



Bringing Law to the People – the Ulster Law Clinic

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FRONTLINE

Law Centre (NI) social welfare law quarterly

WINTER 2012-13

86

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RACE AGAINST TIME



At the time of writing, the Welfare Reform Bill is with the ad-hoc committee at the Assembly. It is clear that

a debate is likely to ensue within the committee between those members who want to confine the scrutiny of the human rights implications to just the Bill and those who think the Bill and the regulations must be looked at together. This becomes important as it is largely an enabling Bill, with the detail (and many of the legal challenges) likely to be in the regulations.

More fundamentally, we appear to be heading for a standoff between the Assembly and the Treasury and DWP. The Bill is increasingly unlikely to be passed by April 2013 when many of the major items will commence in Britain (for example, the spare room tax in Housing Benefit in the public rented sector). Moreover, many of the April 2013 provisions need both the Bill and regulations to be passed in order to come into effect. The Assembly's Social Development Committee is unlikely to look favourably on being given regulations with substantial ramifications and no time to scrutinize the detail. In return, the delay will lead to financial penalties within the block Northern Ireland grant.

There needs to be further changes to the Northern Ireland Bill and regulations to better reflect local circumstances and improve the proposals. Reaching an early agreement on what those improvements will be is in everyone's interests. The Law Centre

has suggested 26 amendments. Some have significant financial consequences while others have almost no extra costs (for details see the Law Centre's website¹). This provides a useful starting point for such an engagement.

More detail is beginning to emerge about how Universal Credit will work. On the plus side, the interim mortgage interest arrangements where support is paid after thirteen weeks (and not 26 or 39 weeks as previously) has been extended until 2015/2016. The figures for earning disregards have also been finalised. Less welcome is the news that the earnings disregards will only be updated by one per cent in 2014/2015 and 2015/2016.

Important issues remain outstanding, such as what will happen to passport benefits. In the short term, a pragmatic and piecemeal solution is on the cards at best, which is likely to add complexity to Universal Credit and may undermine some of the financial incentives to get into work.

Elsewhere, OFMDFM has produced a consultation document *Towards a Childcare Strategy*. The document is risible and a transparent attempt to again delay actually implementing a strategy. It asks self-evident questions such as 'do you agree that there should be a range of childcare options available?' yet fails to say which government department should lead on any strategy, what extra money can be found to deliver a strategy etc. With the Welfare Reform bill predicated on getting both lone parents and their providers of informal childcare (ie their parents) into work, the lack of childcare means one part of the Welfare Reform Bill is destined to fall at the first hurdle.

'There needs to be further changes to the Northern Ireland Bill and regulations to better reflect local circumstances'

The Assembly may have an alibi or two based on cost over some unpalatable parts of the Welfare Reform Bill seeing the light of day. On not delivering a meaningful childcare strategy there is no such excuse.

As ever, everything remains to be played for. Expect to see some last minute, late night negotiations between the parties locally and the coalition government in Westminster at some stage in 2013.

Les Allamby

¹ www.lawcentreni.org/Publications/Policy-Briefings/Law-Centre-NI-Submission-to-Comm-for-Soc-Dev-Oct-12.doc

Time to ask ‘who cares?’: Law Centre AGM

With the biggest shake up to the health and social care system in a generation expected imminently, the Law Centre’s AGM on 19 December heard from Health Minister Edwin Poots about how the system will care for the frail, elderly and vulnerable.

The adult social care system in Northern Ireland provides support to elderly people living in their own home or in residential care as well as care to people with a learning or other disability.

Law Centre director Les Allamby said ‘How we meet the care needs of older adults and others in need of care is an issue that affects us all either because we have an elderly relative who needs care or because we ourselves will require care at some point in the future.’

Delegates also heard from Richard Humphries of the London-based leading health policy think-tank The King’s Fund, Claire Keatinge, Commissioner for Older People Northern Ireland, and Ann O’Reilly, Age NI chief executive.

‘There are considerable challenges ahead to ensure that re-



Les Allamby and Edwin Poots discuss government plans for the future of long term care.

Photo: John Rush

sources match need and that services are accessible and deliver high quality care to those that need it,’ said Les Allamby. ‘Quite simply, we cannot afford not to have an urgent debate about how we as a society will provide and pay for social care in the future,’ he added.

The DHSSPS consultation paper on adult social care, *Who Cares? The Future of Adult Care and Support in Northern Ireland*, is available at: www.dhsspsni.gov.uk/who-cares-future-adult-care-support-ni-discussion.pdf

New era: Frontline goes digital

This issue of Frontline is the last issue in its present paper format. From issue 87, we will be going fully digital.

Constraints of funding and the fast pace of progress in the world of digital publication mean that it is now more efficient to bring the information to you in this new format.

At the click of a button

You will be able to access the magazine with one simple click from your email inbox. Readers will receive an email linking to a downloadable PDF of the magazine and to an alternative screen version placed on our website.

Feedback welcome

This is the beginning of an exciting transformation process and we want it to be informed by your views.

We will be surveying members in April, and again after one year of the online only format, to find out how we can improve your reading experience. All feedback will be gratefully received.

Ursula O’Hare, Assistant Director (Policy and Publications)

Catherine Couvert, Publications Officer, Frontline Editor

ESA migration update

Recent figures from DSD show progress on migration from Incapacity Benefit to ESA up to 30 September 2012. By then:

- 38,145 Incapacity Benefit claimants had started the reassessment process (45 per cent of those expecting to undergo reassessment);
- 10,166 have been placed in the support group;
- 10,596 are in the work related activity group;
- 9,970 have failed the WCA, with 6,196 appealing the decision.

Of 1,301 appeals heard to date 37 per cent have been successful. The figure for GB is 31 per cent.

Belfast Integration and Participation Project update

Training on right to reside and benefits, housing, social services and healthcare

There was a lot of interest in this two-day training course which was quickly booked out and was attended by benefits advisers, social workers, solicitors, migrant specialists and housing advisers.

We worked in groups and learnt through dealing with real case studies as multi disciplinary teams. It was a great opportunity to network with other people who work with migrants and have had different and often difficult experiences in resolving problems. There was a lot of discussion and learning and it was agreed that the course was very worthwhile.

Further training

There will be two further free two day training courses on Universal Credit and migrants which will be accompanied by an online guide. The dates for the training on *Universal Credit - Migrant Issues* are 16 and 23 May 2013 and then 30 May and 6 June 2013.



Law Centre (NI)'s Patricia Carty with a participant at BIPP training session. Photo: Catherine Couvert

Focus groups

The first focus group dealt specifically with tax credit issues that affect migrants and covered making claims and the fast track procedure.

Advisers have reported that this information session has made a real difference to the experience of migrants claiming tax credits and has led to claims being processed much more quickly. The Law Centre has also taken on a number of cases where there have been delays of many months in the processing of claims made by migrants for tax credits and Child Benefit.

The second focus group, on 17 January, was a general information session on benefits available to migrants.

There will be two further focus groups dealing with issues affecting migrants. The dates proposed for these are:

Thur 7 March 2013	11am to 1pm
Thur 13 June 2010	11am to 1pm

Keep an eye on the Law Centre's website for further information on what will be covered at these groups.

Patricia Carty



Lord Kerr praises Human Rights Act

The Human Rights Act has established a more logical and sensible arrangement for the litigation of human rights, according to Lord Kerr, the former Lord Chief Justice for Northern Ireland.

Lord Kerr was speaking to an audience of law students and representatives of the local legal profession at a guest lecture hosted by the Graduate School of Professional Legal Education at the University of Ulster's Magee campus.

Until 2000, UK citizens had to take complaints to the European Court of Human Rights in Strasbourg but under the Human Rights Act, which came into effect in October of that year, these cases have been heard in the UK.

Lord Kerr said the situation prior to 2000 was unsatisfactory because the citizen had to exhaust domestic remedies so proceedings were protracted, the Strasbourg court was not necessarily familiar with domestic circumstances and the range of reliefs that the Strasbourg court could give were more restricted than a domestic court.

'The opportunity exists for us to develop a brand and a body of human rights law which is different from the Strasbourg orthodoxy but which meets the needs of this country's citizens and reflects the standards that this country expects. Where those needs and those standards require it, that opportunity is also our obligation,' he said.

Bringing the law to the people: Ulster Law Clinic

University of Ulster senior law lecturer **Gráinne McKeever** presents a new project integrating a social security and employment law clinic with a Masters course in Clinical Legal Education.

The University of Ulster is setting up a law clinic where members of the public can get free advice and support on social security and employment law cases.

The service will be run on the Belfast campus through the first postgraduate course of its kind in the UK and Ireland specialising in social security and employment law.

Post-graduate law clinic

The new LLM in Clinical Legal Education will contribute to meeting the demand for advice and representation in industrial/fair employment tribunals and social security appeal tribunals.

Students will gain clinical legal experience through the creation of the Ulster Law Clinic, which students will manage, under supervision, on the Belfast Campus and under the Clinical Directorship of Ciarán White. They will also benefit from placements at the Legal Support Project in the Law Centre in Belfast.

Members of the public will receive free specialist advice and support on social security or employment law from LLM students who have been trained to provide advice and representation.

Meeting need

The course has been introduced following research carried out for the Law Centre in 2010 and 2011 which led to proposals for the reform of Northern Ireland's tribunal system, including improved access to advice and representation for tribunal users¹.

The need for change was also highlighted after it was revealed less than one per cent of people taking a case had won after a Fair Employment tribunal hearing.



Gráinne McKeever. Photo courtesy of University of Ulster

The programme's aim is to supplement work of legal service providers by focusing on unmet legal need, while giving students the opportunity to develop legal advice and advocacy skills and engaging their interest in the provision of legal services more generally.

The law clinics concept has been endorsed by the Lord Chief Justice Sir Declan Morgan, Justice Minister David Ford MLA and by the Access to Justice Review Team, which recognises their value and the role that law students and universities have in bringing law to the people.

Advisory group

An external Advisory Group will offer advice and guidance on the operational and strategic challenges that come with running a law clinic.

Dr Kenneth Mullan, Chief Social Security and Child Support Commissioner for Northern Ireland, will chair the Advisory Group, which will meet twice a year.

Members of the group include: Eileen McBride, President of the Industrial and Fair Employment Tribunals; Conall MacLynn, President of the Appeals Tribunals for Northern

Ireland; Mary Kitson, Senior Legal Officer for the Equality Commission Northern Ireland; Sinead Mulhern, Head of the Legal Support Project, Law Centre (NI); Owen McCloskey, Project Worker, Legal Support Project, Law Centre (NI); Fiona Magee, Assistant Director, Advice NI; Louisa McKee, Training Manager, Citizens Advice NI.

Notes

- 1 Gráinne McKeever co-authored 'Redressing Users' Disadvantage: Proposals for Tribunal Reform in Northern Ireland' with Brian Thompson from the University of Liverpool. She authored a further report on 'Supporting Tribunal Users: Access to pre-hearing information, advice and support in Northern Ireland'. The research entailed interviews with users of social security appeal tribunals, special educational needs tribunals and industrial/fair employment tribunals, tribunal chairs, policy makers and tribunal judiciary.

Tribunal reform conference

Tribunal Reform: the Way Ahead

Friday 25 January, Bar Library Belfast, 10 am to 4 pm

A joint conference of University of Ulster, Law Centre (NI) and the Department of Justice

The conference will launch the Department's consultation document on tribunal reform.

Speakers will include:

Justice Minister David Ford MLA; Professor Michael Adler, University of Edinburgh; Brian Thompson, University of Liverpool; Professor Dame Hazel Genn, University College London; Gráinne McKeever, University of Ulster.

Sir Patrick Coughlin, Lord Justice of Appeal will chair the plenary session.

More information from: ann.cartwright@lawcentreni.org

Benefit uptake initiative renewed

Kevin Higgins, head of policy at Advice NI, celebrates a very successful benefit uptake partnership between his organisation and the Department for Social Development.

Last year, Advice NI secured the Social Security Agency's contract to deliver benefit entitlement checks to 25,000 targeted clients across Northern Ireland. These included older people with a possible entitlement to Attendance Allowance or State Pension Credit.

Positive results

The 2011/12 Benefit Uptake direct targeting exercise involved the Social Security Agency writing to 25,000 customers (older people, those with a disability and carers) and providing them with an opportunity to receive a full benefit assessment by contacting the Advice NI Freephone service. Where an adviser identified potential benefit entitlement, clients were assisted with completing application forms and any supplementary forms.

The results have now been verified and have shown a significant increase in the amount of money generated. Advice NI managed to secure £7.17 million for people, mainly older people, across Northern Ireland, which was nearly double the amount generated in the previous year.

Minister's announcement

Social Development Minister Nelson McCausland said: 'My Department has stepped up its work and is investing more than ever before in new initiatives to promote benefit uptake and I am delighted with our success this year. It is vital that we ensure all those who are entitled to benefits receive them. The fact that we have managed to secure over £7 million in partnership with Advice NI, and £13.1 million in total through all our uptake initiatives, is very encouraging. I am committed to making sure that our efforts in this area continue and grow. We will, in

the coming weeks, bring forward for public consultation our strategy for improving benefit uptake to 2016¹.

The partnership with Advice NI to deliver the 2011/12 Benefit Uptake direct targeting exercise has put more money into the pockets of many older people across Northern Ireland. The average weekly amount of additional benefit generated was £61.80 per person. I believe that this makes a significant contribution to the lives of those people benefiting and shows our commitment to tackling poverty.'

The Minister took the opportunity to announce that Advice NI had secured the contract to deliver the Benefit Uptake Programme 2012/13 Targeted Exercises element, which will again focus mainly on State Pension Credit and Attendance Allowance.

Bob Stronge, Advice NI Chief Executive, welcomed the success of the initiative: 'Advice NI is delighted to have played our part in helping to ensure that people receive their rightful social security entitlement. We understand that many Northern Ireland households are struggling to make ends meet at this difficult time. The results show that Advice



Advice NI staff with DSD Minister Nelson McCausland MLA at Advice NI AGM.

Photo: Advice NI

NI advisers have made every effort to increase benefit uptake for people who would otherwise miss out on unclaimed entitlement.'

¹ The Department for Social Development consultation document on benefit uptake has now been published: www.dsdni.gov.uk/maximising-incomes-outcomes-consultation.pdf. Consultation closes on 26 February 2013.

Advice NI / NICVA analyse household debt

From 19 November to 17 December 2012, Advice NI held an online discussion to find out how debt is affecting people across Northern Ireland on www.voice.ni.net.

Key findings are being fed into a wider research project being carried out on behalf of the Centre for Economic Empowerment by NICVA and Advice NI into the nature, extent and impact of both illegal and expensive legal lending in Northern Ireland.

The eConsultation was open to people struggling to cope with household bills and with repayments to expensive legal lenders or illegal money lenders. Peter Hutchinson, Co-ordinator of the Centre for Economic Empowerment, said:

'The recession has had a significant impact on employment and income levels. It has also led banks and financial institutions to tighten up on their lending. The growth in expensive legal lending and illegal lending appears to be a consequence of these changes. This research project will examine why and how people are accessing expensive legal and illegal lending and explore the implications of this.'

Dynamic project responds to high demand

Sinead Mulhern, head of the Law Centre's Legal Support Project, reports on a productive first year.

It is now almost a year since the Law Centre's Legal Support Project (LSP) successfully concluded its first case in the Social Security Appeals Tribunal in February 2012. Since then, the project's caseload has grown rapidly. This is unsurprising given the persisting high levels of demand for advice and assistance in both social security and industrial tribunal cases.

Casework

Since its launch, the LSP has opened over 90 case files, 40 of which have been concluded. In the area of social security, the project continues to concentrate on ESA and DLA appeals. In employment, the focus has been on unfair dismissal and redundancy.

Law Centre member organisations with social security or employment cases in which they are unable to provide representation can contact Sinead Mulhern (Head of the LSP) or Owen McCloskey (Project Worker) to see if the LSP can help.

Volunteers

Almost 40 volunteers have taken part in the LSP training programme. We have a cohort of 20 to 25 volunteers active on cases at any one time.

The LSP is keen to hear from more experienced practitioners who would be prepared to offer some assistance to the project or perhaps take on a single employment case pro bono in their practice, on referral from us.

Promoting pro-bono work

The LSP continues to work with other organisations to promote greater awareness of the need for, and opportunities to engage in, pro bono work in Northern Ireland.

On 17 October, the LSP, in partnership with the Public Interest Litigation Support Project (PILS Project), hosted a seminar on pro bono work, at the Royal Courts of Justice.

Chaired by Mr Justice Stephens, the seminar highlighted the impor-



LSP and PILS staff with keynote speakers at pro-bono seminar. Photo: Catherine Couvert

tance of pro bono work in promoting access to justice and outlined current opportunities for doing pro-bono legal work in Northern Ireland. It was well attended, with participants from across the legal profession. Rebecca Hilsenrath, Chief Executive of Law-Works and Elizabeth Mitrow of KOD/Lyons Solicitors Dublin talked about their experiences of pro bono work in GB and the Republic of Ireland respectively. The focus then shifted to Northern Ireland. Brian Kennedy

QC (Bar Pro Bono Committee), John Guerin (Law Society of Northern Ireland), David Hawkins (PILS Project) and Sinead Mulhern (LSP) described the nature of their organisations' involvement in pro bono work. This was followed by a lively discussion, with many practical suggestions on further developing this area of work.

The LSP looks forward to working in close partnership with others in 2013 to take some of those suggestions forward.

Adoption ruling challenged

NIHRC Chief Commissioner Professor Michael O'Flaherty welcomed the 18 October ruling on the judicial review on the compatibility of the Adoption Order NI 1987 with the ECHR:

'Through this case the Commission has sought to protect the best interests of the child. Given the high numbers of children in care, who need a family in Northern Ireland, the importance of this case in widening the pool of prospective parents cannot be overstated. We are therefore delighted with this outcome.

It brings Northern Ireland law in line with the rest of the UK and means that couples who are not married, those in civil partnerships and same sex couples will be now be allowed to apply to adopt. Mr Justice Treacy agreed with the Commission that preventing someone from even being considered to adopt because of their relationship status is a discriminatory practice.'

The Minister for Health, Social Services and Public Safety has confirmed in an Assembly Q&A that the Department lodged an appeal with the court on 11 December.

Read the judgement on www.courtsni.gov.uk, citation No [2012] NIQB 77

WHO CARES?

The future of adult social care in Northern Ireland

Law Centre (NI) assistant director (policy and publications) Ursula O'Hare commends the publication of the DHSSPS consultation paper on the future of adult care and reflects on the conditions needed to meet growing needs and offer improved quality of care.



Two related initiatives by the Executive in 2013 should bring fresh focus on the challenges ahead in the provision of social care.

First, as the Commissioner for Older People explains in this edition, the Executive is finalising a draft strategy on positive ageing, which should prioritise health and social care for older people that meets need and promotes independence.

' Translating the vision into reality is the more difficult task, not least because this may involve a rethink of how services are delivered and how resources will follow need.'

Second, DHSSPS is currently consulting on the future of adult social care for all those who require support (*Who Cares? The Future of Adult Social Care in Northern Ireland*)¹.

Growing need

It is difficult to accurately estimate how many people in Northern Ireland need support with their care. The figures on domiciliary care packages and on people receiving care in residential or nursing homes tell us only about those whose needs are met through the social care system. Many more people with a learning disability, mental health needs or who are frail and elderly are cared for by loved ones.

It is clear, however, that over the next decades, as the number of people living with dementia or chronic conditions rises and the life-expectancy of people with other disabilities increases, the need for social care will grow. How then should we provide care to the existing population in need of this support and make provision for those who will need support in the future?

Turning the vision into reality

Clarity about the form of care we expect is a pre-requisite to any discussion about the future of care. Is it enough to continue to offer the type of support already provided and funded as per current arrangements? Or, is reform the order of the day? If so, it is important to be clear about what reform should achieve.

It is not difficult to articulate a clear, rights-based, vision of social care that provides accessible, quality care responsive to individual needs. The Joseph Rowntree Foundation, for example, has asked how that 'little bit of help' could be provided to people as part of a system of care and support. Translating the vision into reality is the more difficult task, not least because this may involve a rethink of how services are delivered and how



Michael Sweeney of DHSSPS head of reform and care and support team, discusses the 'Who Cares?' document at the Law Centre's seminar on long term care. Photo: John Rush

resources will follow need. How will social care be funded into the future and what principles will underpin decision-making?

Dilnot

The Dilnot Commission in England and Wales (2011) was tasked to develop a solution based on shared responsibility between the individual and the state. The Northern Ireland Life and Times Survey in 2010 suggests that there is little appetite here for co-responsibility for funding care; 80 per cent of respondents felt that the state should pay irrespective of a person's wealth.

The last Labour government brought forward proposals for a 'National Care Service' but, in the aftermath of the election, these were dropped in favour of the limited Dilnot mandate to explore options based only on a shared responsibility model. At Westminster, Dilnot is now the only game in town. It would be naive to think that whatever happens with Dilnot in Britain will not affect the Northern Ireland Executive approach, especially as the Executive does not have tax raising powers.

'Who Cares?'

While Westminster's response to Dilnot unfolds, the Northern Ireland Executive needs to lead a mature public debate about our system of social care and how it should be funded. *Who Cares? The Future of Adult Social Care in Northern Ireland* is a key marker in this process.

If the care system is to deliver quality support to those who use it, with an emphasis on care in the home and residential care for those who require it, then long-term policy and financial decisions need to be made to guard against an ever-expanding funding gap.

Westminster politicians have tended to shy away from long term decisions about policy development on long term care. It need not be the same at Stormont.

Political leadership to achieve a consensus is essential to deliver good outcomes that enjoy widespread support on this difficult issue.

1 www.dhsspsni.gov.uk/who-cares-future-adult-care-support-ni-discussion.pdf. Responses should be sent by 15 March to reform.careandsupport@dhsspsni.gov.uk

AGE-FRIENDLY SOCIETY

Calling for action on active and positive ageing

Claire Keatinge, Commissioner for Older People for Northern Ireland, unveils her vision for a Stormont strategy on active and positive ageing.



More of us are living longer and healthier lives than previous generations – and that is very good news indeed. We should embrace,

plan for, and celebrate the fact that there are more and more older people who can contribute their experience, knowledge and ideas to our wider society.

individual health and lifestyle choices, promoting independence, delivering excellence in public services, reducing inequalities in our society, and challenging ageist attitudes and discrimination against older people.

Where older people are involved in community life – as employees, in families, as carers, within faith communities, volunteering, in public and political life – they make a significant and positive contribution.

■ In the Northern Ireland Assembly there are 27 MLAs aged 60+ (25 per cent).⁴

Yet too often our society sees older people and their health and social care needs as a burden and a financial cost that cannot be met by wider society. This is not the case.

■ 8.9 per cent of older people in Northern Ireland aged 65+ are employed in a paid capacity.⁵

■ There are 3,000 older people formally registered as volunteers in addition to thousands more carrying out caring and other informal volunteering.⁶

- The estimated population for Northern Ireland is 1,810,900.¹
- There are 360,000 people in Northern Ireland aged 60–99.²
- There are 210 centenarians.³

Culture change needed

The fact that we are an ageing society should be a focus for all of us – whatever age we are. How people live, the lifestyle choices they make, together with the social conditions and economic opportunities available to them are fundamental to the quality of life people can expect to have in older age.

It also means that all of the ways in which society and government are structured and delivered need to focus on supporting positive indi-

Issues to address

The NI Executive has a unique opportunity to create and deliver a strategy

continued over page /

for active and positive ageing that will make every aspect of life in Northern Ireland age friendlier. This will need to include:

- improved respect for, and understanding of, older people as individuals with their own experience, choices, priorities and beliefs;
- a recognition of the positive contribution made to our society by older people;
- flexible housing options for older people;
- safety at home and in our communities;
- an adequate level of income that enables older people to live healthy and fulfilled lives;
- transport that is responsive to the needs of older people;
- the opportunity to participate in society as employees, volunteers, in lifelong learning and in family, faith and community life;
- equality and fair treatment;
- improved support for frail and vulnerable older people;
- excellent health and social care that is person centred, meets real need and promotes the independence and choices that individuals make about the way they wish to live their lives.

■ **Almost 66 per cent of pensioners in Northern Ireland own their own homes, with approximately 20 per cent living in Housing Executive or Housing Association property.⁷**

■ **The total net financial contribution of older people in 2010 in the UK is estimated to be worth nearly £40 billion.⁸**

A strategy for positive ageing

We need a bold and confident strategy for positive and active ageing that will invest in the rights, independence, health and wellbeing of today's older



people. It must deliver better protection of vulnerable older people and it must invest across the generations, so that today's young people look forward with optimism and confidence to being older themselves.

■ **83 per cent of older people who live alone are living in fuel poverty.⁹**

■ **43 per cent say they struggle on their incomes.¹⁰**

■ **65 per cent identify fear of crime as one of their main concerns.¹¹**

Our society is made richer by the participation of older people.

I would call on the Executive to be bold and imaginative – creating real change. The strategy for positive and active ageing must contain clear and measurable targets for improving quality of life for today's and tomorrow's older people.

I am convinced that this is a real opportunity to make every aspect of life in Northern Ireland more age-friendly.

It is in all of our best interest.

Notes

- 1 www.nisra.gov.uk/Census/pop_2_2011.pdf
- 2 www.nisra.gov.uk/archive/demography/population/midyear/Statistical_Report_MYE_NI_2011.pdf
- 3 www.nisra.gov.uk/archive/demography/population/midyear/Statistical_Report_MYE_NI_2011.pdf
- 4 www.niassembly.gov.uk/mlas/statistics.aspx
- 5 NI Labour Force Survey
- 6 Volunteer Now 2010
- 7 www.nihe.uk/older-people-housing-policy-review-action-plan-2008_2010.pdf
- 8 Gold Age Pensioners by WRVS March 2011
- 9 House Conditions Survey 2009 nihe.gov.uk/2011
- 10 Millward Brown on behalf of Age NI 2010.
- 11 Age Sector Platform & Pensioners' Parliament

SHAPING EMPLOYMENT LAW TO MEET LOCAL NEEDS

Stephen Farry announces review of employment law

Liz Griffith, policy officer at Law Centre (NI), welcomes DEL proposals for changes to Northern Ireland legislation on employment dispute resolution, and calls for bolder reform.



On 5 November 2012, the Department for Employment and Learning Minister Stephen Farry issued a statement on the Department's

review of employment law in Northern Ireland. This was the culmination of a detailed consultation process and constituted the most thorough review since 1999.

We are pleased that the Minister is so keen to ensure that Northern Ireland takes the opportunity afforded by devolution to shape employment law to meet local needs. We also share the Minister's recognition that the current tribunal process deters many potential claimants and that this amounts to an access to justice issue. Access to justice is critical and should not be allowed to fall behind 'business considerations'.

One of the most exciting of the Minister's proposals is his commitment to explore the feasibility of introducing a system of early neutral evaluation (ENE). The Law Centre has long supported the concept of ENE, which has been described as giving parties an early 'dose of reality'. During ENE, both parties receive an inde-

pendent assessment of the merits of their case. ENE can also help pinpoint the best forum to handle the case – this could be the Tribunal or a form of Alternative Dispute Resolution.

In other news, the Minister has decided not to give any further consideration to policy proposals including: introducing new requirements on parties to pay witness expenses; increasing the maximum amount of tribunal costs awards; introducing compensated no-fault dismissals for small and medium-sized enterprises. In addition, Northern Ireland is not going to automatically follow Great Britain and increase the qualifying

period for unfair dismissal from one to two years. Instead, this will be subject to further consideration through public consultation as will the concepts of protected conversations and compromise agreements.

The Law Centre commends the Minister on the review process to date. However, if Northern Ireland really is to become a 'model for employment relations', then further and bolder reform is necessary.

To read more about the Law Centre's proposals for employment law reform visit: www.lawcentreni.org/consultation-responses-by-category/employment-responses.html



Save the Children 'Living Wage' exhibit - Millenium Bridge, Derry. Photo: Catherine Couvert

AN ALTERNATIVE TO TRIBUNALS

The Labour Relations Agency Arbitration Scheme

Don Leeson, arbitration secretary at the Labour Relations Agency, explains the workings of the Agency's new arbitration scheme.

A new approach to resolving employment disputes in Northern Ireland was launched on 27 September 2012. Under the Labour Relations Agency Arbitration Scheme, claimants and respondents can choose to refer a claim to arbitration instead of going to a tribunal. The arbitrator's decision is legally binding and has the same effect as a tribunal determination.

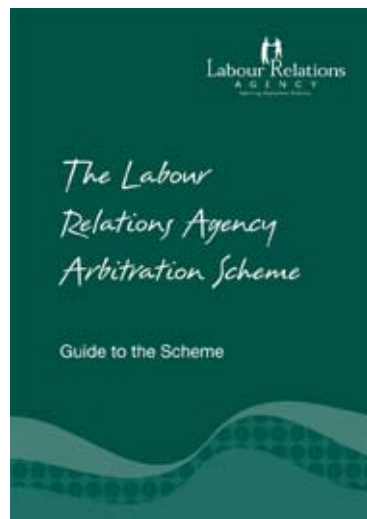
The Scheme covers claims in all employment rights jurisdictions, including unfair or constructive dismissal, payments owed, breach of contract, and discrimination in recruitment or employment.

Review

The Scheme was conceived as part of a fundamental review of the existing systems for resolving workplace disputes in Northern Ireland. The review was carried out in 2009-10 by the Department for Employment and Learning (DEL). DEL was advised by a group comprising the Confederation of British Industry, the Northern Ireland Committee of the Irish Congress of Trade Unions, the Federation of Small Businesses, the Equality Commission for Northern Ireland and the Labour Relations Agency.

New legislation

When introducing the enabling legislation in the Northern Ireland Assembly (July 2012) Stephen Farry, the



Minister for Employment and Learning, noted that:

'A consistent message from the public consultation process was the need to provide a viable alternative to..... employment tribunals. That is not a criticism of the tribunal system..... but a recognition that not all disputes require or are suited to a formal legal determination.'

He went on to state:

'...many employees are unwilling to go through the stress of a formal legal process because of its adversarial nature..... They are simply looking for an independent person to consider and make a decision on the merits of their grievance, and that is what arbitration is designed to achieve.'

A viable alternative

The new Scheme offers a comprehensive and credible alternative to a tribunal. Previous arbitration schemes were limited to claims of unfair dismissal and flexible working complaints, with such cases being out of scope if they were linked, as many tend to be in Northern Ireland, to other alleged breaches of employment rights.

The Scheme, which is unique in the UK, provides a non-adversarial, non-legalistic and informal means of resolving claims. Hearings will be arranged quickly, normally within two months of the agreement to use arbitration, and will usually be concluded in less than a day. They are held in a non-legal setting at the Labour Relations Agency's offices in Belfast or Derry/Londonderry.

Independent arbitrators

Hearings are conducted by an arbitrator sitting alone. The Labour Relations Agency appoints the arbitrator to a particular hearing from its panel of arbitrators, who have all been selected for knowledge of employment law, experience of employment relations and adjudication skills.

A cornerstone of arbitration is that the arbitrator is independent and impartial, so particular care is taken to ensure that the arbitrator appointed to a hearing has no previous relationship with any of the parties to a claim, which might give rise to a conflict of interest.

Written statements

Prior to an arbitration hearing, which is held on a date agreed with the parties, the parties are asked to prepare a written statement of their case and submit this, together with any supporting documentation, to the Labour Relations Agency. These submissions are then forwarded to the arbitrator and exchanged with the other party and form the basis for oral presentations at the hearing.

Non-adversarial hearings

The parties to a claim can be represented at hearings, for example by a colleague, friend, union representative or legal adviser. However, the informality of the proceedings, without the legal trappings of a tribunal, make it ideally suited to claimants and respondents who are unrepresented. Its non-adversarial nature also makes it particularly appropriate where an employment relationship is expected to continue after the claim is resolved.

The parties may also bring witnesses to help support their case.

Rather than cross examining the parties or witnesses, the arbitrator will adopt an inquisitorial approach at the hearing. S/he will ask questions to clarify issues. The parties may also ask questions of each other through the arbitrator.

Decisions and Codes of Practice

Arbitral decisions are based on the general principles of fairness and best practice in employment relations, including principles referred to in relevant Codes of Practice. Decisions can be appealed or challenged in specified circumstances.

Confidentiality and consent

As with other alternative dispute resolution approaches such as conciliation and mediation, the arbitration scheme is underpinned by the principles of mutual consent (in this case, to agree to a third party deciding the outcome) and confidentiality (hearings are closed to the public and decisions are not published).

Jim McCusker, Chairman of the Labour Relations Agency, noted:



Penny Holloway (LRA Director of Conciliation and Arbitration), Stephen Farry MLA (Minister for Employment and Learning) and Jim McCusker (LRA Chairman). Photo courtesy of LRA

'In Northern Ireland we are seeking regional solutions to employment disputes. Our aim is a comprehensive system of alternative dispute resolution that will gain the confidence of claimants, respondents and their representatives. This will take time but our fundamental objective is to ensure that workplaces are harmonious and that disputes, when they do arise, are resolved quickly and, whenever possible, to the satisfaction of all concerned.'

'This means a continuing focus on in-house resolution, mediation and conciliation. Where

these approaches do not succeed, then the new Arbitration Scheme provides a real alternative for resolution. It's an alternative designed to prevent any further fracturing of the employment relationship caused by the dispute. 'Furthermore, as well as resolving the dispute, and where appropriate, the arbitrator will make recommendations to help improve employment relations within the organisation, which is something tribunals are not able to do.'

Further information on the Labour Relations Agency Arbitration Scheme is available at: www.lra.org.uk

WE CAN HELP

DEL Redundancy Service

Deirdre Walsh of the Policy and Legislation Branch at the Department for Employment and Learning explains the role of the Department's Redundancy Service.

The Department for Employment and Learning's (DEL) Redundancy Service aims to help employers and employees going through the redundancy process. The Redundancy Service will plan, co-ordinate and deliver a package of support agreed with the employer.

ered by the District Manager who will then create a customised package of support appropriate to that particular redundancy situation.

Once the employer receives confirmation of the proposed package of support, the District Manager will coordinate its delivery, involving staff from the local Jobs & Benefits office

network and key partner organisations such as:

- Social Security Agency (SSA);
- HM Revenue & Customs (HMRC);
- Money Advice;
- Local Enterprise Agencies; and

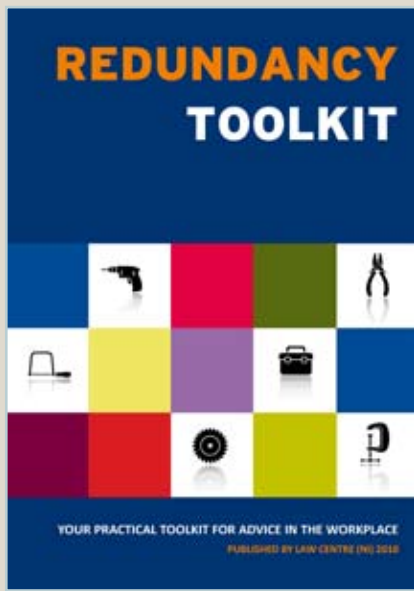
The process

When the Department is made aware that an employer is proposing to make redundancies, a DEL Employment Service District Manager will make contact with them. They will establish the needs of the employer and employees through discussion with the employer. They will then outline the full range of options available within the Redundancy Service and seek the employer's feedback on the suitability of each option.

The Department will offer a package of support tailored to their needs, and designed to equip their employees with the tools and information they will require when they re-enter the labour market. This includes professional advice on employment, training and education opportunities, as well as careers advice.

Support packages

The information gained from the employer will be taken away and consid-



Toolkit for advisers

The Law Centre's Redundancy Toolkit is a practical guide and toolkit for advisers called upon to advise in redundancy situations. Published in 2010 with help from the Department for Social Development, the Redundancy Toolkit remains an invaluable resource, available online as a downloadable document.

Go to: www.lawcentreni.org/publications/other-publications/620.html

- Educational Guidance Service for Adults (EGSA).

Tailored redundancy clinics

The Redundancy Service will deliver tailored redundancy clinics which involve the following:

- presentations on the help and support available from staff in your local Jobs & Benefits office/ JobCentre;
- advice from key partner organisations;
- access to www.jobcentreonline-ni.com;
- jobsearch advice;
- internet access;
- live vacancy lists; and
- careers advice.

Benefits for employers

Where an employer avails of our redundancy service, benefits are experienced by both the employer and their employees. From the employer's point of view, we will plan, coordinate and deliver a package of support tailored to their needs with the assurance that their employees receive the best available support. The service is also completely free of charge and there are no restrictive eligibility criteria.

Benefits for employees

In terms of employee benefits, individuals will be given information and advice about the options and support available to help them find another job delivered in a professional and sensitive manner by trained staff.

More info

For further information on the Redundancy Service visit www.del.gov.uk/redundancyservice

JOB CREATION CONFERENCE

NICVA's Centre for Economic Empowerment (CEE) heard two influential voices in UK economics and politics, Stewart Lansley and Matthew Taylor, at its 4 December conference, *Creating the Good Economy through Job Creation*.



The rise in unemployment is one of the most devastating consequences of the current economic difficulties. In Northern Ireland, the unemployment rate has increased from three per cent in 2007 to eight per cent in 2012. Youth unemployment is a staggering 24 per cent.

Good employment is an essential part of a good economy and society. It not only provides a livelihood, but also a sense of dignity and self-worth.

The conference discussed what more can and should be done to create jobs and reduce unemployment. NICVA Chief Executive Seamus McAleavey said: *'We know there are no easy solutions to the challenges facing the Northern Ireland economy; but if we are serious about creating a good economy we must ensure that job creation is central to any revival in economic growth.'*

First Minister Peter Robinson MLA opened the conference. Keynote addresses were delivered by economist and financial journalist Stewart Lansley whose recent book *'The Cost of Inequality'* was described as deserving of 'a wide hearing and an urgent place on the policy agenda' by the Times Higher Education, and Matthew Taylor, Chief Executive of the RSA (Royal Society for the encouragement of Arts, Manufactures and Commerce), a former Chief Adviser on Political Strategy to Tony Blair and renowned social innovator and thinker. Local speakers also shared their views and visions for job creation and the economy.

Photo: L-R: Keynote speaker Stewart Lansley; Seamus McAleavey, NICVA Chief Executive; Angela McGowan, Chief Economist at Danske Bank; Marie Cavanagh, NICVA Chair; Peter Hutchinson, Centre for Economic Empowerment Coordinator; William Crawley, conference facilitator. Courtesy of NICVA.

STEPS 2 SUCCESS

Shaping an employment programme that works?

*The Department for Employment and Learning is making preparations for a work programme for people who are in long term unemployment, to be rolled out in 2014. **Lorraine Boyd**, Vital Links coordinator at Northern Ireland Council for Voluntary Action, details views of the voluntary sector as gathered by NICVA's working group on the introduction of the controversial new programme.*

Recently there has been much media interest in the Work Programme currently operating in England, particularly in light of revelations that none of the programme's eighteen contractors have reached their target of getting 5.5 per cent of clients a job for at least six months¹. According to the Department for Work and Pensions, which has responsibility for the Work Programme, the aim is to provide 'tailored support for claimants who need more help to undertake active and effective job seeking. Participants receive support to overcome barriers that prevent them from finding and staying in work'².

Against this background, the Department for Employment and Learning (DEL) is preparing for implementation of its own proposed new employment programme, Steps 2 Success (NI). This will replace the Department's Steps to Work (StW) programme which has been in operation from September 2008. DEL's new adult return to employment programme is being introduced in line with the welfare reform agenda. In Great Britain, the policy approach has been that the Work Programme is the carrot and increased conditionality for welfare payments is the stick.

Broadly welcome

It is anticipated that the out-workings of welfare reform will see a substantial increase in individuals moving into work related activities, with a subsequent increase in

demand for the work programme in Northern Ireland.

NICVA, at the request of its members, established a working group to examine the potential introduction of a new work programme in Northern Ireland. When DEL issued a consultation on its proposed employment programme Steps 2 Success (NI) in July 2012, the working group outlined its key concerns about and recommendations on the proposals.

The key objectives are broadly to be welcomed. An outcome focused programme, targeting those most in need, creating stronger incentives for helping those furthest from work, ensuring participants get the support they need, delivering value for money, backed up by a less prescriptive approach for providers, can be supported by everyone. However, concern has been raised within the voluntary and community sector as to whether the new programme will deliver these objectives. It is felt that the programme is unrealistic in its assumptions of the outcomes that can be achieved and neglects the processes required to deliver the desired outcomes. The assumption that people are employable and jobs are available is not safe, particularly in the current economic climate.

Substantial concerns

Some objectives have been overlooked within the document, for example, the need to recognise regional and area variations in training opportunities and other job availability. The need to work with employers is crucial; the programme should include

'The needs and aspirations of participants should form the basis of the programme'

greater incentives, more buy-in and co-operation with key employers enabling them to offer the guarantee of a job to individuals. Subsidiaries of government should be guaranteeing jobs and carrying social clauses to ensure this. The Department should be incentivising employers to encourage them to sign up, and kick-start the economy. The importance of employers recognising the benefit of gaining well trained employees at the end of the programme and realising a return and value from their input is essential. Other specific concerns include:

- the programme individual unemployed people are allocated to will be chosen at random, and will not be matched to people's needs;
- the duration proposed in the programme, 52 weeks, is not long enough to get some people into work;
- there is too much of a premium on 'price' rather than the 'quality of those delivering the programme';
- in Great Britain, there have been serious problems between the main

contractors and those delivering the programme to individuals;

- there has been limited discussion around how the programme will interact with welfare reform proposals or what sanctions in terms of how benefit reductions will be applied to those who fail to engage with it;
- this is a publicly funded programme yet there are still unresolved issues around how the Department will tackle under-performance of contractors and ensure it meets its objectives.

Recommendations

NICVA's working group recommended the development of a programme based on five overarching principles.

- **Local works best**
There is no doubt that a programme which reflects the realities of the problem in Northern Ireland, and which is then delivered by organisations with local expertise, will produce the best possible outcomes for people seeking work.
- **Those who need the programme most should have easiest access to it**
Priority needs to be given to 'hard to reach' groups and delivery organisations should be prohibited from 'cherry picking' the clients that are easiest to work with or who are likely to help them reach their targets by finding employment quickly.
- **Recognise that a genuinely person-centred approach delivers success**
The needs and aspirations of participants should form the basis of the programme rather than developing a programme that feels like a series of hurdles which must be jumped in order to meet benefit requirements.
- **Reflect the reality of the job market in Northern Ireland**
Since 2007, the unemployment rate in Northern Ireland has increased from three per cent to eight per cent. Youth unemployment is a staggering nineteen per cent. Explicit links need to be made between the new work

programme and the Northern Ireland Executive's Economic Strategy, Childcare Strategy, the Not in Employment, Education and Training (NEET) strategy Pathways to Success, and any new youth employment strategy, with particular reference to how individuals further removed from the labour market will be supported to access work.

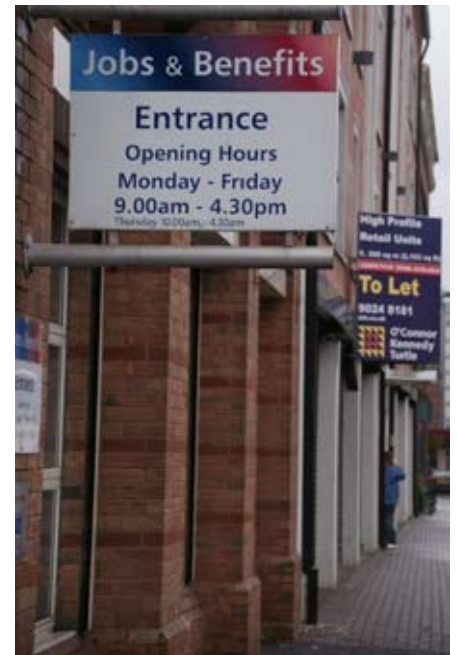
- **Be realistic about the complex nature of the challenges faced by people looking for work in Northern Ireland**

The people most in need require ongoing support to help them remain in employment or progress to a more secure job.

Holistic approach needed

Unemployment affects not only the individuals without work, but also their families and society as a whole. As well as the financial impact, unemployment corrodes people's self-esteem, dignity, and hope. Voluntary and community organisations in Northern Ireland have considerable experience and knowledge in the delivery of adult return to work programmes and are market leaders when it comes to developing models to help hard to reach people find employment or access training and education. The holistic and client centred approach adopted by voluntary and community organisations has led to successful outcomes with many people who have been regarded as 'failures' by mainstream education and training or deemed unemployed by the market.

In order to meet the needs of those furthest removed from the labour market, achieving value for money needs to go beyond a reliance on risk transfer. Indicators of a programme's value for money should be wider than just contractors meeting their contractual targets. The focus should be on an ongoing assessment of value for money in terms of whether all participants receive a suitable level of support and whether the programme produces the expected wider benefits to society in getting people off benefits and into work.



Job & Benefits Office, Conor Building, Belfast.
Photo: Catherine Couvert

Getting ready for 2014

The Department has suggested that the Steps 2 Success (NI) programme tender will go out in February 2013 and will become operational in February 2014. The planned date for Universal Credit to be introduced in Northern Ireland remains April 2014. As the programme is rolled out DEL needs to validate assumptions that have been made and complete robust evaluations to ensure that harder to help groups remain the focus and that the quality of provision and experience of the participants remains central to the delivery of the programme.

For a more detailed analysis of DEL's proposed employment programme Steps 2 Success, download NICVA.org/news/new-government-employment-programme-test-devolution

Notes

- 1 DWP Work Programme Statistical Release, 27 Nov 2012 Statistical Release, 27 November 2012: statistics.dwp.gov.uk/asd/asd1/work_programme/wp_release_nov12.pdf?x=1
- 2 DWP Work Programme web page www.dwp.gov.uk/policy/welfare-reform/the-work-programme/

WELFARE REFORM

Is time running out for Stormont to make its mark?

Law Centre (NI) policy officer **Georgina Ryan-White** reflects on the progress of the Welfare Reform Bill and hopes that Stormont can achieve more flexibilities to reflect Northern Ireland circumstances.



The Welfare Reform Bill was introduced to the Assembly on 1st October. Unsurprisingly, it greatly mirrors the Great Britain ver-

sion. Whether it remains as such is a matter for the Assembly to decide. The Bill received its second reading on 9 October and was referred to the Social Development Committee on 10 October for clause by clause deliberation.

Committee scrutiny

In order to publish its report within the statutory 30 working days timeframe, the Committee met three days a week to scrutinize the Bill.

The Committee carried out a Call for Evidence and received almost 50 written submissions and oral presentations from 30 organisations including churches, trade unions and representatives from the community and voluntary sector. Both Law Centre (NI) and the Northern Ireland Welfare Reform Group submitted written evidence and gave oral presentations to the Committee.

In light of repeated concerns from stakeholders, the Social Development Committee discussed whether the Bill

should be referred to an Ad Hoc Committee on Conformity with Equality Requirements and Observance of Human Rights. In an unprecedented move, the Assembly voted 52 to 41 in favour of invoking Standing Order 35 to establish the committee.

Human rights issues

In its presentation to the Ad Hoc Committee, the Law Centre highlighted a number of areas within the Bill and subsequent regulations which give rise to human rights concerns, including the provisions to make EU workers meet the 'all work requirements' regardless of their circumstances, and the inability of DSD to provide suitable alternatives to claimants caught by the 'spare room tax'.

The Committee was given until 22 January to report back to the Assembly with its findings. Only then can the Bill be referred back to the Social Development Committee to continue its parliamentary passage.

Concessions on Universal Credit

During this time, Minister Nelson McCausland announced that flexibilities had been achieved in relation to the delivery of Universal Credit in Northern Ireland. Its introduction has been delayed from October 2013 until April 2014 in addition to provisions to allow for split and fortnightly payments and payments of housing credit in Universal Credit to landlords. While these are welcome developments, it

'The Law Centre highlighted a number of areas which give rise to human rights concerns'

remains unclear how these measures will be included in the regulations and administered in practice.

Bedroom tax and discretionary payments

The Northern Ireland Federation of Housing Associations had called for a six months delay to the introduction of the under-occupancy deduction or 'bedroom tax' contained within the Bill. However, confirming the Department's intention to continue with the new rules as planned from April 2013, the Minister stated that Discretionary Housing Payments would be the most appropriate means to mitigate the effect of this measure.

Although Discretionary Housing Payments are helpful, they do not represent an adequate alternative to Housing Benefit entitlement. Unlike Housing Benefit, Discretionary Housing Payments are not paid as of right. They have a limited budget, meaning that if there is no funding left, the claimant loses out. In addition, they are viewed as short term assistance, and claimants are often forced to reapply at short intervals, or

are expected to move house to reduce their rent.

The Department for Work and Pensions had originally outlined its intention to increase funding for Discretionary Housing Payments. In contrast, the Autumn Statement announced a funding reduction of £10 million in 2013-14 and 2014-15, and £5 million in 2015-16 and 2016-17, to allow housing payments for those in supported exempt accommodation to be disregarded from the benefit cap. As of yet, it remains unclear whether this measure will impact upon Northern Ireland. Unlike Great Britain, funding for Discretionary Housing Payments comes from the block grant.

DWP draft regulations

Meanwhile, the Department for Work and Pensions laid a plethora of draft affirmative welfare reform regulations before the House of Commons, at the beginning of December. Affirmative regulations must be expressly approved by parliament. Parliament can only accept or reject these regulations but cannot amend them.

In tandem, the long awaited Social Security Advisory Committee’s report on the Universal Credit regulations and the government’s response were published. The Department accepted recommendations to remove housing costs from Universal Credit for people in supported living accommodation and to allow for more than one start-up period for the self employed, while rejecting other recommendations.

Personal Independence Payment

The Personal Independence Regulations 2013 confirmed the roll-out plan and entitlement provisions. The timetable for introduction has been slowed down. The peak period of reassessment has been postponed until October 2015 when existing claimants with indefinite or ‘life’ awards will also be reassessed for the new benefit. This process is expected to be completed by 2017.

It has also been announced that Capita Business Services Ltd had been awarded the Northern Ireland contract to deliver the independent health assessments for Personal Independence Payments.

Following feedback to the consultation on the assessment criteria, a



Photo: Catherine Couvert

number of changes have been made to the design of Personal Independence Payment. These include broadening the approach to aids and appliances; taking account of specialist orientation aids in the planning and following a journey activity; and dividing the communicating activity into two, to take separate account of verbal communication and the ability to read and understand signs, symbols and words.

Positive changes have also been made on some of the benefit rules, including an extension to temporary absences abroad from four to 13 weeks before benefit is affected.

The Department confirmed that the enhanced and standard rates of both Personal Independence Payment components will be the same cash amount as under Disability Living Allowance.

Northern Ireland approach

Overall, sight must not be lost of what can be done differently to take into account the specific circumstances of Northern Ireland. It remains vital to explore what other flexibilities can be achieved.

The Social Protection Fund, established by the NI Executive, offers a real opportunity to tailor a Northern Ireland approach to the issues presented in the Welfare Reform Bill which should be maximized upon. This fund of £20 million a year should be added to and used to ameliorate the worst effects of welfare reform.

It is imperative that the proposed changes will work effectively in practice. Nevertheless, the timetable remains tight, with Royal Assent and the introduction of the first set of regulations anticipated by the end of April.

EQUALITY AND WELFARE REFORM

The Equality Commission has given evidence regarding the Northern Ireland Welfare Reform Bill to the Department for Social Development Assembly Committee and the Ad Hoc Committee on Conformity with Equality Requirements.

Darren McKinstry, director of policy and research at the Commission, outlines the importance of equality considerations in the delivery of the Welfare Reform Bill.



Northern Ireland's Welfare Reform Bill will without doubt cause the biggest shake-up of the social security benefits system in many years. The

Commission considers that it has the potential to impact severely on some of the most vulnerable members of society and we have drawn attention to the importance, and the requirement, for all those dealing with the legislation to properly understand, consider and respond appropriately to the impacts of welfare reform.

Barriers to employment

In our November 2011 response to the Department for Social Development's equality impact assessment of its welfare reform proposals, the Commission said it agreed with the policy aim to 'seek to make the social security system fairer, more affordable and better equipped to deal with poverty and welfare dependency'. But we also pointed out that there are barriers to employment for some groups of people - including women for

example, or people who are older or who have disabilities. These barriers are often institutional or societal, and without appropriate support it is wrong to assume that everyone has the ability to improve their own situation.

In our response to the EQIA, we also expressed considerable concern about how some of the steps had been completed. Amongst our concerns, we noted that the data considered by the DSD were extremely limited and that minimal analysis of the potential impact of the proposals had been done.

Cumulative impact

The Commission is in contact with the Department about the EQIA, both in respect of updating the initial assessment and in respect of any screening and equality impact assessment of regulations as they are developed. We have also voiced our concerns to the DSD Assembly Committee and to the Ad Hoc Committee, and made DSD aware of our overarching concerns about the cumulative effect of the welfare reform proposals. Investigation by the Commission of potential failure to comply with its Equality Scheme commitments is an option, and the Commission is monitoring closely what the Department is doing

to ensure the effective application of its duties.

The Commission is concerned about potential adverse impacts of the Welfare Reform Bill - for example:

- aspects of the Universal Credit proposal;
- lone parent conditionality;
- the Housing Benefit cap; and
- Disability Benefit reform.

We set out below some of the points we have raised, along with proposed areas for further consideration.

Universal Credit payment and women

While the Commission generally welcomes Universal Credit, we are still concerned that the negative impact on women has not been acted upon. We have recommended consideration of payment to the primary carer, usually the mother of children, rather than split payment between two parties in the household.

Online claims impact on disabled people

We are also urging, regarding the payment of benefits online, that safeguards be put in place to ensure accurate and timely information to claimants; and to ensure that claimants do not suffer immediate impact where information relating to their entitlements is wrongly calculated or recorded outside their control.

A 2011 survey on internet usage by the Office for National Statistics revealed that, in Northern Ireland, people with a disability (46.3 per cent) were much less likely than non-disabled people (77.4 per cent) to have 'ever used the internet'. The figures also reveal that internet usage amongst disabled people here is less than the UK average for people with disability (63.8 per cent). Internet usage is a key issue that must be addressed to ensure that all claimants have full access to their benefit entitlements using the new online benefit system.

Conditionality and people with dependants

We have also recommended clarification around some of the ‘claimant responsibilities’ sanctions. The requirement for a claimant or ‘both members of a couple’ to enter into a claimant commitment as part qualification criterion for Universal Credit has the potential to impact adversely on people with dependants, who are typically women with children. We also urge restraint in the blanket application of sanctions for non-compliance with work-related requirements, and recommend that each case should be considered on its own merits.

We are also concerned that some of the conditions for both work-related requirements and claimant commitments may have a particular effect on lone parents of young children. The same eligibility conditions which apply to all claimants, such as being required to be available for work and to spend time actively seeking work, will apply to them. This could be an unrealistic condition for a lone parent without access to appropriate, affordable childcare.

We are concerned that the Welfare Reform Bill does not fully consider the context of Northern Ireland policy and legislation not subject to parity. For example, unlike England and Wales where the Childcare Act 2006 imposes a duty on local authorities to identify and meet childcare needs, Northern Ireland has no corresponding childcare legislation. There is thus no statutory requirement for the provision of childcare in Northern Ireland, where Employers for Childcare has asserted that the situation on both availability and affordability of childcare is the worst in the UK.

The application of this ‘lone parent conditionality’ could limit the educational and training opportunities available to parents and damage their ability to progress up the skills and employment ladder. It has the potential for long-term adverse impact on parents and children alike.

Housing, disabled and separated parents

Changes are also proposed which will introduce a size criterion to assessment for Housing Benefit. This is of concern in the case of tenants who may be disabled and need room for carers or specialist equipment, or housing adaptations resulting in extensions to the property. It also has the potential to impact on separated parents, who may need additional rooms to accommodate their visiting children. There is a risk that such tenants may suffer a reduction in benefits due to ‘under occupancy’.

While the EQIA notes ‘Households containing a disabled adult and with a non-resident carer will be assessed as having a reasonable requirement for an additional room. This will have the effect of reducing the number of disabled claimants affected by the measure’, it is not clear if this extends to those with fluctuating conditions.

The Commission is also concerned that a tenant’s ability to move house may be restricted due to the unavailability of appropriate social housing stock (in relation to one or two-bedroom accommodation) and considers that the implementation of welfare reform must take account of the availability, accessibility and appropriateness of the current housing stock in Northern Ireland.

Personal Independence Payment

The removal of severe disability premium addition to Income Support for those in receipt of Disability Living allowance, under Universal Credits, is likely to result in loss of income and therefore a potential adverse impact on disabled people. The final EQIA identifies a cash loss of £39 per week for 29,000 disabled households but does not identify this as an adverse impact, stating that ‘transitional protection put in place



Photo: Catherine Couvert

will mean there are no cash losses as a direct result of the move to Universal Credit where circumstances remain the same’.

The Department has advised that all disabled people who meet the new qualification criteria of entitlement for PIP will have to go through an additional assessment - the Work Capability Assessment - for entitlement to additional income-related benefits in Universal Credit which are currently automatically granted under the existing DLA Working Tax Credit framework.

We strongly recommend that account is taken of the findings and recommendations of the independent Harrington Review of the Work Capability Assessment (Second Review April 2011), particularly with regard to the evidence gathering process and the support claimants may require during the face-to-face consultation phase of the assessment. We have concerns that the Work Capability Assessment process has the potential to disadvantage disabled people if carried out by an independent assessor who has no

continued on page 25/

SOCIAL SECURITY UPDATE



Tax credits: making the most of the new fast track procedure

The autumn 2012 social security update outlined the new fast track procedure for tax credit claims. This article by **David Mitchell**, apprentice solicitor at the Law Centre, seeks to ensure that fast track claims are processed as quickly and efficiently as possible.

What is the fast track procedure?

The fast track scheme enables a person to apply for tax credits in their local Social Security Agency office or Jobs and Benefits office when making a claim to another benefit.

It is designed to avoid lengthy delays in getting a tax credit entitlement decision. HMRC guidance suggests that claims should be processed within ten days. The fast track procedure does not currently extend to HMRC Child Benefit claims.

Below you will find some guidance that a person should consider if wishing to make a claim for tax credits via the fast track procedure. This guidance identifies how a claimant may pre-empt the need for HMRC to request further information, which can cause delay.

Who can avail of it?

The following people can submit their tax credit claims via the fast track procedure:

- 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 National Asylum Seeking Support into work.

What evidence must be submitted?

■ Birth certificates

Typically, Child Benefit claims are in payment before Child Tax Credit. However, as Child Benefit is not subject to the fast track procedure claimants may now have their tax credits in payment first. The Tax Credits Office has a system in place which enables HMRC staff to access a person's claim to Child Benefit. Therefore if the Child Benefit Office has received and verified a child's birth certificate then this information can be used by the Tax Credit Office, avoiding both of the HMRC offices needing to verify a child's identity.

As only tax credits can be fast tracked, a claimant will need to submit a child's birth certificate or identity document to the Tax Credits Office first if making a claim under the fast track procedure. It is recommended that all original documents are sent via Special Delivery.

If there are problems in obtaining a copy of a birth certificate, for example if the claimant is a refugee from a country where birth certificates are not supplied, the claimant may wish to attach documentary evidence to the claim form to substantiate this. Useful authorities include Human Rights Reports from the United Nations and Amnesty International.

'The fast-track scheme is designed to avoid lengthy delays in getting a tax credit entitlement decision.'

UKBA documents also provide good documentary evidence to validate a claimant's status and entitlement to claim benefit. These documents may include the name and date of birth of any children who have also sought asylum with their parent(s) and may provide sufficient proof to confirm identity in the absence of a birth certificate.

■ Bank account details

As claimants will require a proof of address, they may have difficulty opening a bank account to facilitate the payment of their tax credits. As a person making a fast track application will be doing so through their local Jobs and Benefits office, it is recommended that they request a Simple Payment Account to be opened in their name. This is a 'benefits only' account and overcomes the hurdle in trying to open a bank account without the necessary identification documents. Alternatively, HMRC has provisions to pay a claimant by giro for up to eight weeks. This will allow more time to gather sufficient identity documents to open a bank account should the claimant wish to do so.

■ National Insurance Number

If a claimant does not have a national insurance number, they should ensure that one is requested when attending their local Jobs and Benefits office. The customer adviser will complete a DCI (1)(B) form which will be sent to the National Insurance Processing Centre. If the claimant has submitted the claim before receiving a national insurance number, they should notify HMRC as soon as it is received.

■ Change of address

Often claimants to tax credits who are in temporary housing or National Asylum Seeker Support accommodation may move to an alternative address while waiting for their claim to benefit to be determined. Obviously HMRC should be notified of any change of address as soon as possible to avoid any requests for further

Continued from page 23

information being sent to a previous address.

■ **Authority to act**

Advisers and representatives are encouraged to complete and submit a TC689 HMRC Form of Authority, enabling them to act without the claimant being present. This will allow follow up calls to the Tax Credits Intermediary Office to be made in the claimant’s absence to check on the status of the claim. A TC689 form can be faxed to HMRC’s fax number 01772 235119 and should be placed on their computer system within 24 hours.

Can a claimant receive emergency payments while waiting for a claim to be assessed?

If a claimant is struggling to meet their immediate needs due to a delay in processing a tax credit claim it is advisable to contact the Tax Credits Office to request emergency payments (sometimes called hardship payments). However, HMRC claims that emergency payments cannot be requested until three weeks have passed since the submission of the claim form. If emergency payments are refused, the claimant should ask for a written decision. If you have a claimant in this situation, you can contact the Law Centre for further advice and assistance.

What if HMRC does not make a decision within ten working days?

HMRC has a statutory duty to make a decision under Section 14 of the Tax Credits Act 2002 and this must be carried out within a reasonable time frame (HMRC guidance suggests fast track claims should be processed within ten working days). If you have a case where HMRC has not followed this guidance, you can contact our advice line for further advice and assistance.

Law Centre (NI) advice line: 9024 4401 and 7126 2433, Monday to Friday 9.30am to 1pm.

previous knowledge of the claimant’s personal circumstances or health condition. Evidence from the claimant and medical evidence from the claimant’s own doctor or other medical professional should be taken into account. Further, questions to the claimant should be explicit, clear and transparent during the assessment and understood by the claimant.

Any correspondence to claimants regarding the Work Capability Assessment should make clear that they can take someone with them to the assessment for support to represent their interests. This would apply, for example, to people with a severe learning disability or who have complex support requirements. The Equality Commission is aware, through contact from families of claimants, of some instances where claimants were not informed of their entitlement to such a provision.

Monitoring

The Equality Commission will continue to keep a close watching brief

and engage with the Department on its equality obligations. We are monitoring what the Department is doing to address our concerns about its Equality Impact Assessment and are determined to ensure the effective application by the DSD of its equality duties.

It is crucial that potential adverse impacts identified through the development of the Bill and evidence presented to date are addressed by DSD and that mitigating measures or options are brought forward to address what are matters of critical importance for already marginalized groups in Northern Ireland.

For more information contact Christina Martin 028 9089 0861 or Ciaran Bradley 028 90 500 695 or 07715 476186

Northern Ireland
Ombudsman

Child maintenance

In this case, the complainant was aggrieved about the handling by DSD’s Child Maintenance Enforcement Division (CMED) of his child maintenance liability, following his completion of a maintenance enquiry form in respect of his two children.

The Ombudsman’s investigation found significant instances of maladministration on the part of CMED, with regard to its handling of this case. In particular, he found that CMED’s decision to impose a Deduction from Earnings Order on the complainant was premature; that it failed to provide him with full details of the amount of child maintenance

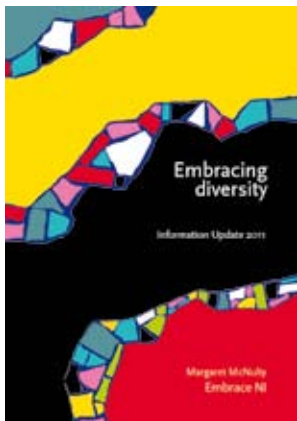
arrears and how they were calculated; that it delayed in handling his request for an adjustment to his child maintenance liability; that it failed to notify him of a home visit; and that it breached confidentiality.

In terms of injustice, it was evident to the Ombudsman that the complainant experienced considerable frustration, inconvenience and distress over a protracted period of time. By way of redress, he concluded that the complainant should receive a letter of apology from the acting head of CMED, together with a payment of £1,000. All the Ombudsman’s recommendations were accepted.

REVIEWS

Embracing diversity

By Margaret McNulty. Published by EMBRACE NI 2012. www.embraceni.org



This is the 7th update of 'Embracing Diversity', written by Margaret McNulty, Information Officer at EMBRACE, and first published by EMBRACE NI in 2005. For such a compact format it contains an astonishing density of information on topics concerning migrants to Northern Ireland. Finding your way round this mass of information is helped by a detailed contents page at the front and the facts are given life by quotations on the page margins from migrants and organisations that help migrants.

As well as a broad overview on why migration happens, it covers the effect of the recession on migration, and the immigration debate. A short section explains the background of the Roma people and the reasons why they are often seen on our streets. There are useful statistics on numbers applying for asylum in Northern Ireland going up to 2012, and the results of local surveys into attitudes to ethnic minorities.

General information is backed up by specifics including Bulgarian and Romanian nationals' entitlements, access to healthcare, workplace rights and border issues. Problems involving destitution and trafficking are highlighted with suggestions on the best way to help. The book has an extensive bibliography, invaluable for researchers in this field, and an index of support groups and agencies.

The publisher, EMBRACE, is an

organisation with a Christian base, formed as a result of concerns about the hardship suffered by asylum seekers, and the last section gives helpful advice to churches on how to welcome and include newcomers in their activities.

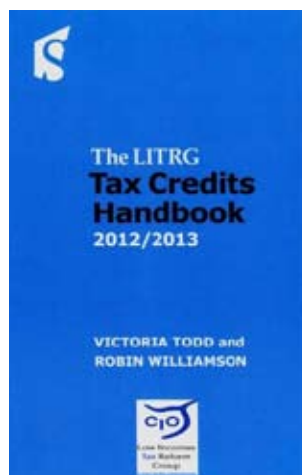
'Embracing diversity' is of immense value to organisations working with immigrants or for individuals interested in learning more about our immigration system and how it impacts on migrants to Northern Ireland.

PDFs of the current edition and previous editions are available on the EMBRACE NI website.

Mary Blair, librarian, Law Centre (NI)

The LITRG Tax Credits Handbook 2012/13.

By Victoria Todd and Robin Williamson, LITRG. www.litrg.org.uk. Price £29.95.

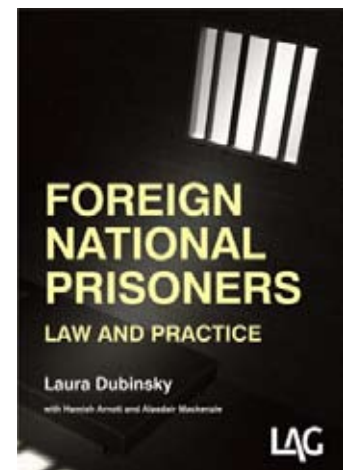


Do you offer advice on Tax Credits? If so I would really recommend that you buy this book and keep it close to your desk. The Handbook, produced by the Low Income Tax Reform Group, deals with the very complex system of tax credits with admirable clarity. There are sections on all major tax credit topics including: claims, entitlement, overpayments, appeals and forthcoming changes. You will be left wondering how you ever got by without it!

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

Foreign National Prisoners: law and practice

By L Dubinsky, H Arnott, and A Mackenzie. Published by Legal Action Group. Price £55.



The UK government has been altering its detention and removal policy in response to media coverage in 2006 that between the years 1999-2006 over 1,000 foreign national prisoners (FNPs) were released in the UK after completing their prison sentences.

To learn more about the recent changes, if you represent FNPs or are someone with an interest in civil liberties then you will benefit from the Legal Action Group (LAG) publication written by Laura Dubinsky with Hamish Arnott and Alasdair Mackenzie, *Foreign National Prisoners Law and Practice*. The authors present a comprehensive overview of the procedures and evidence for appealing deportation orders, prison law, remedies and damages available for FNPs. Mental health legislation and FNPs family rights are also discussed.

FNPs law and policy is still evolving and for that reason the impact of the new laws and policies remains to be seen. Case in point is the UK Borders Act 2007 which introduced automatic deportation for non-EEA nationals who have been incarcerated for twelve months. However, as the authors explain, 'automatic deportation is a misnomer (69).' For one,

deportation orders are made under Immigration Act 1971 which means that FNP have legal rights to appeal deportation orders under the Refugee Convention, ECHR and EC law provisions. Chapter 20 is where you will find useful legal guidance on how to prepare your appeal against deportation orders.

Overall, I believe that you will appreciate this legal resource for bringing clarity and insight into such a difficult and complex area of law.

**Hilary Kipniss,
intern, Law Centre (NI)**



**Joint Standards Committee
Member**

The Joint Standards Committee of the Northern Ireland Social Security Agency and the Northern Ireland Child Support Agency was set up in December 1999. The latter has been succeeded by Child Maintenance and Enforcement Division. The Committee is a non executive body with an independent chairperson responsible for providing the Chief Executive of the Agency and Head of Division of Child Maintenance and Enforcement Division with assurance on the standards of decision making. The Agency and Division wish to appoint an independent member and are now seeking applications.

Applicants must have:

- a general knowledge of the business of both the Social Security Agency and the Child Maintenance and Enforcement Division and the corresponding legislation;
- an awareness of public opinion on social security and child support matters;
- experience of working with the voluntary sector, community groups, trade unions or other groups which regularly represent customers in their dealings with the Social Security Agency and the Child Maintenance and Enforcement Division;
- an ability to work as part of a team;
- an ability to put forward views and opinions clearly and concisely.

The appointment is for an initial period of 4 years, renewable by agreement. It is expected that the member will commit approximately eight days a year. Salary will be £2,040 per annum subject to annual review. Successful applicants may be required to travel within Northern Ireland.

Application forms including alternative application formats and further information about the post may be obtained from Standards Assurance Unit, 1st Floor, 43-45 Falls Road, Belfast BT12 4PD
Telephone: (028) 90138123 or (028) 90138128
Email: SAU.REPORTINGTEAM@NISSA.GSI.GOV.UK
Completed applications must be returned by 2pm on 8 February 2013

The Department for Social Development is committed to the principles of public appointment based on merit, with independent assessment, openness and transparency of process. The Department is committed to providing equality of opportunity and welcomes applications regardless of gender, age, marital status, disability, religion, ethnic origin, political opinion, sexual orientation or whether or not you have dependants.



**INVESTORS
IN PEOPLE**

www.dsdni.gov.uk

LIBRARY NEWS

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

Books/reports

The cost of a child in the twenty-first century. Sept 2012. Child Poverty Action Group (CPAG) 2012.

Counting the costs 2012: the financial reality for families with disabled children across the UK. Contact a Family, 2012.

Getting personal? Making personal budgets work for people with dementia. Alzheimer's Society, 2012.

Improving government service delivery to minority ethnic groups: Northern Ireland, Republic of Ireland, Scotland edited by Philip Watt and Fiona McGaughey. OFMDFM and others, 2012.

Into the unknown: children's journeys through the asylum process. Children's Society 2012.

The LITRG (Low Income Tax Reform Group) tax credits handbook by Victoria Todd and Robin Williamson. LTRG, 2012.

Working arrangements for the welfare and protection of adult victims of human trafficking – guidance. Oct 2012. Dept of Justice and DHSSPS (NI)

Journal articles

Poverty and social justice in China – several articles. Journal of Poverty and Social Justice 20(3) October 2012

Single parents and the welfare-to-work agenda. Journal of Poverty and Social Justice 20(3) October 2012

Subversion of the adjudication scheme for Employment and Support Allowance. Journal of Social Security Law (3) 2012.

Database

www.revenuebenefits.org.uk

Website providing advisers with access to the latest information on the range of HMRC 'products', including tax credits, Child Benefit, Guardian's Allowance, Child Trust Fund and more.

To visit our library, contact librarian Mary Blair on 028 9024 4401

TRAINING AT LAW CENTRE (NI)

Belfast

Mental Capacity and Community Care	24 January
Employment Law (two days)	30 & 31 January
Social Security: Seeking Work, Other Requirements & Sanctions	14 February
Personal Independence Payment (no spaces left)	20 February
Mental Health and Criminal Justice	21 February
Children and Young People in the Immigration System	6 March
Understanding Universal Credit and Other Changes	7 March
Personal Independence Payment	13 March
Commissioner Appeals, Identifying Errors of Law	19 March
Legal Research Skills for Advisers (half day)	21 March
Benefits for Carers	26 March

Derry

Employment Law (two days)	27 & 28 February
Understanding Universal Credit and Other Changes	14 March
Personal Independence Payment	28 March

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

For more details visit the training section of our website: www.lawcentreni.org or contact elaine.mccorriston@lawcentreniwest.org

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- 1/4 page £80
- 1/2 page £120
- full page (inside) £200
- back cover sponsorship advert (includes mention in contents page of magazine):
 - 1/2 page: £300
 - full page: £500

We can design your advert or take camera-ready copy. We also take leaflet inserts.

For more information contact Catherine Couvert, Publications Officer

Telephone: 028 9024 4401

Email: catherine.couvert@lawcentreni.org

Training and conference rooms for hire



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

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

Members

£60 (half day)
£120 (full day)

Non-members

£70 (half day)
£140 (full day)

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

Available equipment

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

Catering

- tea/coffee/biscuits £1.50 per person per serving
- tea/coffee £1.00 per person per serving
- sandwiches £3.00 per person per serving

For more information or to book: contact Ann Cartwright on: 028 9024 4401 or email: ann.cartwright@lawcentreni.org