

Ad Hoc Committee on Conformity with Equality Requirements of the Welfare Reform Bill
2012

Submission of Evidence

1. Introduction

This Submission of Evidence has been prepared by Niamh (The Northern Ireland Association for Mental Health), Disability Action and Mencap. It focuses on the human rights and equality aspects of the Welfare Reform Bill, which impact disabled people¹. We consider that the work of the Ad Hoc Committee has specific relevance to disabled people in Northern Ireland.

The Ad Hoc Committee has been established under the provisions of the Northern Ireland Act 1998, consequent to the Peace Settlement. The high levels of disability in Northern Ireland, particularly of mental ill-health are related to the conflict. Further disabled people's ability to have equal access to goods and services, and employment; as well as enjoy their human rights has been significantly affected by historical under-investment in infrastructure and services.

Commentary within and outwith the Assembly on the welfare reform agenda has recognised that there will be a significant and differential impact on disabled people. It is essential that action is taken to mitigate negative impacts of welfare reform on these groups.

This submission of evidence provides:

- a summary of the legal framework for the Ad Hoc Committee
- a discussion of parity
- examples of the impact of welfare reform on disabled people; and
- recommendations that address human rights and equality concerns regarding both the primary legislation (the Welfare Reform Bill 2012) and the secondary legislation (the Regulations).

¹ We note that this Submission of Evidence was prepared in advance of the announcements in relation to PIP by the Minister for Disability, Esther McVey Mp on 13 December 2012.



Niamh

Niamh is the largest and longest established mental health charity in Northern Ireland. We deliver community based mental health services in every constituency through Beacon and Carecall; undertake mental health research; and seek to influence public and political debate about mental health through our public affairs work and campaigns.

Disability Action

Disability Action works to ensure that people with disabilities attain their full rights as citizens, by supporting inclusion, influencing Government policy and changing attitudes in partnership with disabled people.

Disability Action is unique in its work, as it is the only Northern Ireland wide pan disability organisation working with disabled people with various disabilities; physical, mental, sensory, learning and hidden. Our work is important as one in five people in Northern Ireland has a disability.

Mencap

Mencap is the voice of learning disability. Everything that we do is about valuing and supporting people with a learning disability, and their families and carers across Northern Ireland. In Northern Ireland we deliver a range of services, support a membership network of local groups and clubs, and campaign for equal opportunities and chances for people with a learning disability.

2. Summary of Legal Framework for Ad Hoc Committee

2.1 The Principle of Lawfulness

The Belfast Agreement reflected a consensus political and societal desire to achieve reconciliation, tolerance and mutual trust and protection as well as serving to vindicate the human rights of all. The political parties committed themselves to “partnership, equality and mutual respect as the basis of relationships within Northern Ireland”. The *Northern Ireland Act 1998* was introduced to provide a legislative basis for and a backdrop to the new political dawn envisaged by the signatories to the Agreement.

Whilst primarily concerned with the Constitutional arrangements for power sharing, the *Northern Ireland Act 1998* also mandates that the Northern Ireland Assembly and its

Ministers uphold and protect the rights guaranteed to the people of Northern Ireland under the European Convention on Human Rights. This is implicit in provisions of the 1998 Act, which requires that the overarching ethos of legislative standards is to be derived from the provisions of the ECHR.

For example, section 6 of the 1998 Act provides that a provision is outside the legislative competence of the Assembly if it is incompatible with any of the Convention rights - therefore provisions introduced within any legislative framework, whether primary or secondary legislation, must be human rights compliant. More specifically, section 24 of the 1998 Act provides that a Minister² or Northern Ireland Department has no power to introduce subordinate legislation or to do any act in so far as that would be incompatible with any Convention right; therefore, should Regulations (as subordinate legislation) be introduced in furtherance of the anticipated Welfare Reform (NI) Act 2013 which are *prima facie* in breach of any of the ECHR rights, the Minister and/or Department will be acting unlawfully if they introduce such legislation, and a challenge to any such legislation is very likely to result in the non-compliant regulations being struck down by a Court. More commonly referred to in Northern Ireland are the equality provisions of section 75 which require a public authority to have due regard to the need to promote equality of opportunity between categories of person, which includes sexual orientation. Detailed submissions have been forwarded to the Committee on section 75, for example, by the Equality Coalition, and in the interests of avoiding duplication it is not intended to rehearse those arguments again, except to say that we strongly advocate the adherence to both the spirit and the specifics of section 75 and the ancillary structures set up to ensure compliance with it.

The Northern Ireland Act 1998 also served to provide the statutory basis for two significant post-conflict commissions: the Northern Ireland Human Rights Commission (established under sections 68-72) and the Equality Commission (established under sections 73-78). It is our view that the existence of and the expertise within these Commissions provides a purpose built structure which should be used to assess, monitor and advise the Departments as regards the compatibility and outworking of the subsequent regulations required by the general provisions of the anticipated Welfare Reform (NI) Act 2013.

Not all equality and human rights breaches may be apparent on the face of either primary

² “Minister”, unless the context requires otherwise, means the First Minister, the Deputy First Minister or a Northern Ireland Minister: s.7 (3).



or secondary legislation, and it is for this reason that both Commissions should operate as overseers of compliance as the provisions of the Act and the regulations roll out. Such a role would allow possible breaches to be identified, assessed and rectified, without resort to expensive and protracted litigation.

Individual examples of difficulties could be analysed so that consideration could be given to whether the difficulties represent a rights breach of general application or are fact specific to that individual. This would result in either a considered approach to amending the regulation to ensure future compliance, or it could result in a context specific remedy to the individual concerned with associated learning around application of systems, etc. focused on whatever was the source of the difficulty for that individual.

2.2 Taking Due Regard of Ratified Instruments and the ECHR in Policy Making

The OFMdfM guide on policy making³ is clear that policy makers must be outward looking and use information and experiences from the regional, national, European and international situations and ‘make use of OCED and EU mechanisms etc’⁴. The policy is also clear with regard to the European Convention on Human Rights (ECHR) which the policy comments is incorporated into domestic law and warns policy makers that, “for the first time, individuals who consider that their Convention rights have been breached will be able to seek redress in the courts in Northern Ireland instead of having to incur the cost and delay of taking a case to the European Court of Human Rights in Strasbourg”.⁵

The focus of the policy guidance is compliance with the ECHR and the Human Rights Act. The OFMdfM policy guidance comments that, “where necessary, existing legislation must be examined to identify provisions which might not be compatible with the ECHR and future policy and legislation developed taking account of the ECHR, the Human Rights Act and the Northern Ireland Act”⁶.

The policy guidance from the OFMdfM reflects the current status of international agreements in the UK as stated by Assembly Research Briefing paper, which concluded that

³ OFMdfM, A Practical Guide to Policy Making, <http://www.ofmdfmi.gov.uk/policylink>

⁴ OFMdfM, A Practical Guide to Policy Making, <http://www.ofmdfmi.gov.uk/policy> Page 6 (website accessed December 2012)

⁵ Ibid page 40

⁶ OFMdfM, A Practical Guide to Policy Making, <http://www.ofmdfmi.gov.uk/policy> Page 41 (website accessed December 2012)

the comment that “the justifiability of the UN treaties is questionable”. However it is clear in court proceedings that UK ratified instruments are viewed by the judiciary as colouring the interpretation of the ECHR (this is illustrated in the *Burnip, Trengove, Gorry v SSWP* [2012] EWCA Civ 629 case cited in the Under-occupancy section below).

2.3 Recommendations

We recommend that the Ad Hoc Committee explicitly states in its report that both the primary legislation (the Welfare Reform Bill 2012) and the secondary legislation (the Regulations) must be human rights and equality compliant before they are passed by the Assembly in line with the provisions of the Northern Ireland Act 1998.

We recommend that the Ad Hoc Committee seeks confirmation that both Commissions will operate as overseers of compliance as the provisions of the Act and the regulations roll out in order that possible breaches are identified, assessed and rectified, without resort to expensive and protracted litigation.

We recommend that the Ad Hoc Committee demonstrate innovative leadership by considering how the primary and secondary legislation (including the systems of review, monitoring and sanctions that it establishes) comply not only with the Human Rights Act and the ECHR but also Northern Ireland’s international obligations under UK ratified instruments.

3. Parity

We recognise that parity is a central consideration in progressing the Welfare Reform Bill and Regulations through the Assembly. As members of the Northern Ireland Welfare Reform Group we share the Group’s position, which is articulated in its Briefing on Parity⁷.

As an alliance of disability organisations, we are of the view that the principle of parity only works when jurisdictions are working from the same position; we are not doing this in regard to Northern Ireland with regard to: our higher incidence of disability, differing policy environment, and differing social context due to the conflict. We note that there are

7

<http://www.niamhwellbeing.org/SiteDocuments/WRG%20Parity%20Briefing%20Paper%20Nov%202012%20Final.pdf>



precedents that exist for breaking parity. We are concerned that the lack of data from the Department of Social Development generated through policy simulation models means that the full equality and human rights impacts in Northern Ireland are not possible to quantify.

3.1 Higher incidence of disability

It is widely accepted that in Northern Ireland there is a higher rate of disability. The reasons for this include the conflict, higher levels of social deprivation and ill health. There are also differences in the type of disability experienced, with a significantly higher incidence of mental health disability here.

The most recent statistics show that just over 10% of NI population is in receipt of DLA. In the last decade the proportion of working age population in receipt of DLA has risen from 8% to 9% and it is twice the rate of Britain. Research evidence would suggest that ‘part of the explanation for higher receipt of DLA in Northern Ireland lies in the worse levels of ill health’.

In a research report commissioned by WAVE Trauma Centre and funded by OFMDFM, “Injured in the Troubles: the needs of individuals and their families” (May 2012), it states, “No comprehensive census of those injured is available; therefore, it is not easy to provide a definitive estimate of the number of people who are living with injury as a result of the Troubles in Northern Ireland.....This report provides an overview of the current estimates of numbers of people injured which range from 8,383 to 100,000”.

In relation to economic and financial needs the report states that “injured people identified economic needs and money worries as a major stressor”. It further states that “since many injured people rely entirely on the benefits system, the current review of disability benefits is causing great anxiety”.

Earlier research has highlighted the prevalence of mental ill-health due to the conflict; and secondly the severity of mental ill-health related to the high levels of Post Traumatic Stress Disorder. (Bunting, Murphy, O’Neill and Ferry, 2011; Bamford Review, 2007; Appleby, 2005). The “Troubled consequences: A report on the mental health impact of the civil conflict in



Northern Ireland” report, published by Commission for Victims and Survivors (October 2011), provides a detailed analysis of prevalence, help-seeking and service use.⁸

3.2 Differing policy environment

In Northern Ireland the policy environment is significantly different to the rest of the GB, and in particular disability policy. For example in England and Wales there is an Independent Living Strategy and a Disability Strategy which have key indicators and measures.

In Northern Ireland the final draft **Disability Strategy** has not yet been launched. The fact that we have had no such strategy or policy in Northern Ireland demonstrates that we are not working from a position of parity.

In Northern Ireland we also do not have an effective **Childcare Strategy**. A consultation has been launched on this strategy but this is only the start of the process. In England the National Childcare Strategy was launched in 1998 and updated in 2004. The fact that we have had no such strategy or policy in Northern Ireland demonstrates that there we are not working from a position of parity.

As mentioned earlier Northern Ireland does not have an Independent Living Strategy, we also do not have a system of personalisation in relation to how social care is delivered. In Part 3 of the **Welfare Reform Bill 2009** legislation was brought forward in GB in relation to Choice and Control and how disabled people are given more rights to choice and control in how they have care delivered. In Northern Ireland we did not bring forward this piece of legislation which demonstrates another area where parity does not exist for disabled people here.

Finally in relation to **disability equality legislation** disabled people in Northern Ireland do not have parity with disabled people in other areas of the UK. The Equality Act in GB strengthened the rights of disabled people in relation to discrimination legislation. However, in Northern Ireland similar legislation has not been brought forward; this demonstrates another area where parity does not exist for disabled people here.

⁸ This report was prepared by the Bamford Centre for Mental Health and Wellbeing at the University of Ulster in Partnership with the Northern Ireland Centre for Trauma and Transformation and Compass (Niamh’s research section)



We currently have around 175 people with a learning disability who continue to have a hospital as their home address in Northern Ireland⁹; and are waiting to be resettled into the community. This is not the case in the rest of the UK where no-one with a learning disability lives in a long stay hospital. The “Bamford Review of Mental Health and Learning Disability: Equal Lives” was published in 2005; whereas the equivalent report in Britain “Valuing People” was published in 2001. Therefore there has been greater progress in the rest of the UK in addressing inequalities that people with a learning disability have historically faced.

3.3 Differing social context

Decades of conflict have created a different social context in Northern Ireland from the rest of the UK. There has been historical under-investment in infrastructure and services that would enable disabled people to realise their human rights such as the rights to participate in public and political life, and to live independently. Examples of poor infrastructure are the lack of comprehensive accessible transport particularly in rural areas; the lack of an appropriate housing stock. Examples of poor services are the lack of appropriate childcare that would enable the parents of disabled children to engage in education, training and employment; and the lack of appropriate and accessible education and training programmes.

Further, the provisions of the Welfare Reform Bill presume a freedom of movement between different areas for education, training and employment. However, a continuing legacy of the conflict is that individuals cannot live in all areas or indeed travel through and to certain areas because of continued sectarian division.

Disabled people are vulnerable to hate crime and we consider that they will be put at greater risk if they have to travel through and / or to areas that are unsafe because of sectarianism. We note that the absence of accessible, reliable public transport means that disabled people report to our organisations that they have to use their current benefits to fund travelling by taxis in order to minimise the risk of hate crime.

For individuals whose mental ill-health is a consequence of conflict-related trauma it is not appropriate for them to be required to travel to or through areas where conflict-related events took place. The relationship between mental health and the conflict is illustrated by Niamh’s research into our day support services reported this year. 91% of our members

⁹ Transforming Your Care: Vision to Action, Health and Social Care Board p39

were raised in Northern Ireland; and 36.5% reported “some” or “a lot” of political violence in their neighbourhood. 39.5% reported having personally suffered “some” or “a lot” as a result of the conflict. The impacts of the conflict reported included having to move due to intimidation (16.7%), having personally experienced damage to their home as a result of a bomb (10.9%), experiencing personal injury as a result of cross community violence (7.7%); and having family or friends injured in cross-community violence (19.3%).

For some claimants it may be difficult to initiate discussion about these conflict-specific issues with welfare benefits assessors and officers. Therefore it is incumbent on the Assembly to amend the primary and secondary legislation to ensure that the legislation in Northern Ireland is appropriate for the differing social context.

3.4 Precedents of breaking parity

In addition to Part 3 of the Welfare Reform Bill 2009, we note that parity has been broken also in relation to: water rates, and winter fuel payments. Further we note the intentions of the Executive to break parity around a reduction in Corporation Tax and Airport Tax.

3.5 Lack of Northern Ireland Impact Data

As the Department for Social Development has not yet confirmed or published the policy simulation modelling in Northern Ireland as stated in the Equality Impact Assessment (EQIA) we are still in a situation that we do not know the number of disabled people that will be impacted by some elements of the Bill. For example, we do not know how many people will be impacted by the removal of Disability Living Allowance and the introduction of Personal Independence Payment. The only statistic available about the lack of policy modelling is from the HM Treasury – Budget 2010 Policy Costings.

It states that, “This measure will introduce an objective medical assessment and revised eligibility criteria for both new and existing working-age claims for Disability Living Allowance, to be rolled out from 2013/14. The assessment will follow a similar process to the Work Capability Assessment (WCA) used for claims to Employment and Support Allowance, with a points based system to assess eligibility to the different rates of the benefit”.

“Drawing on the evidence of the impact of the WCA, the central assumption for this policy is that it will result in a 20 per cent reduction in caseload and expenditure once fully rolled out. It is assumed that existing claimants would be reassessed over three years, with 25 per cent of the caseload reassessed in the first year, 75 per cent by the end of the second year and 100 per cent by the end of the third year¹⁰.”

So in essence we do not know how many people in NI will be impacted by this change. Using the crude 20% that was in the Chancellors budget statement in 2010 would mean that 23,400 people currently entitled to DLA will not be eligible for PIP.

3.6 Recommendations

We recommend that the Ad Hoc Committee considers its scope to develop provisions that reflect the specific conditions present in Northern Ireland with regard to the: (i) higher levels of disability; (ii) different policy environment; and (iii) different social context consequent to the conflict.

We recommend that the Ad Hoc Committee seeks further data from the Department of Social Development (with regard to policy simulation modelling and the differential impact of Section 75 groups) and the Department of Finance and Personnel (with regard to the Impact Appraisal Assessment on human rights).

4. Examples of Impact

In this section we discuss key concerns with regard to the fulfilment of equality and human rights requirements by the Welfare Reform Bill and Regulations. We illustrate the issues raised with examples from our work with individuals with various disabilities: physical, sensory, learning, mental health and hidden.

4.1 The Principle of Reasonableness

We consider the legal principle of reasonableness to be central to the operation of welfare reform. Using the example of the Claimant Commitment under Universal Credit, it should be asked: is it reasonable for a person with a disability to be required to attend a training

¹⁰ http://www.hm-treasury.gov.uk/d/junebudget_costings.pdf



course or work placement in an area which may not be accessible to them due to lack of accessible transport or in a building that is not accessible?

4.1.1 Recommendations

We recommend that the Regulations clearly set out conditionality requirements for carers and disabled people; and that individual circumstances are considered at all times.

We recommend that the legal principle of reasonableness is the basis for the operation of welfare reform. This means that all parts of the social security system take into account at all times the specific circumstances of carers and disabled people; and are sufficiently flexible to reflect fluctuating and degenerative conditions, and altered circumstances.

4.2 The Principle of Legal Certainty

Fundamental to ensuring human rights and compliance is the principle of legal certainty; this is central to all disabled claimants being treated fairly and consistently. We are concerned that there is a significant scope for arbitrary treatment under the Welfare Reform Bill and Regulations.

For example under the Welfare Reform Bill there is a significantly enhanced role for the Personal Adviser. If the Personal Adviser does not have awareness, knowledge and skills to engage with an individual who has specific and potentially complex disabilities there is a significant risk of arbitrariness in how the social security system operates. Further this enhanced role could leave an individual claimant vulnerable if they complain about the conduct of or appeal the decision of the Personal Adviser.

In order to reduce arbitrary treatment and decision making; and to create legal certainty that disabled claimants will receive an appropriate service it is essential that systems are put in place to deliver consistent practice. Such systems would include: core and tailored training for public sector workers and staff employed by private contractors; clear and unequivocal guidance; supervision of practice; review and monitoring of decision making; and a complaints and appeal system that protects disabled claimants.



4.2.1 Example of Impact

The arbitrariness of the current system is illustrated by the experiences two middle aged men who have longstanding diagnoses of mental illness. They reside in supported accommodation provided by Niamh through its Beacon service – one in East Belfast, the other in South Belfast. This accommodation is staffed 24 hours per day. Both men receive support from their statutory mental health service. Both have been in receipt of Incapability Benefit and were reviewed in 2011-2012 for transitioning to Employment and Support Allowance. It is the view of the men and the services that they are not capable of training or employment; and this was communicated through the assessment forms and additional evidence provided by the statutory mental health services.

The man living in East Belfast transitioned onto ESA following a paper review of his case. The man in South Belfast experienced a year of the Social Security Agency insisting that he attend a face to face assessment despite both statutory and voluntary sector mental health services evidencing that this would be detrimental to his mental health and that he did not have the capacity to participate. After a year of social security advocacy by his services, the manager of the accommodation where the man lived attended the Appeal Panel, which decided that he should go onto ESA on the basis of documentation and oral evidence from the service.

4.2.2 Recommendations

We recommend the development of transparent criteria for the operation of welfare reform with regard to disabled claimants.

We recommend the development of systems that ensure that disabled claimants experience consistent treatment at all stages of the social security process.

4.3 Provision of Independent Advice and Representation

Whilst we welcome the cross-party commitments and Ministerial statements to protecting the most vulnerable members of our society including disabled people, the individuals with whom we work experience an undermining of their lives through the changes to the social security system.



We have direct experience of how welfare reform has undermined already disabled people's rights to live independently, to participate in public and political life, to enjoy private and family life, and to be healthy. We consider that there is a real danger of disabled people falling into destitution if mandatory protections are not put in place. This is a serious concern in light of the severe sanctions regime that is being proposed.

4.3.1 Example of Impact

If a claimant is seriously depressed he or she may not answer their phone or their door, or open their mail. They may not be aware that they are not complying with the requirements of the social security system for example to complete an application or assessment form; to attend for assessment; or to fulfil the requirements of their claimant contract. Individuals experiencing mental illness may not have insight into how profoundly their ability to engage with education, training and employment is undermined by their current condition; and may enter into unrealistic and unhealthy commitments in their claimant contract.

Claimants with fluctuating conditions such as mental ill-health may enter into arrangements with their Personal Adviser when they are well but if their condition deteriorates, they may not be able to keep up with such agreements. Individuals who have fluctuating conditions may not understand that they need to communicate how severely their condition impacts them at a medical assessment; or they may, in their desire to recover their mental health, overestimate the pace and extent of this recovery.

In summary disabled claimants need independent advice and representation to help them negotiate the social security system particularly the radical changes created by welfare reform. The providers of this advice and representation need to have awareness, knowledge and skills to engage with disabled claimants.

4.3.2 Recommendation

We recommend the introduction of a mandatory provision of independent advice and representation to disabled claimants provided by advisers who have the awareness, knowledge and skills to engage with them.

4.4 Private Providers

The welfare reform programme gives extensive, wide ranging and core roles to private contractors. As disability organisations we have extensive negative experience of the delivery of medical assessments under the Incapacity Benefit / Employment and Support Allowance transition. Concerns about the performance of the private contractor have been well rehearsed in the media, in discussion in Westminster and the Assembly, and in reports including the Harrington Reviews and the recent report of the Public Accounts Committee. This experience foreshadows the allocation of public funds to private contractors with regard to all aspects of welfare reform.

It has been established in law that those contractors providing goods and services on behalf of the state are considered to be carrying out duties of the state and therefore are designated as “public authorities”. As public authorities these organisations will be required to promote and protect the human rights of their service users under the provisions of the Human Rights Act and the European Convention of Human Rights.

It is implicit in this that Departments and Ministers cannot delegate equality and human rights duties through private contractual arrangements, which may seek to limit the liability of private contractors. The thread of human rights runs from the Department through to the service user by whatever means the Department uses to provide the necessary services. It is for this reason that it is essential that human rights and equality clauses are clear on the face of any contracts entered into with private contractors.

Rather than wait for legal sanctions the Department should front load checks and balances relating to human rights and equality to ensure compliance and protect service users. Such a methodology would also provide an inbuilt review system by which performance can be assessed, shortfalls addressed and failings sanctioned.

4.4.1 Recommendations

We recommend that all human rights and equality clauses are clear on the face of any contracts entered into with private contractors.

We recommend that robust systems of checks and balances relating to human rights and equality compliance are put in place including an inbuilt review system by which performance can be assessed, shortfalls addressed and failings sanctioned.



4.5 Regulations

A central requirement for compliance with human rights and equality is the creation of legal certainty. With regard to the Welfare Reform Bill, we consider that this test is not met for the following reasons.

- The draft Regulations have not been published and these will provide the detail of how the primary legislation will be implemented
- A satisfactory EQIA has not been produced by the Department of Social Development using up to date and comprehensive data
- The data from the policy simulation modelling of different components of the Welfare Reform Bill has not been published by the Department
- It is not apparent whether the Department of Finance and Personnel has produced an Impact Appraisal Assessment on human rights in line with HM Treasury Guidance.

The absence of these documents raises the following issues.

- We do not know the baseline from which the Welfare Reform Bill will be operating;
- We do not have data on the differential impact of specific parts of the legislation on groups covered by Section 75
- We do not have the detail of how welfare reform will operate
- We do not have any evidence base to assess whether the policy intentions of welfare reform that is: (i) to return individuals to education, training and employment; and (ii) to continue to provide (and indeed redirect) social security resources in order to protect the most vulnerable in society, will be realised by the legislation.

There is no legal certainty and there are significant risks that arbitrary implementation of welfare reform will seriously impact the lives of disabled people, compromising their fundamental rights.

4.5.1 Recommendations

We recommend that the Regulations should be passed by affirmative resolution in order to ensure scrutiny by Assembly.

We recommend that the Ad Hoc Committee requests access to all relevant data including policy simulation modelling, and Impact Appraisal Assessments before making its final assessment on the Bill's human rights and equality compliance.

We recommend that the Ad Hoc Committee recommends that the Department of Social Development produces a substantial EQIA on the Welfare Reform Bill based on comprehensive and current evidence; and that it does this in a timely manner than enables firstly scrutiny by (i) the Equality Commission for Northern Ireland in fulfilment of its statutory function, and (ii) voluntary and community organisations working with Section 75 groups.

We recommend that the Ad Hoc Committee recommends that the Department of Social Development produces a substantial EQIA on the draft Regulations based on comprehensive and current evidence; and that it does this in a timely manner than enables firstly scrutiny by (i) the Equality Commission for Northern Ireland in fulfilment of its statutory function, and (ii) voluntary and community organisations working with Section 75 groups.

We recommend that the Ad Hoc Committee recommends that the Department of Finance and Personnel publishes an Impact Appraisal Assessment on human rights in line with HM Treasury Guidance for the Welfare Reform Bill, and for the draft Regulations when these are issued.

4.6 Under-Occupancy

The provisions of the Welfare Reform Bill as currently drafted will require individuals to move into smaller accommodation by reducing the amount of Housing Benefit that they receive. The requirement to move to accommodation with fewer bedrooms raises the following concerns amongst disability organisations.

- Such accommodation may not be accessible for individuals with certain disabilities.
- Such accommodation may not enable the individual to have in home care as required.
- Such accommodation may not be available in areas where the individual has established, family, peer and service support networks, or in areas where the individual feels safe.
- If such accommodation is not available an individual may be forced to move into inappropriate shared accommodation.

- Such accommodation may reduce the individual's access to their children, if they are separated.

We consider that the outworking of the under-occupancy provisions are:

- (i) disruption of social / care / health support networks, and domestic care arrangements;
- (ii) increased risk to personal safety;
- (iii) increased risk of compromising the individual's mental health and recovery;
- (iv) disruption of family life;
- (v) limitation of an individual's right to live independently;
- (vi) limitation of an individual's right to participate in public and political life;
- (vii) increased risk of destitution if the individual is unable to find appropriate alternative accommodation, remains in their home, and proceeds to get into debt with their rent and other household expenses as their income reduces.

4.6.1 Background

From April 2013 it is proposed to introduce size criteria for new and existing working age housing benefit claimants living in the social rented sector. The size criteria will replicate the size criteria that apply to claimants in the private rented sector and whose claims are assessed using the Local Housing Allowance Rules.

The EQIA states that "the impact of the measure on households containing a disabled claimant or partner suggests that a higher proportion of households containing a disabled person would be more likely to be affected by the introduction of the size criteria".

It further states that "households containing a disabled adult and with a non-residential 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".

The mitigating measure only takes into account the need for an overnight carer and does not take into account the extra space that may be needed for aids and equipment, medical equipment or to provide therapies in the home.

It also does not take into account other factors in living in a particular area, for example, being close to family or friends that provide support, accessing community service,

transport and being part of the community. The provision of accessible housing options may already significantly reduce the choice a disabled person has over where to live. By implementing the housing criteria as it currently stands disabled people may not have the opportunity to live independently in their own community.

Our view is that in relation to disabled people the issue is more complex than the number of rooms. The issue is one of reasonable space, firstly for the disabled person to live and move freely, and secondly to accommodate a care-giver. Care-givers are not always family members; they may be employees with a live in status that requires more than an additional bedroom.

4.6.2 Case Law

In the case of *Burnip v. Birmingham City Council*¹¹, Mr Burnip took a case under Article 14 of the EHRC in relation to measures brought forward in the Welfare Reform Bill 2009. Mr Burnip had a severe disability which meant he needed the presence of carers throughout the night in a private rented flat in which he lived. This meant he needed a two bedroom flat. The problem was that the HB amount he received was in relation to a one bedroom flat, without taking into account the need for an additional bedroom because of disability. The claimant argued that this was unlawful discrimination under ECHR.

The Judge held that the Secretary of State had not yet established an objective and reasonable justification of the discrimination effect of the HB criteria. He considered in detail the other benefits received by the claimant, and in particular the fact that they could receive 'discretionary housing payments' to cover some shortfall between their HB allowance and their actual rent. However, he found that because these payments were discretionary and there was no guarantee of them being provided, they could not, by themselves, justify the discrimination.

While there has been legislative amendments to fix the problem, and this is carried over to the new bill in which it will allow for "one additional bedroom in any case where the claimant, or claimants partner is a person who requires overnight care" it does not give consideration to those who may need additional room for therapy and equipment.

There is also some interesting commentary in relation to the UNCPRD. Whilst the Judge reached his conclusions on discrimination without reference to the CRDP he noted that the

¹¹ *Burnip, Trengove, Gorry v SSWP* [2012] EWCA Civ 629



European Court of Human Rights has “shown increased willingness to deploy international instruments as aids to construction of the ECHR”. He summarised the correct use of the CRPD as follows:

“If the correct legal analysis of the meaning of Article 14 discrimination in these circumstances of these appeals had been elusive or uncertain (which I have held that it is not), I would have resorted to the CRPD and it would have resolved the uncertainty in favour of the appellants. It seems to me that it has the potential to illuminate our approach to both discrimination and justification.”

Human rights advocates have commented that “those bringing, or thinking of bringing, disability discrimination claims in future therefore would be well advised to look at the CRPD if the domestic law or the ECHR is not clear”.

If we consider the CRPD in terms of this element of the WRB and in particular article 19 – the right to independent living and being included in the community. It states that “people with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in particular living arrangements”.

4.6.3 Example of Impact

J is 43 years old and has Downs Syndrome. He now lives in his own flat but it has taken him over twenty five years to get a home of his own. J has now been living independently for just over two years in a social housing two-bedroom flat. He did not request the two-bedroom flat, but it was the only one that was offered to him. He has now finally settled in and to him it is his "home". Since moving in, he has adopted the extra bedroom as his "office" complete with a computer. The room also has a spare fold-out bed for family and friends to visit and stay.

J and his parents are now very concerned that he may have to move as a result of this new policy, taking him away from his local community and support networks. They feel that it would be very disruptive and affect his mental well-being. Since moving to his flat, J has for the first time felt that he also has some rights, as well as some choice over his own life. Having to move would destroy his aspiration to live more independently and would most



likely have a negative knock-on effect on the many new skills he has acquired, as well as undermining his confidence.

J currently lives a relatively short distance from his parents, who support him as much as they can. He also gets 17 ½ hours support from a support worker. If J was forced to move further away from his parents and support network as a result of the changes to the Housing Benefit regime, this would most likely lead to J needing more support paid for by the State.

4.6.4 Recommendations

We recommend that the introduction of the under-occupancy provision in the Welfare Reform Bill is deferred until the housing stock in Northern Ireland matches the housing needs of disabled people in the population.

We recommend that criteria are developed to make the assessment of Housing Benefit entitlement, equitable for disabled claimants i.e. by addressing the issues raised in this section.

4.7 Reduction in the term of entitlement to benefits when in hospital / care setting

We are concerned that the intention to reduce the period that an individual is in a hospital or care setting before their benefits are stopped will have serious consequences for the individual's rights to live independently and to participate in public and political life; and may lead to destitution. We are concerned both about the intention to limit the term and also the potential delay in recommencing benefits once the individual is discharged.

Further, the requirement to pay back any hardship payment may lead to a risk of destitution. Disabled claimants struggle already to survive on benefit payments, particularly because of the additional costs of having a disability. The requirement to repay any hardship payment will undermine their ability to pay for basic necessities: accommodation costs, food, transport; and make them vulnerable to legal and illegal money lenders.

4.7.1 Background

Whether the two rates of PIP will be payable to those undergoing medical treatment as an inpatient at a hospital or similar institution when any of the costs of the treatment, accommodation or any other related treatment are met from public funds is to be determined by future regulations. This decision must take into consideration the provision of health and social care in Northern Ireland. At present Transforming Your Care and the Review of Adult Social Care are only at consultation stage. Whilst TYC is moving towards a model of more community based services the reality is that in Northern Ireland at present many community based services are not in place and therefore people are more likely to have extended stays in hospital. The difference in provision in health trust areas also needs to be taken into consideration. For example, some treatments are available in a person's home in one area and in another area they are only available with admission to hospital.

Any such future regulations must be specific to Northern Ireland and reflect our different system of health and social care provision.

Under PIP, families will lose the right to retain Motability vehicles if they spend 28 days or more as a hospital in-patient in any 365 day period. This fails to recognise how people with disabilities depend on these vehicles and how often many disabled people with complex needs have to stay in hospital. Disabled people, particularly in rural areas in Northern Ireland, do not have any other viable option for transport other than their vehicle from the Motability scheme.

At present the information in the EQIA does not demonstrate any attempt to mitigate the impact for this group. The statement in the EQIA is not relevant as the person's loss of income will not be met by the benefits outlined in the narrative.

The cumulative effect of the loss of income is not considered. For example, a person who receives low rate care will probably not qualify for support from social services. They are therefore probably using their low rate care to provide services they require to live independently, for example, help with cooking and cleaning.

As it is likely that there will be higher proportion of people in Northern Ireland impacted in comparison to their counterparts in the rest of GB then the Department has failed to measure the impact and put in place mitigating measures.

4.7.2 Recommendations

We recommend that the term of entitlement is not reduced for individuals in hospital and residential care.

We recommend that a system to reinstate benefits as soon as the person is discharged from hospital and residential care.

We recommend that the claimant does not have to repay a hardship payment.

4.8 Universal Credit

4.8.1 Severe Disability Payment

The removal of the Severe Disability Premium (SDP) under Universal Credit is a key concern. Extra support for disabled adults is built into the Universal Credit differently to the current system of premiums and tax credits. In some instances the loss of the SDP will lead to some people being less well off under the Universal Credit.

4.8.2 Families with Disabled Children

The Welfare Reform Bill EQIA illustrated the entitlement changes for household in the population pool segmented by disability. However, the EQIA does not consider the impact on disabled children and only reflects households.

Children with disabilities may also be impacted by Universal Credit. Under the new benefit there will be a 'disability addition' and a 'higher addition' for disabled children. Children who are in receipt of higher rate DLA (Care component) will get the 'higher addition', which will be paid at a similar level as now. However, those children who are currently receiving the lower level of support through the 'disability element' (because they receive low or middle rate DLA care component) will now receive the new 'disability addition' which will be worth only £27 instead of the current £54.

The NICCY report¹² found that “Large families where there is a severely disabled child are at risk of being affected by the benefit cap and this could potentially impact on the lives of 6,500 children in Northern Ireland”.

4.8.3 Example of Impact

A is a twenty two year old with a learning disability who lives in Maghera with their family.

Currently, A receives Disability Living Allowance at the low rate for care and mobility. A works sixteen hours a week in paid employment. At present A uses the mobility component to pay for transport costs to travel the journey in and out of the workplace. If A did not receive this element of benefit A would simply not be in a position to afford the costs and therefore could potentially have to give up her employment.

A’s mother says that A “loves her job, if A cannot for any reason get to work she become extremely frustrated.” A has also studied hard for her driving license and has just, within the last month, bought a care which they are preparing for driving on the road. A has saved hard for the money to do this and is intending to use their mobility component to fuel the car. This will give A even greater independence.

A lives at home with five other members of the family, three of whom are in full time education. A’s mother is a full-time carer and her father is unable to work because of a long term illness. A contributes forty pounds per week into the family household, twenty of which is her care component of DLA. A’s mother has said that if A was unable to continue contributing at the current level and it was to be reduced that “there would be no food in the house at the weekend”

It is clear to see from A’s story how vital benefits are to this individual and their family. If A was to lose her entitlement to DLA under the new assessment process for PIP, it would have a detrimental impact on her independence. Currently, A receives approximately £40 per week in care and mobility components of DLA. A also earns approximately £99 per week in wages (A is paid minimum wage). After contributing to the household budget, saving for a car and covering the cost of travel to work, A would then have a small budget for paying for social activities, any other transport costs and buying personal items. It is likely that if A lost her DLA then this would restrict her personal life and the activities they could enjoy. The outcome of having DLA withdrawn from this person will have an impact on her entire family.

¹² A child’s rights impact assessment of the impact of welfare reform on children in Northern Ireland, April 2012, G Horgan and M Monteith (NICCY)

A is aware of the contribution she makes into the family budget and is keen for this to continue.

4.8.4 Recommendations

We recommend that the impacts of the removal of the Severe Disablement Payment are assessed and that mitigating measures are put in place.

We recommend that the EQIA on the Welfare Reform Bill and the Regulations assesses the impact on families with disabled children.

5. Concluding Comments

We welcome the recognition that welfare reform will have significant and specific impacts on disabled claimants; and that there is a cross party and Ministerial commitment to protect the most vulnerable members of our society.

We welcome any further opportunity to provide assistance to the members of the Ad Hoc Committee and the Assembly as it progresses welfare reform.