

Law Centre (NI) response to UN Special Rapporteur on Extreme Poverty & Human Rights – in advance of UK visit November 2018

Introduction

1. Law Centre (NI) promotes social justice and provides specialist legal services to advice organisations and disadvantaged individuals in social security, community care and mental health and employment law. Law Centre (NI) provides legal advice, representation, training, information and policy services. We work in partnership with Advice NI and Citizens Advice to deliver the Welfare Reform Support Project. We convene an Advisers Network for welfare rights advisers, and the Welfare Reform Group, which is an umbrella grouping of organisations that campaign for positive changes to policy, service provision and legislation for persons in receipt of social security.

Special Rapporteur's UK visit

2. We welcome the Special Rapporteur's visit to the UK. We would urge Prof. Alston to include Northern Ireland in his visit. Unfortunately, Northern Ireland is home to deep-seated poverty related to years of conflict. Economic recovery has been made more difficult by long-term economic deprivation and a relative lack of investment, low pay levels, high levels of economic inactivity, and high levels of poor mental health. Northern Ireland's distinct set of circumstances include:
 - a) Higher rates of disabilities as a legacy of the conflict, which results in increased dependency on social security benefits. Continued ethno-religious segregation feeds the continuing political division and contributes to ongoing social, economic and political instability.
 - b) Northern Ireland being disproportionately affected by welfare reform. Evidence shows that the financial loss to Northern Ireland, per adult of working age, is substantially larger than in any other part of the UK and that Belfast is hit harder by the reforms than any major city in Britain'.¹
 - c) Social Security being devolved to Northern Ireland, which was able to negotiate a mitigation package to help mitigate the worst effects of welfare reform.²
 - d) That Northern Ireland has been without a government for 600 days. It is deeply concerning that major social security reform is being rolled out without the accountability of elected representatives.
 - e) That Brexit poses particular risks to Northern Ireland given its proximity to another EEA member state and implications for trade, employment, etc. Northern Ireland has been one of the main beneficiaries of EU structural funds among the UK regions, which has supported social and economic development: it is unclear how the government will mitigate the loss of such funds to the civic society.³

¹ Centre from Economic Empowerment at Sheffield Hallam University, 'The impact of Welfare Reform on Northern Ireland' (2013)

² Prof Evason, 'Welfare Reform Mitigations Working Group Report' (2016)

³ D Birrell and AM Gray, 'Devolution: the social, political and policy implications of Brexit for Scotland, Wales and Northern Ireland' (2017) 46(4) Journal of Social Policy 765

3. In the context of a NI visit, the Special Rapporteur may consider visiting North Belfast, which presents a sort of microcosm for the poverty-related difficulties that Northern Ireland face,⁴ and Derry-Londonderry, which risks bearing the brunt of a 'hard Brexit' and which has the highest male and female unemployment in NI - with barely half the total adult population in work.⁵

A. GENERAL

a) Definitions

4. Law Centre (NI) does not generally consider the various technical definitions of poverty in its day-to-day work. However, in line with our academic colleagues at Ulster University, our view of extreme poverty is informed by the definition of destitution in the UK Immigration and Asylum Act 1999 and the definition of hardship from the Universal Credit Regulations 2013⁶ and Jobseeker's Allowance Regulations.

b) Right to social security

5. Although not adequately recognised, poverty is associated with a number of human rights violations. The most serious is considered to be violation of the right to protection from inhuman and degrading treatment, which is only recognised in extreme cases and normally involves periods of street homelessness.⁷ Homelessness in Northern Ireland (NI) is on the rise. Since 2012 the number of homeless people has increased by 32 per cent.⁸
6. The UK has consistently been in breach of the right to social security, as protected by article 12 ESC, and of some aspects of the right to social assistance (article 13 ESC).⁹ The period since 2010 has seen a series of deliberately retrogressive measures in relation to the right to social security (article 9 ICESCR). This has put at risk the ability of social security claimants to enjoy an adequate standard of living (article 11 ICESCR), including the subsidiary rights to housing (as many households'

⁴ K Torney, 'Inquiry aims to improve poor outcomes in North Belfast' (Detail, Belfast) 7 September 2018 <https://www.thedetail.tv/articles/north-belfast>; NI Assembly, Constituency Profile (Belfast, North) June 2016 <<http://www.niassembly.gov.uk/globalassets/documents/raise/constituency-profiles/2016/Belfast-North-Profile-June-2016.pdf>>; M O'Hara, 'Poverty is the Backdrop to the Riots in Northern Ireland' (Guardian, London) 14 July 2010 <https://www.theguardian.com/commentisfree/2010/jul/14/belfast-riots-ardoyne-poverty-deprivation>.

⁵ Almost half of Derry's claimants (49%) are long-term unemployed (compared to the NI and UK averages of 33 per cent and 31 per cent. 'Ask yourself: why is Derry so poor and why is nothing being done about it?' (Derry Journal) 30 March 2018 <https://www.derryjournal.com/news/opinion/ask-yourself-why-is-derry-so-poor-and-why-is-nothing-being-done-about-it-1-8439286> See also NI Statistics and Research Agency focus on Multiple Deprivation Measures accessible here: <https://www.nisra.gov.uk/statistics/deprivation>

⁶ Universal Credit Regulations (NI) 2016

⁷ *R (on the application of Limbuela) v Secretary of State for the Home Department* [2005] UKHL 66

⁸ Northern Ireland Audit Office, Homelessness in Northern Ireland (November, 2017) accessible here: https://www.niauditoffice.gov.uk/sites/niao/files/media-files/Homelessness%20in%20Northern%20Ireland%20Full%20Report_0.pdf

⁹ M Simpson, 'Assessing the compliance of the UK social security system with the state's obligations under the European Social Charter' (2018) 18(4) Human Rights Law Review (forthcoming)

housing benefit payment no longer covers housing costs) and food (as evidenced by rising dependence on food aid).¹⁰ While constructive conditionality can be justified as supportive of the right to work (article 6 ICESCR), the poor quality of employment support for harder to help groups, the disproportionate severity of sanctions and the evidence that they can cause claimants to become more distant from the labour market mean it is difficult to defend the current UK approach on this basis.¹¹

c) Procedural and administrative fairness

7. In addition to other barriers to individuals receiving benefits,¹² Law Centre has concerns about procedural and administrative fairness within the social security system. We highlight two particular issues. First is the auditing process relating to Personal Independence Payment (PIP) reports by the assessment provider, Capita. While practice in Northern Ireland is better than in Great Britain, we are nevertheless concerned that relevant assessment information is not readily available to claimants, therefore potentially engaging their right to a fair hearing.¹³ The second issue is the process of Mandatory Reconsideration. While ostensibly, this affords an opportunity for decisions to be reviewed, Department for Communities statistics show that as of the end of May 2018, 79% of new PIP claims result in no change to the award following Mandatory Reconsideration.¹⁴ In contrast, Law Centre has achieved up to

¹⁰ M Simpson, G McKeever and AM Gray, *Social security systems based on dignity and respect* (Glasgow: Equality and Human Rights Commission, 2017); See also, Kayleigh Garthwaite, *Hunger Pains: Life inside Foodbank Britain* (Policy Press, 2017).

¹¹ A Rees, A Whitworth and E Carter, 'Support for all in the UK work programme? Differential payments, same old problem...' (Birmingham: Third Sector Research Centre, 2013); M Adler, 'A new leviathan: benefit sanctions in the 21st century' (2016) 43(2) *Journal of Law and Society* 195; G McKeever, M Simpson and C Fitzpatrick, *Destitution and paths to justice* (London: Legal Education Foundation/York: Joseph Rowntree Foundation, 2018)

¹² Lack of awareness of entitlement, difficulty navigating multiple application processes, poor quality of assessments for disability benefits, and stigma and fear in challenging decisions, can act as barriers to individuals receiving benefits to which they ought to have a right. See G McKeever, 'A ladder of legal participation for tribunal users' (Winter 2013) *Public Law* 575; G McKeever, 'Improving decision making in employment and support allowance' (2014) 21(1) *Journal of Social Security Law* 13; D Cowan, A Dymond, S Halliday and C Hunter 'Reconsidering mandatory reconsideration' (April 2017) *Public Law* 215; M Simpson, G McKeever and AM Gray, *Social security systems based on dignity and respect* (Glasgow: Equality and Human Rights Commission, 2017); G McKeever, M Simpson and C Fitzpatrick, *Destitution and paths to justice* (London: Legal Education Foundation/York: Joseph Rowntree Foundation, 2018)

¹³ Auditing can result in the amendment of reports, changing of scores and comments on the quality of the assessment that may be relevant to the weighting of evidence by decision makers and tribunals. Prior to November 2017, none of this PIP information was disclosed by Capita, with only the final version of the assessment included in the appeal papers. Since autumn 2017, the Department for Communities has agreed to include each iteration of the assessment, an explanation of the changes and crucially a copy of the Assessment Provider's actual peer review audit document. This is important for transparency. As far as Law Centre is aware, the tribunal in England and Wales has not adopted this good practice but continues to only receive the final, audited version of the report. This brings to question a PIP claimant's right to a fair hearing. See Law Centre (NI) response to Independent Review of PIP Assessment (NI) Process (March, 2018) accessible here: <https://www.lawcentreni.org/consultation-responses-by-category/social-security-responses.html>

¹⁴ Department for Communities, 'PIP Experimental Statistics' (May 2018) accessible here: <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/personal-independence-payment-statistical-bulletin-may-2018.pdf>



an 89% success rate at Tribunal.¹⁵ In short, our concern is that Mandatory Reconsideration thwarts access to the tribunal and to justice.

d) Migrants

8. Migrant destitution is increasing across the UK: an outcome of the 'hostile environment'.¹⁶ An increase in chronic homelessness and migrant destitution has attracted the concern of regional and international human rights monitoring bodies.¹⁷ The No Recourse to Public Fund restriction on many non European nationals has long caused hardship. In recent years, a number of benefit restrictions targeting European nationals have been introduced which have the effect of them from benefits or limiting their entitlement.¹⁸ For example, EEA migrants jobseekers may only receive Jobseekers Allowance for 91 days before being subject to the Genuine Prospect of Work test (92% of jobseekers fail this test).¹⁹ The problem is compounded with the introduction of Universal Credit given that EEA jobseekers are not eligible to submit a claim. The result of such restrictions is an increase in migrant destitution that places pressures on the voluntary and community sector, which is struggling to provide adequate support to migrants who present as homeless or rough sleepers.
9. The Northern Ireland Executive Office's Crisis Fund has proved to be a lifeline for destitute migrants and has demonstrated that small sums at key moments of transition (for example, after losing work, reduced working hours or family breakdown) can provide a significant bridge to allow people to get back on their feet while averting a potentially costly crisis situation.²⁰ While Northern Ireland's Crisis fund is an excellent initiative to be applauded, it does not address the underlying problem of restrictive legislation, which is a matter of UK policy.
10. In contrast to Northern Ireland's approach, the Home Office sought to respond to the rising levels of EEA rough sleepers, the Home Office started removing EEA rough sleepers back to their own country. An English High Court found this approach to be unlawful and rough sleepers are no longer removed.²¹

¹⁵ See, Personal Independent Statistics (May 2018) <<https://www.communities-ni.gov.uk/publications/personal-independence-payment-statistics-may-2018>>

¹⁶ See <https://www.homeless.org.uk/connect/blogs/2018/jan/10/migrant-homelessness-stark-reality-of-destitution-in-england>

¹⁷ European Committee on Social Rights UK 2016 report, ICESCR report accessible [here](#)

¹⁸ Law Centre NI, 'Information briefing: Habitual Residence and Right to reside requirements' (2015) accessible here: <http://www.lawcentreni.org/Publications/Law-Centre-Information-Briefings/Habitual-residence-and-right-to-reside-requirements-January-2015-update.pdf>

¹⁹ DWP, 'Analysis of EEA Migrants' Access to Income-Related Benefits Measure' (August 2016) accessible here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/548225/analysis-of-eea-migrants-access-to-income-related-benefits-measures.pdf

²⁰ Jude McCann & Neil McKittrick, 'OFMDFM Emergency Fund – Pilot: August 2011 – March 2012' (2012) accessible here: <http://www.communityfoundationni.org/News/Emergency-Fund-report-launched>

²¹ The Home Office launched Operations Adoze and Gopik in 2016 to remove rough sleepers from the jurisdiction, amending its administrative removal policy to designate rough sleeping as an abuse

e) Asylum seekers

11. Asylum seekers constitute a particularly disadvantaged and marginalised category of migrants. The weekly subsistence rate of £37.75 per week is completely insufficient to enable asylum seekers to meet their “essential living needs”.²² Some asylum seekers are not denied asylum support completely and the right to work is virtually non-existent. More than a decade ago the Westminster Joint Committee on Human Rights concluded that the UK’s treatment of asylum seekers ‘falls below the requirements of the common law of humanity’. The Committee recommended the introduction of a ‘coherent, unified, simplified and accessible system of support for asylum seekers, from arrival until voluntary departure or compulsory departure’.²³ The UK government has not adopted this recommendation, nor has it adopted those of a UN Committee which called for an ‘increase in the level of increase the level of support provided to asylum seekers [...] in order to ensure that they enjoy their economic, social and cultural rights, in particular the right to an adequate standard of living’. The UN Committee also reiterated previous recommendations about granting the right to work.²⁴

B. AUSTERITY

12. The public funding environment for voluntary sector organisations like Law Centre has become increasingly difficult and coincides with the introduction of austerity policies. Voluntary and community organisations (Law Centre included) have seen a shift from core funding from government to short-term project funding. This funding model limits the ability of organisations to respond effectively to emerging issues.
13. The current political hiatus serves to intensify funding uncertainty. Until a government is reconvened, civil servants are acting as caretakers, but they have limited decision making powers and are unable to efficiently respond to social need.²⁵
14. There is an urgent need for the UK/NI to publish research on the cumulative impact of all the austerity measures.

of EU free movement rights to facilitate this. In December 2017, an English High Court found this approach to be unlawful and so EEA rough sleepers are no longer removed from the UK.

²² See: Reforming asylum support (February 2010) <<https://www.lawcentreni.org/reforming-asylum-support.html>>; Children’s Society Parliamentary Inquiry into Asylum Support (December 2012) <<https://www.lawcentreni.org/Publications/Policy-Responses/Inquiry-into-asylum-support-for-children.pdf>>; Reforming support for failed asylum seekers (September 2015) <<https://www.lawcentreni.org/Publications/Policy-Responses/HO-reforming-support-for-failed-asylum-seekers-Sep-2015.pdf>>

²³ JCHR, The Treatment of Asylum Seekers 2006-7, recommendation 14

²⁴ Committee on Economic, Social and Cultural Rights, ‘Concluding observations on the UK’ (2016) E/C.12/GBR/CO/6. See also E/C.12/GBR/CO/5, para. 27 and UN Committee on the Rights of the Child has recently noted the high risk of destitution for asylum seeking children CRC /C/GBR/CO/5

²⁵ See NICVA’s ‘Funding Watch Survey’ <http://www.nicva.org/article/results-of-nicvas-funding-watch-survey>; also M O’ Hara, ‘Stormont Chaos set to cause more cuts in Northern Ireland’ (Guardian, London) 17 May 2017

C. UNIVERSAL CREDIT

15. The structural problems with Universal Credit and the financial hardship caused have been well documented.²⁶ Hardship is exacerbated by parallel reforms in the benefit system.²⁷ A particular cause of financial hardship is that new claimants wait five weeks until their UC is in payment; this is further compounded by the fact that one in five new claimants do not receive their full payment on time.²⁸
16. The Law Centre's view is that while simplification is a laudable aim, Universal Credit does not deliver it.²⁹ As UC continues to roll out across Northern Ireland, Law Centre's advice line is receiving an increasing number of calls from claimants who are confused about the multi-facets and implications of the new benefit— such as the cessation of Housing Benefit and the need to manage a five-week period with no benefit, increased conditionality including a 35 hour weekly job search and the digital skills required to manage the UC claim.
17. Claimants in Northern Ireland have the benefit of being able to access the Independent Welfare Changes Helpline, which is funded by the Department for Communities and delivered by Law Centre (NI), Advice NI and Citizens Advice.³⁰ The Helpline forms part of the package of welfare reform mitigations, which was negotiated by Northern Ireland Assembly in the Fresh Start Agreement in 2015.³¹ The mitigation package is unique to Northern Ireland and is designed to ease the transition from legacy benefit to the new social security system. The difficulty is that the mitigation package agreed in 2016 will cease in 2020. Some of the most vulnerable claimants are effectively facing a cliff edge scenario. Due to lack of an Executive, there is considerable uncertainty for the future.

²⁶ For example see CPAG, 'Rough Justice' (August 2018) accessible here: <http://www.cpag.org.uk/sites/default/files/CPAG-Rough-justice-2018.pdf>

²⁷ For example, below-inflation uprating, limits on housing benefit eligibility, the household benefit cap, and restrictions on eligibility for child-related benefits and the removal of disability and family related premiums.

²⁸ National Audit Office, 'Rolling out Universal Credit' (2018 para. 11. Accessible here: <https://www.nao.org.uk/wp-content/uploads/2018/06/Rolling-out-Universal-Credit.pdf> para 11

²⁹ In particular, the amount of information that is required when making a single UC claim remains significant. Furthermore, the various factors that determine the level of claimant entitlement remain broad; therefore it is likely that the intrinsic complexity of individual rules, which stem from that diversity of circumstances and needs, is likely to remain. See N Harris, *Law in a Complex State: Complexity in the Law and Structure of Welfare* (Hart Publishing, 2013), p 131

³⁰ The Independent Welfare Reform Advice Line was established as part of a number of measures in the welfare reform mitigations package, which was agreed as part of the 'Stormont Fresh start agreement' in December 2015. See Welfare Reform Mitigations Working Group Report (January, 2016) <https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/ofmdfm/welfare-reform-mitigations-working-group-report.pdf> (accessed, September 2018).

³¹ A Fresh Start: the Stormont Agreement and Implementation Plan' (November 2015) accessible here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf



18. The lack of an Executive is impinging on the distribution of funds committed under the current welfare reform mitigations package. For example, £35 million per year was committed to support a 'Cost of Work Allowance' designed to provide additional income to support people in work who have low incomes. Due to a flaw in the Department's design of the scheme, and a subsequent need to review the legislation – which requires Ministerial authority - the money is unspent and it is not clear whether it can be reallocated at a later stage.³²
19. Universal Credit has established an intensification of welfare conditionality.³³ The system of financial sanctions, which have increased considerably in Great Britain, for failure to comply with conditions for receipt of a benefit presents a notable threat to an adequate standard of living, with an impact on the sanctioned claimant's right to the highest attainable standard of health (article 12 ICESCR). The Department for Communities in NI has, in conjunction with the advice sector in Northern Ireland, sought to minimise the risk of claimant being sanctioned by commissioning Law Centre to develop a guide to 'understand, challenge and avoid' sanctions.³⁴ This is a welcome step, however, ultimately the Law Centre is concerned that Decision Makers are afforded excessive discretion to sanction claimants.
20. Difficulties faced by Universal Credit claimants seeking work in Northern Ireland are compounded by the decreasing number of vacancies³⁵ and by the lack of affordable childcare. Childcare is a particular problem in this jurisdiction owing to the fact that there is no childcare strategy in place. This significantly impacts on the employment prospects of women.³⁶
21. Universal Credit provides a potential threat to the right to an adequate standard of living (article 11 ICESCR) for all UC claimants in the waiting period for an initial payment and the need to manage a limited budget over a longer period. There is an acute risk that rights under art 11 ICESCR, as well as art 19 CPRD and art 28 CPRD for claimants who receive premiums (such as a Severe Disability Premium/Enhanced Disability Premium) under the legacy benefit scheme. Such premiums do not exist in UC and so claimants in receipt of premiums face a significant drop in their benefit payment on migration to UC. Those who 'naturally migrate' from the legacy benefit to UC or who claim UC prematurely (i.e. before the 'managed migration process' is in place) will have no entitlement to a 'Transitional Protection' payment to mitigate the

³² Confirmed to Law Centre (NI) in a letter from Permanent Secretary for the Department for Communities, Leo O'Reilly dated 1 July 2018.

³³ P Dwyer and S Wright, 'Universal credit, ubiquitous conditionality and its implications for social citizenship' (2014) 22(1) *Journal of Poverty and Social Justice* 27

³⁴ G McKeever, M Simpson and C Fitzpatrick, *Destitution and paths to justice* (London: Legal Education Foundation/York: Joseph Rowntree Foundation, 2018); See also, Law Centre (NI), Understanding, avoiding and challenging sanctions (May 2018) <<https://www.lawcentreni.org/images/sanctions%20guide%202018.pdf>>

³⁵ There were 14,167 vacancies notified in the fourth quarter of the 2017/18 financial year, a decrease of 2% when compared against the same period in the 2016/17 financial year. NISRA, 'Northern Ireland Labour Market Research' (June 2018)

³⁶ Equality Commission NI, 'Investment in childcare blog article (2017) accessible here: <https://www.equalityni.org/Blog/Articles/June-2017/Investment-in-Childcare-must-be-a-policy-priority>



loss of premiums/legacy benefit payment³⁷ and will have to seek alternative forms of support, for e.g. from foodbanks.³⁸ Law Centre has recommended measures that protect vulnerable claimants from being migrated to UC prematurely.³⁹

Law Centre Case study – 70% reduction in income⁴⁰

Marie is a young woman < 25 years living in GB who received ESA (support group) and Enhanced Disability Premium. In total, she received £191.45 per week. Marie moved to Northern Ireland and expected a smooth transition to an ESA claim here through the Reciprocal Arrangements. However her claim was not transferred and she was advised she had to claim UC and undergo a new ECA medical assessment. Marie's weekly income is now £58.10 per week. As a result of claiming Universal Credit, Marie has experienced a loss of £133.35 per week i.e. almost 70% reduction.

D. NEW TECHNOLOGIES IN THE WELFARE SYSTEM

22. With regards to the use of algorithms in the welfare system, Law Centre has observed that the level of administrative discretion in the social security system has increased, particularly in the Welfare Reform Act 2012. It is a concern that such discretion (which is intended to be carried out by humans/frontline workers) would be filled with algorithms or technological decision making tools, thus impinging on claimant's Art 14 rights.
23. As a related point, is concerned about the absence of departmental guidance e.g. on Discretionary Support, the operation of the Contingency Fund, etc. In response to Law Centre's request for guidance, the Department for Communities provided colleagues with the telephone scripts used call handlers. This is not a substitute for department guidance and diminishes legal clarity.

E. CHILD POVERTY

24. Law Centre is gravely concerned about the impact of the 'two-child limit',⁴¹ which is estimated to push 200,000 more children below the poverty line.⁴² The policy has a

³⁷ See R (TP and AR) and Secretary of State for Work and Pensions [2018] EWHC 1474

³⁸ Law Centre (NI) response to the Social Security Advisory Committee's Consultation on Managed Migration (August, 2018) <https://www.lawcentreni.org/consultation-responses-by-category/social-security-responses.html>

³⁹ Law Centre (NI) Migration from legacy benefits to Universal Credit - SSAC call for evidence August 2018

⁴⁰ *ibid*

⁴¹ The two child limit is a policy of austerity which dictates that tax credits/UC will only be provided for the first two children, unless there are special circumstances (e.g. the third child is conceived as a result of rape).

⁴² 'Broken promises: what has happened to support for low income working families under universal credit'. CPAG, 2017



particular adverse impact on families in Northern Ireland for a number of reasons. First, Northern Ireland has restrictive abortion legislation,⁴³ meaning that women effectively do not have a choice about terminating the pregnancy of any 3rd or subsequent child.⁴⁴ Second, differences in criminal law may make it difficult for women to rely on the 'rape concession'.⁴⁵ Third, this policy disproportionately affects families from specific cultural and religious backgrounds where there is a trend for bigger families or a moral opposition / conscientious objection to contraception, emergency contraception and abortion, such as Orthodox Jews, Catholics or Muslims. There are twice as many large poor families in Northern Ireland as there are in Scotland and the South West; this will result in a larger increase in poverty.⁴⁶ In short, the two child limit engages a number of human rights.⁴⁷

25. The Immigration Act 2016 makes provision for the discontinuation of asylum support for families who have received a final negative decision where there are no 'genuine obstacles to removal'.⁴⁸ This marks a first in social policy i.e. a government policy that will, by design, make children homeless. Thankfully, this provision has not yet been commenced.

F. BREXIT

26. Law Centre is concerned about the repercussions of Brexit on the rights of cross-border workers. There remains considerable uncertainty in relation to how social security provision (e.g. child benefit and tax credits/UC) will work for those who live on one side of the border and work on the other or vice-versa.⁴⁹ The removal of the

<http://www.cpag.org.uk/sites/default/files/Broken%20promises%20FINAL%20for%20website.pdf>

Child Poverty Action Group and Institute for Public Policy Research

⁴³ The 1967 Abortion Act does not extend here – with NI continuing to operate under the Offences Against the Person Act 1861. This means that a woman can face criminal prosecution if she 'procures' an abortion.

⁴⁴ See, In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland) Reference by the Court of Appeal in Northern Ireland pursuant to Paragraph 33 of Schedule 10 to the Northern Ireland Act 1998 (Abortion) (Northern Ireland) [2018] UKSC 27 <https://www.supremecourt.uk/cases/docs/uksc-2017-0131-judgment.pdf>

⁴⁵ Section 5(1) of the Criminal Law (NI) Act mandates that all serious crimes must be reported to police - thus any woman who applies for the 'rape exemption' should expect to have the case reported to the police. This puts frontline workers at the jobcentre in a very difficult position where they must report the disclosure to the policy or risk being charged with a crime themselves. Women's Policy Group NI, 'Opposing the two child tax credit cap and rape clause' <https://www.womensaidni.org/assets/uploads/2017/05/opposing-the-two-child-cap-and-rape-clause.pdf>

⁴⁶ A Hood and T Waters, 'Living standards, poverty and inequality in the UK: 2017-2018 to 2012-22 (IFS, 2017) <https://www.ifs.org.uk/uploads/publications/comms/R136.pdf>

⁴⁷ This policy results in retrogression in respect of the child's right to benefit from social security (article 26) and to enjoy an adequate standard of living (article 27). As with adults, in the poorest households the child's right to the highest attainable standard of health (article 24) may be put at risk. The same developments raise questions about the UK's compliance with the right to family protection in article 16 ESC. Finally, the Articles 9 and 14 of ECHR are engaged in relation to freedom of conscience and religion and the right not to be discriminated against.

⁴⁸ Section 66 of the Immigration Act 2016 gives effect to Schedule 11 that provides for discontinuation of asylum support for families.

⁴⁹ G McKeever, 'Brexit, the Irish border and social security rights' (2018) 25(1) Journal of Social Security Law 34



current framework may generate greater uncertainty regarding entitlement and the transportability of benefits.

14 September 2018