immigration Rules will undoubtedly be concerned about the impact on family life.

It remains to be seen how the 'codification' of Article 8 into the rules will impact on applicants in practice and indeed how the courts will deal with the challenges that will inevitably come before them.

Financial requirement

A new minimum income threshold of £18,600 has been introduced for

those wishing to sponsor a non EU spouse/partner to enter and settle in the UK. Additional amounts are required for any children seeking leave to enter with the non EU spouse/partner⁴. At the entry clearance stage, only the income of the partner settled in the UK will be taken into account. Therefore the previous, current or prospective employment and earnings of the non EU applicant are irrelevant.

Where there is a shortfall in meeting the income threshold, cash savings above £16,000 can be taken into account.

The amount required is calculated as follows; any shortfall in meeting the income threshold of £18,600 is multiplied by 2.5. This amount is then added to the minimum amount of cash savings of £16,000. Cash savings must have been held for at least six months at the time of applying and can belong to the sponsor, the non EU spouse/partner or jointly as a couple. The savings can originate from a third party, such as a parental gift. However, promises of support from a third party will not be acceptable as the resources must be under the control of the sponsor or couple.

Clearly, the new financial requirement will pose great difficulty for sponsors in low paid employment and for couples with limited savings.

Fortunately, there are some exceptions namely; where a sponsor is in receipt of disability related benefits such as Disability Living Allowance, the applicant will only have to show that s/he will be adequately maintained and accommodated by the sponsor without recourse to public funds.

Settlement

A further significant change is the extension to the period of time before a non-EU spouse/partner can apply for settlement from two to five years. The rationale given for this change is an attempt to test the genuineness of relationships. UKBA has produced



Photo: Catherine Couvert

its own guidance to help caseworkers assess whether a relationship is 'genuine and subsisting', including whether the couple can provide evidence of a current, long-term relationship.

Any new applications made after 9 July 2012 for leave to enter as the non-EU spouse/partner, if successful, will be granted leave initially for two and a half years and a non-EU spouse/partner will therefore be required to make a further application for leave to remain before becoming eligible to apply for settlement at the five year point. This will result in a degree of uncertainty for couples as they will need to satisfy the same rigorous conditions with each application.

Other important changes

- Adult dependent relatives (which no longer includes aunts and

uncles) wishing to settle in the UK will have to demonstrate that as a result of age, illness or disability, they require a level of long term personal care to perform everyday tasks that can only be provided by their relative in the UK.

- Long residence - the fourteen year rule has been abolished and replaced by a requirement of 20 years residence for leave to remain on the basis of private life.

Conclusion

Anyone potentially affected by the recent changes to the Immigration Rules will undoubtedly be concerned about the impact on family life. Law Centre (NI) would encourage individuals to seek specialist immigration advice in relation to their specific circumstances. The immigration advice line is open Monday to Friday, 9.30am to 1pm.

Notes

- 1 Home Office Statement of Intent: Family Private and Family Life
- 2 Para 31, Statement of Intent: Family Migration
- 3 Para 38, Statement of Intent: Family Migration
- 4 £3,800 will be required for the first child sponsored and an additional £2,400 for each further child.

IMMIGRATION UPDATE



Part 2 EEA regulations

The Immigration (European Economic Area) (Amendment) Regulations 2012 SI 2012/1547

Zoe Antoniou, immigration legal adviser at Law Centre (NI), examines changes to the regulations and, in particular, how they will affect people with dual British/Irish nationality.

The Amendment Regulations came into force on 16 July 2012 and make considerable changes to the Immigration (European Economic Area) Regulations 2006 (the Regulations). Transitional provisions have been introduced that further explain how these amendments shall be implemented.

The Regulations have been amended to give effect to a number of different judgments. Notably of greatest significance to the rights of people born in Northern Ireland and their family members, is the amendment that seeks to implement the decision of *C-434/09 Shirley McCarthy v Secretary of State for the Home Department*.

EEA nationals and dual nationality

The definition of an EEA national has been amended in the Regulations to provide that any person with dual na-

tionality, ie nationality of another EU member state and British citizenship, can no longer be an 'EEA national' for the purposes of the Regulations. This amendment will come into force on 16 October 2012.

This means that people born in Northern Ireland with dual British/Irish nationality will no longer be able to rely upon their Irish nationality to support applications for non-EEA family members to reside with them in the UK after this date, if they have never lived and exercised 'Treaty rights' as a worker, self-employed person, student or self-sufficient person elsewhere in the European Union.

It should be noted that the deadline for applying for EEA family permits from abroad, by non-EEA family members in reliance on the original definition of an EEA national to enter the UK, was 16 July 2012. A non-EEA family member of a person born in Northern Ireland with

dual British/Irish nationality can no longer apply for an EEA family permit to enter the UK, under the Regulations based upon that person's Irish nationality, unless the EEA national has lived and exercised Treaty rights such as a worker, self-employed person, student or self-sufficient person in another European Union member state.

However, the deadline for applying for a residence card or a registration certificate within Northern Ireland, as the family member of an 'EEA national' who is an Irish/British national is 16 October 2012.

Derivative residence

The Amendment Regulations also implement other judgments. The cases of *Chen* [2004] ECJ C-200/02, *Ibrahim* [2010] ECJ C-310/08 and *Teixeira* [2010] ECJ C-480/08 have all been incorporated within the Regulations and allow for a new category of residence called 'derivative residence' which results in the issue of a new type of 'derivative residence card'. However, it is important to note that this new type of derivative residence will never qualify the family member for permanent residence in the UK.

Permanent residence

Furthermore, the judgments in *Lassal* [2010] ECJ C-162/09 and *Dias* [2011] ECJ C-325/09 have been incorporated into the Regulations to make provision for people who have spent peri-

Free ILPA courses for refugee courses

at Law Centre (NI) Belfast

Guidance for Non-Practitioners: 22 October 2012, 2-5.15pm

Legal Developments in Refugee Children's Cases: 23 October 2012, 2-5.15pm

Working with Refugee Children - the Asylum Process and Age Assessments for Social Workers: 24 October 2012, 10am-5pm

- The ILPA Refugee Children's Project is offering free training at the Law Centre's Belfast Office. The first two courses, for immigration advisers, carry three CPD hours. The third is aimed at social workers who deal with refugee children.
- To book please contact noreen.hyndman@lawcentreniwest.org.
- For more information visit: www.lawcentreni.org/news/recent-news.html

'People born in Northern Ireland with dual British/Irish nationality will no longer be able to rely upon their Irish nationality to support applications for non-EEA family members to reside with them.'

ods of residence in the UK in accordance with other regulations, prior to the 2006 Regulations, and allow these periods of residence to count towards the five year period required for permanent residence.

Many other changes

There are many other amendments to the Regulations which affect matters such as when a person can bring an appeal against a decision, the circumstances in which a person's right to reside can be cancelled, a change to the definition of a student and new provisions relating to retained rights of residence, amongst many others.

The Amendment Regulations are very detailed and complex. They must be cross referenced and read with the Regulations. It remains to be seen how these amendments will be implemented by the UK Border Agency both in the UK and abroad and, furthermore, how they will be interpreted by the courts.

Multilingual leaflet on equality

The Equality Commission has produced a multilingual poster which briefly explains areas where people are protected under equality laws in Northern Ireland and signposting them to the Commission's website.

The leaflet is translated in Polish, Lithuanian, Russian, Portuguese, Romanian, Mandarin Chinese, Latvian, Slovakian, Hungarian, Czech, Cantonese Chinese and Tetum.

To get free copies for your users, contact Teresa Moley: tmoley@equalityni.org.

Migrant domestic workers, gender equality and human rights

On 19 October, the Centre for Criminal Justice and Human Rights (UCC) and the Irish Human Rights Commission will be hosting an international conference on migrant domestic workers, in University College, Cork.

The conference will mark European Anti-Trafficking day.

Conference Fee: €40 /Students €15. 4 CPD points are available for this event.

For bookings or further information email: ccjhr@ucc.ie, or contact Noreen Delea at 00 353 21 490 2728.

Northern Ireland Ombudsman

Northern Ireland Environment Agency

Complaint about illegal dumping

The complainant in this case was aggrieved about the actions of the Northern Ireland Environment Agency (NIEA) in response to his concerns regarding the alleged illegal dumping of waste at the property next door to his home. He informed the Ombudsman that he first brought the matter to the attention of Belfast City Council. The Council reported the alleged illegal dumping to the NIEA in February 2009.

Over the following months, the complainant made numerous written enquiries to the NIEA regarding the action it was taking to address the problem. Not all his correspondence was answered. In August 2009, he was advised that the NIEA had commenced 'corrective action' but was given no further information about what that involved. In October 2009,

he was informed that the NIEA's actions were constrained by 'a lack of staff' and 'the legal process'. At the same time, the NIEA declined an offer he had made to provide details of those he believed to be responsible for the illegal dumping. In February 2010, the NIEA advised the complainant that having 'exhausted all powers available to it', no further action could be taken on the matter. Subsequently, in October 2010, he was advised that the NIEA had decided that pursuing legal proceedings in relation to the dumping problem would not have been 'proportionate'.

The Ombudsman upheld this complaint in part. He found no evidence of maladministration in the NIEA's discretionary decision not to pursue legal action against the owner of the site where the dumping has occurred, and he was satisfied that the action the NIEA took

to address the complainant's concerns was proportionate in the circumstances. However, he concluded that there were some instances of maladministration by the NIEA in the manner in which it responded to the complainant's concerns about the dumping. These included the NIEA's failure to provide complete and accurate responses to some of his enquiries, and to deal appropriately with some of his correspondence.

By way of redress for the frustration and distress experienced by the complainant as a result of the NIEA's failings, the Ombudsman recommended that the Chief Executive should write a letter of apology to the complainant, and that the NIEA make a payment to him of £500. The Chief Executive accepted the findings of the investigation and the recommended remedy.

SOCIAL SECURITY UPDATE



New fast track procedure for tax credit claims

*Law Centre (NI) social security legal adviser **Lee Hatton** explains the genesis and operation of this new procedure which will address long delays for refugees and others claiming tax credits.*

Delays in getting a decision on claims for tax credits are not uncommon, especially for certain groups of persons claiming. However, a new fast track procedure has recently been introduced into Northern Ireland which should address this issue for some people.

Substantial impact of delays

Tax credits are administered by Her Majesty's Revenue and Customs (HMRC). They consist of two elements; the Working Tax Credit for those in employment and Child Tax Credit, for families with responsibility for a child or children. Both parts of the benefit are means-tested so delay in having a decision made on a claim or in getting payments made can have a substantial impact on the person or the family's ability to provide for their children as other sources of income may not be available.

Working group brings about change

Reports from clients and advisers highlighted that refugees were one of the groups facing substantial delays in having claims to tax credits processed, with some experiencing waiting periods of six months or more to get a decision made and payments issued on Child Tax Credit claims.

Factors contributing to this were the difficulties in moving from

payments and housing provided by National Asylum Support Service (NASS) into mainstream support provided by the Social Security Agency (SSA) and HMRC once refugee status was granted. Changes in address, the need to produce original or certified copies of Home Office documentation, language difficulties and the general problem of dealing with a labyrinthine system of benefit support combined with how a claim from a refugee was processed internally by HMRC all contributed to the possibility of delay occurring in having these vital payments made.

A person who meets one of the criteria would still have to specifically request that the claim be treated under the fast track procedure, which is why it is so important to ensure that as many people and advisers as possible are aware of the scheme.

The Northern Ireland Community of Refugees & Asylum Seekers (NICRAS) had been working hard to raise these issues with the SSA and HMRC. As a result of their effort, a working group was created consisting of NICRAS and staff from the SSA and OFMDFM, the Law Centre and other representatives of the voluntary sector.

One of the products of this group has been the implementation of the new fast track procedure in Northern Ireland.

The fast track procedure had been available in England for some time now but it was not being operated in Northern Ireland.

Fast-track extends beyond refugees

While the main beneficiaries of the new fast track procedure are likely to be those people who have recently been granted refugee status, it may also be of benefit to other persons who meet the criteria.

In essence, the new procedure allows a person to make a claim to tax credits through the SSA when making claims for other benefits. The service will not be available to all claimants but those who meet one of the following criteria are eligible to use it:

- a person or partner starting paid work and losing entitlement to Income Support, Income-based Jobseeker's Allowance (JSA(IB)) or Income-related Employment and Support Allowance (ESA(IR));
- a person making a new claim for JSA(IB), Income Support or ESA(IR) AND a new claim for tax credits;
- a person already receiving Income Support/JSA(IB)/ESA(IR) who has a first child joining the household;
- a person who has been granted leave to remain in the UK by UKBA and has gone straight from NASS support into work.

Not an automatic procedure

At the moment, a person who meets one of the criteria would still have to specifically request that the claim be treated under the fast track procedure, which is why it is so important

to ensure that as many people and advisers as possible are aware of the scheme.

If the person meets the criterion and requests that the claim is processed under the fast track procedure, SSA staff in the Jobs and Benefits Office will submit a Fast Track claim on behalf of the person.

If the person claiming is a refugee, then SSA staff should be aware of the Home Office documentation that must be provided and can advise the person of what is needed. Our advice would be to try and ensure people keep their original documentation where that is possible and have the SSA staff take certified copies.

The SSA will then send the fully completed claim and accompanying documents to HMRC by courier to prevent any delays to the claim.

In order to further combat potential delay, when notifying the person that the claim for asylum had been granted, the Home Office follows a fast track National Insurance number (NINO) allocation process arranged with the SSA, who will then allocate a NINO to the person claiming.

Help for advisers

The scheme is relatively new in Northern Ireland and people may face initial difficulties as advisers and SSA staff become familiar with its operation.

If an adviser or a person attempting to claim benefits does experience problems having claims to tax credits processed under the fast track scheme, then please either contact Law Centre (NI) or NICRAS for further advice.

Contribution-based ESA

Extra statutory scheme covers people moving between GB and NI



The Law Centre has been working for a number of people who lost their Employment and Support Allowance when moving from England to Northern Ireland. On moving, they were required to make fresh claims for ESA and were refused because they had not had recent national insurance contributions for Contribution-based ESA and were not entitled to Income-related ESA; for example because a partner is working. This is because the reciprocal agreement between GB and Northern Ireland on Incapacity Benefit was not updated to include Contribution-based ESA.

We asked the Department to amend the law and to introduce an extra statutory scheme to pay those affected by the failure to update the reciprocal agreement.

The Department has started the process to amend the legislation and set up an extra statutory scheme open to all those affected by this rule.

Anyone who has been affected by this should contact the Law Centre's advice line for further information.

Patricia Carty, Law Centre (NI) social security legal adviser

Getting involved in Pro Bono litigation: Opportunities in Northern Ireland

a joint seminar by Legal Support Project and the PILS Project

Wednesday, 17 October 2012
at the Inn of Court, Royal Courts of Justice, Belfast

The seminar is aimed at solicitors and barristers interested in pro bono work. It will cover a number of issues, including:

- the importance of pro bono work in promoting access to justice and the potential benefits to the legal profession
- the experience of pro bono work in England and Wales, and the Republic of Ireland
- opportunities for practitioners to do pro bono work in Northern Ireland

Chair: The Honourable Mr Justice Stephens

Keynote speakers: Rebecca Hilsenrath, Chief Executive of LawWorks and Elizabeth Mitrow, Solicitor at Terence Lyons & Co. Dublin

Panel: Representatives of LSP, PILS Project and NI Lawyers Pro Bono Group

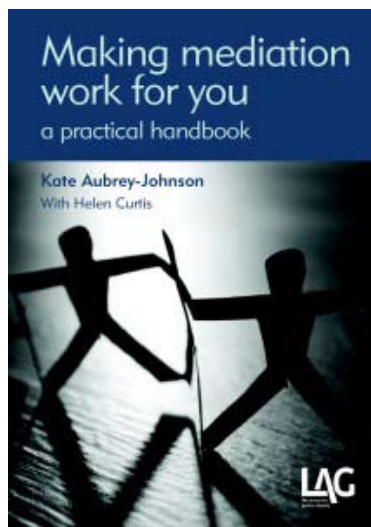
This seminar is free, but places are limited. To book, please contact:

- Mickey Ghanni, PILS Project via email mickey@pilsni.org or by phoning 028 9044 6201 or:
- Deborah Hill, Legal Support Project, Law Centre (NI) via email deborah.hill@legalsupportproject.com or by phone on 028 9043 5050.

REVIEWS

Making mediation work for you: A practical handbook

By Kate Aubrey-Johnson with Helen Curtis. Published by Legal Action Group 2012. Price £40.



‘Making mediation work for you’ is breaking new ground. It provides a way in which the citizen can, even without legal aid, find a way of resolving his or her problem.’ –Lord Woolf

The enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in England and Wales and subsequent proposals for legal aid reform in Northern Ireland herald a new era of curtailment of legal aid provision. Mediation can provide a successful alternative to litigation, eliminating much of the cost and resulting in an increased understanding of the legal issues at hand and a satisfactory outcome for both sides.

The authors, both accredited mediators and barristers, provide a concise yet comprehensive overview of mediation. Various areas, including workplace, civil, family and community mediation, are explored and a guide to the essential strategies, techniques and skills is provided.

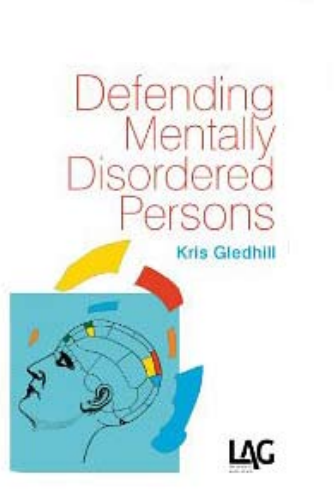
Dispensing with complicated jargon, this book is clearly written and includes input from some of the leading names in the mediation field.

Chapter summaries, case studies, draft agreements and a consideration of ethical issues and codes of practice greatly assist the reader’s understanding. I would have no hesitation in recommending this book as a practical and accessible guide to the concept and process of mediation.

Catherine McReynolds
intern, Law Centre (NI)

Defending mentally disordered persons

By Kris Gledhill. Published by Legal Action Group 2012. Price £48.



Kris Gledhill is a barrister and senior university law lecturer who specialises in mental health law and prison law. He has published extensively on these topics and thus, in my view, the reader who is unfamiliar with his work can approach this book safe in the knowledge that it has authority behind it.

And this is important because it is very much focused on the legal practitioner’s needs. It is a comprehensive textbook (725 pages) on the relationship between criminal law and mental health law. Laid out in a sequential fashion, it describes what happens when an alleged offender’s mental disorder is taken into account at the various steps in the proc-

ess. Ranging from at the time of the offence (eg defence of not guilty by reason of insanity); to the trial process (eg is accused unfit to plead?); through to what options the courts have for disposal (eg a hospital order). Legislation and caselaw are up to date as of 1 March 2012. At many junctures the author comments on how the law could be developed further. Or put another way, he suggests reasons for the practitioner to argue that the established cases could be distinguished from one’s own.

As the book was published in Britain, there is the usual health warning that the legislation quoted throughout is English centric. But there is considerable similarity with the principles and content of Northern Ireland legislation and jurisprudence, such that practitioners locally will still find it very useful.

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

Community care and the law

5th Edition, by Luke Clements and Pauline Thompson. Published by Legal Action Group 2012. Price £40.



‘As this edition goes to print community care law remains a hotch-potch of conflicting statutes, enacted over a period of 60 years, with each

REVIEWS

statute embodying a slightly different philosophical attitude...The law reform, that this book has been calling for since its first publication 15 years ago, now looks likely to take place.'

This clear and comprehensive book helps the reader navigate this complex area, providing an invaluable tool for the community care practitioner or adviser. The explanation of key principles and caselaw is excellent.

The new edition includes contributions from Carolyn Goodall, Jean Gould, Edward Mitchell, Camilla Parker and Alison Pickup; all leading practitioners in the field.

Community Care and the Law covers local authority duties and powers, assessments, care planning, ordinary residence, care home accommodation, community-based services, direct payments, NHS responsibilities, housing, carers, mental capacity, learning disability, duties to children and asylum seekers and vulnerable adults. It details the historical background and discusses current legislation, caselaw and guidance, proposals for reform and areas likely to be subject to change in the coming years.

It does not cover welfare benefits but the breadth of topics that are covered more than compensates for this omission.

The text refers to English and Welsh legislation and guidance throughout and there are instances when distinctly different legal or financial positions apply, such as the separation of social services, primary care trusts and local health boards in England and Wales and financial arrangements for residential care. Most importantly, recent developments that do not apply here include the Equality Act 2010 and the Mental Capacity Act 2005.

As a starting place for general guidance, the book is invaluable but care should be taken to cross reference the information with Northern Irish law.

Kirsty Linkin, apprentice solicitor,
Law Centre (NI)

LIBRARY NEWS

A selection of new publications on the shelves of the Law Centre's library

Books/reports

Dangerous people: policy, prediction and practice, edited by Bernadette McSherry and Patrick Keyser. Routledge, 2012

The growth of in-work housing benefit claimants: evidence and policy implications. Building and Social Housing Foundation, 2012

A guide to legal aid. Northern Ireland Legal Services Commission, September 2012

In the eye of the storm: Britain's forgotten children and families: a research report for Action for Children, The Children's Society and NSPCC, June 2012

Making children visible: assessing the impact on children (of welfare reform). NICCY (Northern Ireland Commissioner for Children and Young People), April 2012

Making mediation work for you: a practical handbook. LAG(Legal Action Group), 2012

Positive duty of care? The mental health crisis in immigration detention. AVID (Association of Visitors to Immigration Detainees), 2012

Journal articles

Low pay, no pay churning: the hidden story of work and worklessness (Joseph Rowntree Foundation) Poverty (142), Summer 2012

Think of the children: right to reside through a child. Welfare Rights Bulletin (228), June 2012

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TRAINING AT LAW CENTRE (NI)

Belfast

Representing Clients at Mental Health Review Tribunals	2 October
Redundancy, Lay Off and Employer Insolvency	8 October
Introduction to Immigration Law and Practice – two days	12 November
Challenging Tax Credit Decisions: Overpayments	28 November
Advocacy Skills – two days	5 December
WRAP Refresher – Means Tested Benefits – half day	7 December
The Rights of Agency Workers	13 December
Welfare Rights Adviser Programme (WRAP) – eight days	15 Jan 2013
Mental Capacity and Community Care	24 Jan 2013
Introduction to Employment Law – two days	30 Jan 2013

Derry

Welfare Rights Adviser Programme (WRAP) – eight days	9 October
Tribunal Representation – six days	25 October
WRAP Refresher – Means Tested Benefits – half day	11 December
Mental Capacity and Community Care	17 Jan 2013

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

Contact Noreen Hyndman for details: noreen.hyndman@lawcentreniwest.org or visit www.lawcentreni.org.

Full Training Programme online: www.lawcentreni.org

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For more information contact Catherine Couvert, Publications Officer

Telephone: 028 9024 4401

Email: catherine.couvert@lawcentreni.org

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

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

Members

£60 (half day)
£120 (full day)

Non-members

£70 (half day)
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These rates include the hire of the room and use of equipment, which must be pre-booked and is subject to availability.

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- DVD player

Catering

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- 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