Northern Ireland Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Welfare Reform Bill: Law Centre NI Briefing

23 October 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Ms Pam Brown
Mrs Judith Cochrane
Mr Michael Copeland
Mr Mark Durkan
Mr Fra McCann

Witnesses:
Mr Les Allamby Law Centre NI

The Chairperson: We resume our scrutiny of the Welfare Reform Bill. We have a briefing by the Law Centre, and a number of representatives have come to advise the Committee. I welcome Les Allamby.

Mr Les Allamby (Law Centre NI): Chair and Committee, thank you very much.

The Chairperson: Are you on your own today?

Mr Allamby: Yes I am.

The Chairperson: You are well able, I might add. You are very welcome, Les. Members have before them an earlier submission from the Law Centre. I remind Members that the session is recorded by Hansard. In your submission, Les, I would like you to take on board, or reflect upon, some of the comments made by the Minister yesterday, if you are in a position to do so.

Mr Allamby: Yes, Chair. I am happy to do that. Someone described me as "not a man of few words". Clearly, that extends to writing, as well. My apologies for presenting this paper to you at a late stage. It is a very extensive submission, which really reflects the size of the Bill.

To take up your invitation, the Law Centre welcomes the flexibilities that have been negotiated by the Minister. We support them. It is a recognition of what can be achieved when political parties, this Committee, Ministers, officials and stakeholders like the voluntary sector, all speak with the same voice, by and large, on issues.

Now we need to look at some of the details. I think that the payments to landlords looks slightly more straightforward and clear to me on the initial reading of the Minister's statement than how we are going to manage the payment fortnightly rather than monthly. I am not completely clear yet as to how big and significant a concession that is.

What I mean by that is that I am still not quite clear as to which groups will be paid fortnightly, and which will be paid monthly. In Britain, the intention is to pay monthly, but there is a default mechanism to pay fortnightly. So it will be interesting to see what the difference is between Northern Ireland and Britain when the detail comes through. However, I do not want to put a wet blanket over the announcement yesterday; I think it was quite important. I think it is an achievement that should be banked by all the political parties because these are issues that pretty much everyone was at one on.

On the payment of housing benefit to landlords, we have always taken the pragmatic view and I will give an example. My wife gets exasperated by me occasionally, when she finds me looking in estate agents' windows, not to find a lovely new house for us, but to see how many properties are rented that say, "No DHSS". I did that the other day, in Stranmillis on Sunday, when we went for a walk through the Botanic Gardens and up to Stranmillis. There, it said "19 properties in the private rented sector; no DHSS". One had, "DHSS considered", six had, "DHSS yes".

Putting aside the private rented sector's landlords being rather out of touch with who administers social security, that gives an indication of, for example, the state of play in the private rented sector market and the housing benefit changes. I would not put that down as a scientific survey but it is the second or third time I have looked at that in the past three or four months and seen pretty much similar figures.

Paying housing benefit to landlords is important because it probably at least encourages some to be open to renting to people on and off benefit. It is significant because the assumption is always made that there is one homogenous group who are on housing benefit, and, presumably, on housing credit, and another who is not. In fact, lots of people move between the two. You move in and out of work; you move in and out of housing benefit. So, "No DHSS" has all sorts of ramifications for people who were in work and are no longer in work.

I welcome the concessions that have been made to the Bill and, in fairness to Lord Freud, he has genuinely engaged with politicians of all political hues and others, and that is to be welcomed.

I will turn to our submission, which is a long one, reflecting the size and importance of the Bill. We had a difficulty in drafting a response because the Bill is an enabling Bill. It sets the framework but leaves very significant issues to the regulations: the rates of benefit; how the old work requirements will work; what will be the earnings disregards; the detailed rules on personal independence payment about what is a daily mobility activity and what is a daily living activity; and lots more besides. In addition, an awful lot of information will be produced in guidance and circulars that will not be in regulations. Looking at the approach in GB, there has been an attempt to move stuff that had been traditionally in regulations across to guidance. Therefore, we do not have a complete picture at the moment.

The other reason we do not have a complete picture is that there are still significant issues to be decided in Britain, despite the Bill having been passed there for over six months. How will transitional protection work? How will self-employed people be treated? What are we going to do about passport benefits? What will be the arrangements for housing credit? For example, how long will the waiting period be? And a great deal more besides. So, a lot of key issues have still to be decided in Britain and some go right to the heart of the purpose of the Bill in terms of making work pay etc. You are, to some extent, working in a vacuum without all the detail to have the whole picture.

I will give you a date that you may want to keep in your diaries in terms of looking out for things, because this is in the public domain. In partnership, the Department for Work and Pensions (DWP) and the Secretary of State in the summer asked the Social Security Advisory Committee to consult on the draft universal credit regulations, albeit that there were gaps in the regulations. The Committee did that and submitted its report in August. The Department has announced publicly that it will respond to the report on 5 December 2012, so we may get some information right in the middle of your deliberations about the Bill.

I suspect that some of the things that they will announce that day may be quite important, so there is a sort of "watch this space", as our Bill travels through its procedures, to see what is going on in tandem with Britain. I saw some of the information that you asked for. I know the answers to some of the

things you asked for. In some cases, I do not know the answers and neither does the Department here, because DWP has not got the answers as yet.

That is a fairly long preamble. I will take you through our submission and outline what we think are the key issues in the Bill. I will not go through everything. We have not drafted amendments yet, but the Law Centre is very open to doing so. If you say to us, here are some areas where you would welcome, entirely without prejudice, as the lawyers say, amendments to be drafted, we will do that. We felt that that was better than giving you a blizzard of amendments and leaving you to wade through vast amounts of paper in case there were some areas that were perhaps not what you wanted to look at in particular. If you give us an indication of what would be helpful — we understand that they may or may not become amendments that you can live with — we will do that. I hope that that is a helpful offer.

I will try to do this with a page-by-page approach so that you can follow what we are saying. I am more than happy to take questions as we go along or at the end, on anything and everything.

The Chairperson: Are members content to wait until we have had the whole presentation?

Mr F McCann: My only question is about the advisory group. I remember that it may have looked at the issue of the single room allowance.

Mr Allamby: I am sorry, Fra, what was that?

Mr F McCann: The single room allowance. I am going back a while. Some of the material that I read indicated that the Government did not accept the advisory group's recommendations. I take it that you were asked to look at the Bill in its earliest stages. The group's recommendations had not been accepted, and I take it, from what you just said, that there are aspects of those recommendations, which had been unacceptable, that you will recommend again. It just seems strange that you keep getting asked. It is a very important group that includes quite a lot of good opinion-makers, but the Government asked for this information and continuously rejects it.

Mr Allamby: In fairness, I would be taken aback if the Government accepted everything that the social security advisory committee had to say to them, because it is an advisory committee. At the same time, there are areas where they have been prepared to listen and have made changes in the past. However, it has always been selective and I guess that the committee itself would not expect anything other than that.

Interestingly, this time, the draft regulations that were published in Britain — and they were draft, but they gave a sense of the direction of travel — on some areas there was a very considerable response from organisations, much of which is in the public domain. In some of the areas, it is clear that pretty compelling issues were raised, and in some cases the issues are coming from, if you like, not just the traditional stakeholders of the voluntary sector, but small employer organisations etc, who are raising some very important detail.

My sense is that officials and Ministers may pick up on some of those areas. I would be absolutely flabbergasted if everything that the committee said, they followed. I have not yet met any organisation with which I have been involved that, just because you say something, they immediately agree with it.

So, I think that in December, we will, perhaps, get some sense of some changes. This is a fast-evolving situation. Even in Britain, where they have the Bill, they are still working on issues at what is a very late stage, given the timetable there. One of the reasons why I welcome pushing back the universal credit timetable is that it gives us a chance to see how the pathfinders, which come into operation in Britain in April 2013, and the first wave of universal credit, will go. I suspect that we may learn some very important lessons and may even be able to avoid some pitfalls if we move from 2014.

I will start with clauses 3 and 4, which are dealt with on page 3 of our submission. These deal with the rules on entitlement. It is quite clear in the Bill, and it is the position in Britain, that where one person in a couple is over pension age and the other person is under pension age, the couple is placed on universal credit and not on pension credit. That, it seems to me, has some ramifications for the all-work requirements and the seeking-work commitment arrangements.

As you know, women's pension age is going up and will be equalised. So, once universal credit is in, there are likely to be situations where an older member of a couple has a younger partner. You could

quite conceivably have a woman aged 61 with a male partner aged 70, for example, who will be claiming universal credit and, as a couple, not pension credit. I am not clear whether a 70-year-old, for example, who may well have retired several years ago, is suddenly going to be plunged into the world of work requirements and seeking work. It does not seem to me to be the most sensible use of jobs and benefits office time, per se, but I am not clear on what is going to happen there. That is one of the things that you might want to seek some information on from the Department.

You can have claimants who are wealthy 86-year-olds, with 27-year-old partners. I do not think we have many of those, but are you going to ask someone who happens to be 80, and who has a partner in their late 50s, to be looking for work?

The Chairperson: I am not sure whether I should congratulate them or commiserate with them.

Mr Allamby: All I can say is that you should choose a partner who is about the same age as yourself.

Mr Brady: It is too late for some of us.

The Chairperson: There is no romance there, Les.

Mr Brady: I do not mean that prescriptively. I am talking about the age aspect.

Mr Allamby: There is another issue that you might want to tease out. Clauses 3 and 4 set out regulations about when you can be absent from Northern Ireland and about when you can study and retain benefit. We are not clear yet on what those arrangements are going to be. It is probably important to see whether they are going to change from the current arrangements, because, within jobseeker's allowance (JSA), income support and employment and support allowance (ESA), we already have different arrangements for studying and retaining benefit. If you are on ESA, the rules are much more restrictive than they are if you are on JSA, but, presumably, we will have a single set of rules for universal credit. Are they going to be more restrictive, or are they going to be slightly more liberal? I think that it is probably worth asking that question of the Department now, if you have not already done so.

I move now to absence from home in specific circumstances. The Department in Britain has signalled that it is going to have a two-tier system: you could be absent from home for up to one month in certain circumstances, and up to 26 weeks in other circumstances, and they will set those out in regulations. That includes payment for housing credit for up to 26 weeks when a person is in residential care or hospital. Those contrast with the current housing benefit rules, for example, which allow you an absence of 13 weeks in certain circumstances and up to 52 weeks in other circumstances. In other words, the new rules may be more generous in some cases, but less generous in others. They are going to be less generous in the situation of a person being in hospital or residential care on a temporary basis. I am not sure. I think that the 52-week rule was a fairly good rule in terms of giving people a chance to recover and find themselves in residential care. We might find ourselves with some hard cases. It is worth clarifying whether we are going to have the same rules here. I assume that we probably will.

The one other thing in this clause relates to 16- and 17-year-olds. From the draft regulations in Britain, we know what the intention is, and I have set them out on page 4. In the current system, we have what I call a catch-all safety net. Sixteen and 17-year-olds, for example, coming out of care are no longer dealt with in the social security system; they are dealt with in a separate system through health and social trust payments. However, there is a catch-all net that allows for severe hardship money to be paid to 16- and 17-year-olds. It does not look to me as if that sort of overall safety net is going to be kept, where you have a discretion, so it would be worth asking the Department about that.

Clause 5 introduces the new capital rules. I understand that they will be the same as the current rules for income support, JSA and ESA. That is what the Department has signalled. In other words, the overall savings are £16,000, with a tariff income. It is a bit like a taxi meter. Savings of between £6,000 and £16,000 are assumed to generate an income. That will be quite a significant change for some claimants. Tax credits and pension credit have no upper capital limit. It is more likely to affect older workers. Let us say you are 55 and low-paid and you have done what the Government have said you should do, which is save money assiduously, and you have saved £20,000 for your old age. If you make a claim for universal credit, you will not get it, because you will be above the limit, whereas, when you were on tax credits, you would have got it. I am not clear if transitional protection will protect those who are already on tax credits. That is a question we need to ask.

Let us say you are on pension credit, for example, at the moment. Again, you could have a fairly low income but you could have saved money and reached pension credit age of what is now pensionable age. Under the new arrangements, where universal credit will be paid later and later if one partner is under pensionable age, you have got a capital rule. Let me tell you why I think that is significant. If you remember, the Joseph Rowntree Foundation issued its annual monitoring poverty and social exclusion document in May. One of the differences between Northern Ireland and Britain was that pensioner poverty was going down in Britain and rising in Northern Ireland. One of the explanations for that is that it appears that we have not got the same level of occupational pension provision that many people in Britain have, and that will be with us for some time. Therefore, when we get to pensionable age, we do not have the cushion that proportionately more people seem to have in Britain. If you take away an issue of capital rule for people above 60 or pensionable age that is not there now, it may have a further chilling impact on pensioner poverty. That is another area that needs some scrutiny.

I will spare you the detail of clause 6, which probably means that members of religious orders will not get universal credit. They do not get benefits at the moment.

Clauses 8 to 10 set out the rates of universal credit. We do not know what they are yet. The only intention that has been signalled is that they do not expect them to be less than what is currently paid, in general terms, but there are a couple of significant differences. One is that the new standard allowance rate of universal credit is going to be simplified for people under 25. I will spare you the details at the moment, but it looks pretty clear to me that the benefit of some people who are currently under 25 will be lower under universal credit. You probably need to ask the Department for the details and the numbers of people who will be adversely affected. If what they have said they are going to do in Britain is replicated here, a number of young people will be worse off. It will simplify the system, and there may well be transitional protection, which I will come to in due course, but it looks as if groups of people will be worse off. I think that you need to ask about that.

The next area that I have included is how the self-employed will be treated. One of the new features of universal credit is what is called a deemed minimum income. At present, if you are self-employed and making no net profit, you are deemed to have no income if you are, perhaps, part-time and self-employed. When you start to make an income, it affects your benefit. Under the new arrangements for universal credit, there will be an assumption that you are making a minimum income. Regardless of whether you do or whether your self-employment is ebbing or flowing, the assumption is that you are making a minimum income. The Government have not said what it will be. At one stage, they were talking about the possibility of it being the national minimum wage, but they seem to have resiled from that, and I think they are probably looking at something smaller than that.

They have indicated that you will be given a period before the minimum income is brought into effect. So there is a recognition that, if you start a self-employed business, you do not make money from week one. My best guess, from what I understand is going on, is that it is probably going to be a period of about a year, but I do not think that that has been officially confirmed. They have said that you will be allowed one start-up every five years. Woe betide you if you start a self-employed business and it does not work and you come back with another idea in 18 months' time. It feels a bit like 'Dragon's Den', with DWP sitting round the table and no doubt Lord Freud, Iain Duncan Smith et al saying, "No. If you tried once, you are not going to get another chance to be self-employed, unless the minimum income kicks in straight away." That seems pretty harsh, because the whole purpose of this is to encourage people into work, and one way of getting people back to work is through self-employment.

The other problem with a minimum income scenario is that, if you run a small business or are a single person, or if you are part of a family and you are self-employed, what happens when you fall ill and, suddenly, your income drops? You have still got the same minimum income. What happens if you go on maternity leave? Do you still have the same minimum income? We do not yet know what the arrangements are going to be. The Department has signalled, for example, that it is going to manage the reporting on a monthly basis. Well, heaven help people who are self-employed if, every month, they have to report their income. Most people do not keep their accounts on a monthly basis; lots of people keep them quarterly, some six-monthly, and so on. That will require a level of discipline that does not reflect how self-employed organisations work in reality. It will also involve ebbs and flows on a month-to-month basis. It strikes me that it is going to create all sorts of issues around managing people's universal credit. There is a lot of work to be done around self-employment. If you look at the number of people who are in self-employment in Northern Ireland and the number who lose jobs and

move into self-employment — the world of taxi-driving et al — it seems as if universal credit will, paradoxically, achieve the opposite of what was intended.

Finally, you probably saw Tanni Grey-Thompson's report, which was backed by Disability Rights UK, Citizens Advice and the Children's Society. It outlined three areas where it sees people with disabilities being significantly worse off as a result of the change to universal credit. I do not need to go into the detail; it is in the paper. I know that the Department, to some extent, attempted to traduce the paper by saying that it was an exaggeration. There will be transitional protection for some of the groups that are mentioned here. The problem with transitional protection is that it will be eroded inexorably over time. So unlike, for example, public sector workers, who are having to face the austerity measures of pay freezes and so on, there is an assumption that eventually you will be paid more than you are currently being paid. Transitional protection does not work in that way. Slowly but surely, your income will drop until you are down to the level that new claimants of universal credit are at. What the Department did not say when it criticised the report was what will happen to new claimants of universal credit. What about young people with disabilities who cannot find work and who move into universal credit for the first time? They are not going to find any transitional protection; they are going to be worse off straight away. There is a need to look at that and at the numbers of people who will be affected.

Clause 11 is about housing costs, or housing credit, as it will be called. There is one important thing that I do not think people have picked up on. If you read the DWP explanatory memorandum for universal credit regulations, you can see that it makes clear that there is going to be a new "zero earnings rule" in universal credit for owner-occupiers. That means that, if you move into any form of work, you will lose help with mortgage interest. Let us say, hypothetically, that you are a lone parent who is getting help with the mortgage interest and you decide to do what the Government say you should do under universal credit, which is take a mini-job to see whether you can get into the world of work while still being able to pick up the children from school, etc. If you do, say, seven hours a week — under the zero earnings rule, you could do two hours a week — you will immediately lose all your help with mortgage interest. It seems to me that that is likely to have a chilling impact on the work incentive. You will have more generous earnings disregards, etc, but it strikes me as being a very tough rule indeed that says that, if you start any form of work, you will lose your help with your mortgage interest. Again, I think that you may want to press the Department on the rationale behind that rule.

The other thing we do not know is the waiting period for housing costs. Currently, it is 13 weeks if you go onto income support, JSA or ESA, and that has been the case since January 2009. Before January 2009, you used to have to wait 26 weeks or, in most cases, 39 weeks before you got any help with your mortgage. They have not yet announced which of those they will do for universal credit. Clearly, that is quite an important issue.

There is another thing to be aware of, and the Committee has probably picked up on this. At the moment, as you know, more and more lone parents are moving to JSA as their youngest child turns seven; eventually, it will be when they turn five. If you are on income-related JSA for two years, you lose help with your mortgage interest. So, you have to find work in two years. If you do not, you lose help as an owner-occupier. If you happen to have only two years left to pay your mortgage and you are 61, it appears to be a case of, "Tough." However, in the new arrangements, we understand that that will be transferred to universal credit, but it will now encompass a lot more people. It will no longer just be people who were on income-related JSA; it will also be people who are on income-related ESA, probably in the work-related activity group, and people who are on income support. It might pick up people who are on tax credits, etc. You may well find that a larger number of people will lose help with their mortgage interest. We need to know from the Department what other help will be available to people who lose their accommodation. That is the end of chapter 1. I will pause for breath for a second and then move onto chapter 2.

Clause 14 deals with the claimant commitment. You have asked for a lot of information on that, and you might ask the Department about one other issue. I understand from DWP that both partners must sign the claimant commitment. If both partners do not sign it, you do not get benefit. There are ramifications of that. One of the advantages of doing advice work for a number of years is that I have regularly found people who, occasionally justifiably and occasionally unjustifiably, are at loggerheads with the Department and will say, "I am not signing a claimant commitment or the jobseeker's agreement." In the current situation, if one partner decides that, to somehow get at the other partner, they will not sign the commitment, neither partner gets any benefit and neither do the kids. If one partner has mental health problems and refuses to sign, the rest of the household does not get benefit. In our view, there ought to be prescribed conditions that say that, if one partner signs the

claimant commitment and is clearly committed to finding work and another does not for whatever reason, pay the single person rate, pay it to the person who has signed the claimant commitment and pay the amount for children. I think we could live with that. By all means, do not pay the couple rate if one member will not sign. However, the idea of saying that, unless you get your husband or wife or male or female partner to sign, you will not get any benefit at all seems to me to punish people and almost says to households, "Split up from your partner if you want to get any benefit". I am not sure that that is the most productive way forward. You might want to ask again about the claimant commitment. Let us have some sensible regulations that do not punish people who are not the cause of their own demise.

Clauses 15 to 24 are the work-related requirements, and, again, you have asked for quite a lot of information about that. As you know, there are four categories you can be in. There are actually five, I suppose. The first one is that you have no requirements at all as you have just given birth and do not have to look for work — not for very long — or you are about to give birth. Then you have work-focused interviews, which are a relatively light-touch approach, and then the slightly more onerous work preparation, work search and work availability. The Department in Britain has signalled that, if you are in what is called the "all work requirements", at the moment, it is likely to be suggested that you have to show that you are spending 35 hours a week looking for work. If you are a carer or need childcare, it may be reduced. However, if you do not fall under any exemptions, you are expected to spend 35 hours a week looking for work. I will be candid with you: if I became unemployed tomorrow, I could probably spend 35 hours in the first couple of weeks looking for work. I could, no doubt, work on my CV, go to the jobs and benefits office and the library and do any number of things to prepare myself for work. I could write out to employers, etc. If, after six weeks, I have done all that and got all that out there, could I put my hand on my heart and say that I could spend 35 hours a week looking for work? Not unless I was knocking on doors and saying, "Have you got a job?", or "Gissa job", as in the 1980s Alan Bleasdale plays. I do not know how you could spend 35 hours a week, 52 weeks a year physically looking for work. It almost sets up an impossible task. How the Department is going to enforce that and how it is going to say that there are things that you should be doing 35 hours a week, every week of every year, is a bit beyond me. However, that is what the intention is in Britain. I do not have a difficulty in saying that there is a very good training project and that you can spend 35 hours a week on training if it helps you to get work, etc, but, if you are not in that category, I do not quite know how you tell people that they have to spend 35 hours a week looking for work. It is clearly very onerous if you are in the all work requirements category. We need to know a bit more about what the operational arrangements are and how they will work.

The other thing that I strongly urge you to look at is at the top of page 11 of my presentation. It is one of the nastier bits of the Bill, in that, to be quite candid, this Bill does not seem to like foreigners. I think that the Bill is bordering on the xenophobic. Look at paragraph 7 of schedule 1; it allows for regulations to provide that claimants from the EU with a right to reside who fall under the no work-related requirements, work-focused interview requirement only, etc, will be placed instead in the all work requirements category. Hypothetically, say that you are a Polish woman who has been here now for seven or eight years. You have worked for five or six years and you have had children here. Let us say that your young child has a disability. You will be expected to spend 35 hours a week looking for work. You will not be placed in any of the other requirement categories. If you have just given birth, it looks as if you will be expected to look for work 35 hours a week when you are barely out of hospital. If, on the other hand, your next-door neighbour is in exactly the same circumstances and happens to be Irish or British, they will not be treated in the same way. Can someone tell me how that can possibly be lawful? Under the European Convention on Human Rights, a case called Stec states that both contributory and non-contributory benefits fall under the right to property. Article 14 of the convention states that you have a right to be free from discrimination. Treating EU migrant workers differently from indigenous local workers when it comes to looking for work is clearly discriminatory. There may be an objective justification for saying that a Polish woman who has just given birth has to look for work 35 hours a week but that somebody next door who is British or Irish does not. I cannot see an objective justification, and I urge you to talk to the lawyers and, perhaps, even the Attorney General's office to see whether they think that is lawful, because I do not think it will survive a legal challenge. In our view, it should not be enacted in this Bill. I do not think that it is being driven by officials. I think that it is being driven by politicians who have an antipathy to the EU. That is one area where I think there is scope for us to recognise that there needs to be a different approach.

The other thing that is new is in clause 22, and that is that all work requirements can be imposed on claimants in work who earn below a specific threshold. If you are on tax credits at the moment and you work 16 hours a week, there is no requirement to say that, as you are only working part-time, it is about time you found full-time work. Under universal credit, if you are working 16 or 17 hours a week and your earnings are below a certain threshold, the notion is that you will be expected to still look for

work on top of the part-time work you are doing, even if you have a sensible rationale for working part-time. In fairness, the Department in Britain has said that it wants to trial that before implementing it to see how it might work. So, it is not coming down the track immediately. However, there are clear ramifications that DEL and the jobs and benefits offices are going to be biting off probably more than they can chew in getting people into work at all, and we appear to be saying that we are going to try to get them into full-time work rather than part-time work. We should probably start by trying to encourage people to get into work. My experience of most people who work part-time is that, if full-time work were out there, they would probably happily take it. They usually work part-time because that is the reality of the market that they are in, or that is the reality of the circumstances that they are in. So how much is to be gained from that? The sanctions regime will apply to people who are part-time working but who do not apply for full-time work. That does not strike me as a sensible use of resources. The reality for DEL and the jobs and benefits offices is that they are going to have to concentrate their resources where they can make most impact. If you keep bringing in things like this, all you will do is spread the resources more thinly. You will not concentrate them where you can get the most effective outcomes, and I think it is counterproductive. It is one of the areas that you might want to explore with colleagues behind me. I do not even want to look at Michael Pollock's face as he hears this list getting ever longer.

The other thing is sanctions. You will not be surprised to learn that the Law Centre is not a big fan of sanctions. The level of sanctions and what the new arrangements will be are set out in a table on page 13 of our presentation. As you can see, it is a bit like a Bruce Forsyth game show: higher and lower. In this case, it is high, medium, low and lowest level. The high level is almost "Three strikes and you are out": it is three years off benefit if you offend for a third time within a certain period.

There are a number of issues around sanctions. The first is whether they are proportionate, given the impact on the rest of the household including children. If, for whatever reason, I happen to fail to do something, should the rest of the household be punished for up to three years? We think that that is too long. If we are going to live with sanctions, we do not see why we have to increase them to quite that significant level.

Secondly, the regulations in Britain only allow five working days for a claimant to establish "good reason" before a sanction is applied. If we are going to increase the level of sanctions, it seems to me that it would be fair and proportionate to increase the time you have to explain why you have failed to do something. I will give you an example. Say that you did not sign on on Thursday because you had a family emergency; you were rushed to hospital or something happened to your partner or child. Let us say that that crisis lasted for the next 10 days or whatever. Then, you finally go and say, "I am really sorry that I did not sign on last Thursday. It was because my partner was involved in a car accident and ended up in hospital." Under those arrangements, you did not get back within five working days. To me, five working days seems to be a very tough time period within which to do something. You will not find five working days being imposed on the Department to do things anywhere in the social security system, yet we seem to be quite comfortable with imposing it upon claimants. I think that it should be increased to 15 working days. That allows people a bit of time to explain whatever it is that they have done and avoid the sanction. That is a recognition that, if we are going to increase the level of sanctions, we should increase the time period for people to do that. That will be in regulations, and we are keen to see that introduced.

The second issue is in two clauses that I will come on to. DWP has already increased the sanction arrangements for people on JSA and ESA in advance to broadly align with universal credit. The line seems to be that we want to get into the swing of sanctions so that we align all this together. However, we are not aligning the apparent advantages of universal credit, so it feels like we are introducing the sticks in advance, but not the carrots. With the best will in the world, if we are going to have sticks and carrots, we should introduce them at the same time. We do not have the work programme here; we will not have an equivalent until October 2013. We do not think that you should introduce sanctions or up the sanctions regime in ESA and JSA in advance. I do not think that is fair or appropriate. If we have not got the work programme and all the other advantages of better earnings disregards, etc, that should not be introduced.

Clause 28 also introduces hardship payments in advance. Hardship payments are already a feature of the scheme. The difference between hardship payments under universal credit that may come in advance and the current ones is that you are going to give loans under the new system, not grants. Currently, if you reduce somebody's benefit in certain circumstances and they are in hardship and there is a sanction, it is not repayable. Under the new regime, it will be repayable. Again, that affects all members of the household, not just the person who is sanctioned. We have never been very keen on kicking somebody when they are down. This appears to me to be a bit like kicking someone when

they are down. Again, we do not think that hardship payments under the new regime should be introduced in advance. We do not see why they should be loans. If you are going to reduce benefit by 40%, that is a pretty significant drop in income. You then force the person, when they come out of the sanction period, which will be a much longer period, to pay the money back. You will have families going into serious crises, and somewhere else in the system will have to pick that up, whether it is the social fund or social services. All you will do is spend money elsewhere to shore up somebody who is in crisis, so it will not save very much money and it does not make sense.

We are now on chapter 3. I am not sure that the Welfare Reform Bill would make it into 'Book at Bedtime'. Clause 31 relates to regulation-making powers. I mentioned paragraph 7 of schedule 1, which refers to how people from EU countries will be treated. I suspect that one of your questions will be whether that includes people coming from the South to the North. I think the answer is probably no, because I suspect the arrangements will protect those in the common travel area. So, it will probably be people outside these islands. I have not seen that for definite but, looking at other arrangements, that is my best guess. However, it will not protect Portuguese, German, Polish, Latvian, etc.

Clause 42 relates to pilot schemes. You may wish to ask what, if any, pilot schemes we are thinking of introducing here. I am not aware of any, and that clause may be there just in case, but you might want to ask.

Clause 47 relates to sanctions arrangements. That is the clause that introduces sanctions in advance for JSA. We do not see the need for an in advance introduction.

Clause 52 deals with the ESA restriction of entitlement. That is one of the big-ticket items. If you are on contributory ESA for 12 months and you are in the work-related activity group, you will lose benefit. The particularly significant issue for us here is that you will lose benefit straight away if you have already been on ESA for 12 months. So, the day this is introduced, a large number of people will drop out of the system.

I have not seen figures for Northern Ireland, and we probably should ask for them. However, I remember that, in the equality impact assessment in Britain, 48% of the people who will fall out of the benefit system altogether as a result of this are aged 50 or over. That is because older workers are more likely to have partners who are also in work and therefore they will not be able to go onto means-tested benefits, or older workers are more likely to have savings ready for retirement of above £16,000 and therefore will not be on means-tested benefits until they erode the savings that were supposed to be for old age.

It strikes me that this one comes at a cost, and it is in the explanatory memorandum: £12 million in year 1, £52 million in year 2 and £56 million in year 3. I understand that doing something different has a pretty significant price tag attached to it. I am not sure about those figures and whether they take into account how much it would cost if you took into account the proportion of people who go onto income-related ESA or income-related JSA, which may reduce the figures. You may want to interrogate that a bit further.It is possible, I guess, that you could look at amendments that say that this should not apply to claimants over a certain age. Alternatively, you could look at having a clause that says that the clock should start ticking from the date that this comes in, so at least you would give people 12 months' notice rather than saying that claimants who have been on ESA for two years would come off it the next day. That might be more equitable.

ESA in youth is, effectively, a benefit paid to young people under the age of 20 who have not made national insurance contributions and are clearly quite severely disabled. The numbers are fairly small, and the current cost is estimated at just under £400,000 a year. It seems to me that that might be one of the areas in which some of the social protection fund money might sensibly be spent, if need be. We think that ESA in youth, particularly for young people with severe disabilities, is a reasonable benefit. As far as I can see, there is no great rationale for getting rid of it other than to save money.

I have already spoken about clauses 57 and 58, which allow the new sanctions regime for ESA to come into effect in advance.

Clauses 61, 62 and 63 create the new requirements for claimants to have an entitlement to work for contributory benefits, including maternity allowance and statutory maternity, paternity and adoption pay. This is really aimed at people who are subject to immigration control. Again, the current rules say that means-tested benefits are public funds. Therefore, if you are subject to immigration control, you cannot get means-tested benefits. However, if you are here, for example, under a work visa or

other arrangement and have paid your national insurance contributions, having worked legally, and are then in a dispute with the UK Border Agency (UKBA) about whether you are entitled to remain, you will not be able to access contributory benefits. If you have worked here lawfully and paid your national insurance contributions, why on earth should you not be entitled to claim those contributory benefits? This will not affect very many people, but it seems to be another of these issues in the Bill that demonstrates an obsession with people from abroad getting benefit. If someone has a partner who has worked and paid national insurance contributions, they will not be entitled to maternity benefits on the basis of his or her contributions. I cannot, for the life of me, see what this is about other than an antipathy towards people from abroad. That should not be the basis on which you legislate. Sorry, that is my rant over with on that one.

One of the key clauses, clause 69, concerns housing benefit and has two elements. The first is the issue of how the levels of local housing allowance will be calculated. They will go up on the basis of the lower rate of the consumer price index (CPI) or what has happened to the 30th percentile in the private rented sector, whichever is the lower. Currently, it is based only on the 30th percentile. In April, a regulation came in to pave the way for this. In the past 15 years, average inflation on the basis of the CPI has been around 2%, and the average rent increase in the bottom 30% has been around 4%. At present, claimants are expected to look for accommodation in the bottom 30% of the market. Almost certainly, that will be inexorably eroded to become the bottom 28%, 26%, 25%, and, eventually people will be trying to find accommodation in a very small part of the private rented sector if they want to have any chance of their full rent being met. That is before all the housing benefit cuts that have already been introduced come into play. It seems to me that it is being made more and more difficult for claimants on benefit to get into the private rented sector. We will make it very difficult for people who are already in the private rented sector, have paid rent while in work, et cetera, and then fallen out of work to stay in their accommodation. It is tough enough when you lose your job. How losing your job and accommodation at the same time would help you to get back into work is beyond me. It seems to me, therefore, potentially counterproductive.

The second part of clause 69 is our dear friend, the size-related element of housing credit for people of working age who live in public sector housing, or the "bedroom tax" as everybody else likes to call it. As you know, that will lead to reductions. Someone who "over-occupies" one bedroom will lose 14% of their maximum eligible housing benefit; for two bedrooms, the loss will be 25%. The draft regulations in Britain suggest very few exceptions to the rule. If someone is in what is called "supported accommodation" — the kind of accommodation that is registered, et cetera — that will not apply. Beyond that, there are very few exemptions. A foster carer, for example, who has a spare bedroom between placements, will be expected to have their housing benefit cut. Although there is no doubt that people could ask for discretionary housing payments, et cetera, why we should make life more difficult for foster carers who do the state a very considerable favour is beyond me.

If, on the other hand, the rules are equivalent to those for the private sector, again, I think that there are issues of lawfulness. The bedroom tax, if you like, has existed in the private rented sector for some time. Recently, the rules were challenged on the basis that exceptions did not include people who needed a spare bedroom for full-time carers or people who had two children under 10 years of age, both with disabilities, where it was impractical for them to share a bedroom. One child with a disability was keeping the other child up every night, so separate bedrooms were needed because of the care required by each child. The courts found that both cases were unlawful under the European Convention on Human Rights and the Human Rights Act 1998. The DWP then accepted that needing a full-time carer and an extra bedroom would become an exemption. The second challenge was because two children under 10 years of age — the particular case involved a 10-year-old and an eight-year-old — were being told to share the same bedroom even though both had disabilities. That, however, was not an exemption — do not ask me why — which gives you an example of how narrowly the exemptions are being crafted.

Presumably, families in that situation are expected to ask the Housing Executive for discretionary housing payments. The Housing Executive and local authorities are being told by DWP in Britain that those exemptions and discretionary housing payments should not be paid in perpetuity, but for a period to allow claimants to do something different. Well, unless a claimant's child recovers from the disability, I am not quite sure when and on what basis that claimant will suddenly be able to get out of that situation. You are aware of many of the other concerns that the Law Centre has about this, such as how exactly the Housing Executive will be able to implement it in practice. It is another provision that comes with a rather bloodcurdling price tag with regard to the expected savings: £15 million in year one and much more thereafter. However, I am not sure whether £15 million would be saved after the discretionary housing payments have been paid or before, so I want to ask about that.

I do not think that this provision should be implemented until the Housing Executive and housing associations have a credible plan for how to deal with it. It is one thing to tell people, "We will give you an alternative, and here are proposals that allow you to avoid a cut in housing benefit." However, if an alternative cannot be offered, it seems unreasonable to start reducing people's housing benefit. If there is no offer of an alternative in the public rented sector, that is, effectively, telling people to move into the private rented sector. First, if you move into the private rented sector, it will probably not be cheaper; secondly, given all the new rules in the private rented sector, you will not get all of your housing benefit anyway; and, thirdly, you will find it very difficult to find accommodation in the private rented sector because, of course, you are looking in the bottom 30%, or 25%, or whatever it happens to be when the CPI new rules kick in.

So we need to find creative ways to deal with the issue. Having been involved in discussions with Lord Freud, I know that he understands that we also have issues with single identity estates. Our housing stock is such that we do not have the deftness to say to people from the New Lodge that there is accommodation in Tiger's Bay that is more suitable to their needs, or vice versa, and so they can just move across the road. The current reality, for perfectly understandable reasons, is that, in certain estates, it would be very difficult to make that a credible option. That is not going over the top about where we are; it is the reality of life in Northern Ireland, and you all know that as well as I do.

There are a number of things that we could do to make this better: we could decide to apply it only to people over a certain age; or we could make sure that the regulations include far more exemptions than in Britain. There are discussions to be had about what the clauses or amendments might look like. I recognise that simply saying that we should not implement it carries with it a very considerable price tag. I realise that this is a very challenging issue for political parties in the Assembly.

We are galloping on. There is an issue about discretionary payments, and I know that you are looking closely at what the new son or daughter of the social fund will look like. It is pretty clear to me that, unless I am missing a trick, the existing social fund will remain after April 2013. For the life of me, I cannot see how a new scheme can be put in place, with all the consultation complete and the implementation and IT issues resolved, by April 2013. It is important that we get a timetable and a sense of when that will be in place.

The personal independence payment (PIP) is another difficult one. In our submission, we flagged up some of the changes from disability living allowance (DLA) to PIP that are not clear. To qualify for DLA, a person must have had a particular form of ill health or disability for three months previous to an application for benefit and be likely to have it for six months afterwards. To qualify for PIP, the periods will be three months before and nine months afterwards, which is a slightly adverse increase.

Under DLA, when a claimant's condition has deteriorated and the claimant makes a new claim within 12 months of a previous one, he or she does not have to serve the three-month waiting period. People who have fluctuating conditions that worsen again within 12 months do not have to undergo another three-month wait. Under DLA, that was allowed if a condition worsened within two years. So the period in which the fluctuating condition can come back has been halved. Rheumatoid arthritis is a very good example: some people can go into remission but it then comes back very severely. Under PIP, if the condition happens to come back 18 months after the claimant was in remission, he or she must serve another three-month waiting period. I cannot see any rationale for that other than saving money.

A new residence and presence test is being introduced. The old one was held to be unlawful by the European Court of Justice. The detail is not in the Bill, but we understand from the Department that, under the new test, claimants will have to have been in the UK for two of the past three years. Again, that is clearly aimed at telling migrant workers that it will be harder for them to pass that test. A migrant worker might have been here for 18 months when they suffered an accident at work, and they would have been likely to qualify for DLA. Why should they have to have been here for at least two of the past three years? The test is primarily aimed at people from abroad, and, interestingly, another example of a particular obsession on the part of Ministers.

The provision on PIP and prisoners is an improvement. I will give you the rationale for that. PIP will be paid for 28 days to prisoners or people held on remand who are already on PIP. Currently, DLA stops on the day of imprisonment or being placed on remand. The reason for giving PIP for up to 28 days is that there are loads of overpayments of DLA to people who move into prison for short periods. Given the time taken to recover that money, it is more sensible to pay PIP for 28 days before recovering any overpayment, because many of the overpayments to people who go in to prison are small. Currently, under DLA, if someone is held on remand but then not sentenced to imprisonment

because the charges are dropped, the conviction quashed, or it is clear that they should not have been held on remand at all and that the authorities had the wrong person, benefit is paid back when the individual comes off remand, which can be a very long period. However, under PIP, the person's benefit will not be paid back. So if there is a miscarriage of justice and the individual happens to be disabled, that is just tough. I guess the rationale is that they will get all the support that they need for their disability when in prison. Well, unless prison conditions have changed since the last time I visited any HMPS establishment, I have my doubts. However, on principle, if you wrongly lock up somebody who has a disability and is entitled to benefit, and you then release them and recognise your error, frankly, it seems to me that you ought to restore the benefit. The rules, however, say otherwise.

Finally, the rules on temporary absence from the UK will be made tougher. They will allow entitlement to PIP for only four weeks, or up to 26 weeks if a claimant goes abroad for treatment. Under DLA, temporary absences of up to 26 weeks do not normally affect entitlement. I have heard that the Government might ameliorate that by making it eight rather than four weeks. Again, to my mind, that is one of those areas where, when you compare the amount of money saved with the difficulties created, it is probably not worth it.

In Part 5, clause 95 deals with the benefit cap. You know our views on the benefit cap — they are on the record. We now know how much it is intended to save in years 1 and 2. I would be fascinated to know what those figures are based on and how many people DWP think will be affected. Last week, DWP issued figures on whom it thinks will be affected by the benefit cap in England, Scotland and Wales. It would be very helpful if the Department here issued something similar so that we could get a feel for who will be affected. In other words, we want to know how many children the Department thinks that people will have, what proportion of parents will be lone parents and what the proportion will be in England, Scotland and Wales. We need more figures.

My view is that we should consider amending the clause on the benefit cap. It should state that, if you are receiving carer's allowance and looking after somebody full time; are on a widow's or bereavement benefit; or have worked long enough to pay contributory-based ESA, those benefits should exempt you from the cap. That would at least ameliorate the impact, although I would prefer no benefit cap. I think that we should extend the current exemptions from just DLA, attendance allowance, war widow's and widower's pensions, the support component of ESA and industrial injuries benefits to those other benefits. The Law Centre urges such an amendment.

There are issues with the recovery of overpayments. Under the current rules, the Department can recover an overpayment if someone misrepresents their circumstances, accidentally or otherwise, or fails to disclose something. If a person does something wrong that causes an overpayment, the Department can recover it. Under the new rules, it does not matter how the overpayment arises; the Department will recover it. So even if the overpayment is the Department's fault, and the person affected has not contributed to that, it will still be able to recover the money. In fairness, that is what HMRC can do with tax credits at present, although it has a code of practice on when it will and will not recover. The Department is talking about having some guidance on this. However, I think that, before the legislation is enacted, we need to see under exactly which circumstances the Department will and will not recover overpayments. As the Bill stands, the Department will have carte blanche to recover overpayments, even when the overpayment is clearly its fault and the claimant has not contributed to that in any way. It is worth noting that the clauses also give very considerable additional powers to recover the money by going to employers without, as happens at present, going through the court. In addition, if an employer does not co-operate and comply with the court order, they will face a criminal sanction. I do not know whether small employers realise that this is coming down the track, but I do not suppose that they will be overly keen when they hear about it. Interestingly, there will also be an administrative charge. So if you get an overpayment that has to be recovered, you will also pay for your employer to take it out your wages. The sum being proposed in the regulations is not that significant, but it is there. All of these provisions are quite new, and this is probably not one that people have majored in.

Penalties for benefit fraud will increase considerably. The Law Centre does not condone fraud. We recognise that there are criminal sanctions for fraud and that that is appropriate. This provision, however, disproportionately ramps up the penalties. If, for example, something is not disclosed and it turns out that there is no overpayment — nothing has been gained from the non-disclosure — the proposal is to introduce a new penalty. It will state that a minimum amount of £350 can be paid to avoid prosecution. The period for which the person will also be off benefit, which is up to four weeks, means that they could find themselves, despite not having taken any money off the state in benefit, facing a £350 penalty plus four weeks off benefit. The cooling-off period is being reduced from 28 days to 14 days. As set out in my submission, there will be increased rules for sanctions if more than

one offence is committed within a certain period, etc. A new civil penalty for incorrect statements and failure to disclose information will be introduced — that £50 penalty was introduced in Britain on 1 October. Interestingly, although HMRC has these powers, it very rarely uses them. When we look at DWP's anticipated income from civil penalties, it appears that it intends use them to a far greater extent than HMRC. You might want to ask the Department for Social Development (DSD) about how often it intends to use civil penalties and how much it thinks that it will raise from them. If you believe DWP, civil penalties will be handed out with about the same alacrity as parking tickets on market day in any town near you.

We have a concern about clause 130, but not about the clause itself. I am still unclear on something, and perhaps the Committee is as well, so I would welcome clarification. In Britain, as part of the localism agenda, council tax benefit has been moved from central government. Local authorities have been told that they can implement their own council tax benefit scheme. However, to do that, they have 10% less to spend than central government had. In other words, local authorities have to do it more cheaply. The argument is that, somehow, money can be saved through local implementation. I am not clear whether our rate rebate scheme will have to be 10% less generous. I have heard various answers to my questions. I am not sure whether we will reduce our rate rebate scheme or how we will deal with the apparent issue of where that 10% saving will be made. As I understand it, if such a saving were to be made here, it could be as much as £10 million, so we need to know what is happening with the rate rebate scheme.

I am sorry that that was such a lengthy narration — I am a man of not few words. I am more than happy to answer any questions.

The Chairperson: Les, thank you. That was very helpful and explanatory on a whole range of issues. It added to your previous presentations to us. All have been very helpful in shaping the minds of members.

Mr Brady: Thanks, Les. That was extremely comprehensive, and you covered most of the issues that I wanted to ask about. There is just the matter of financial conditions. As you said, currently, the pension credit cap is open-ended. Obviously, there is then a sliding scale when £1 is lost for every £250 or £500. Those who qualify for only a very small amount can get a passported benefit, but that will be affected by the introduction of universal credit, which will rule out fairly large numbers of older people.

The waiting period for universal credit needs to be clarified. They may opt for 39 weeks' help with a mortgage, but my experience of that was that it affected a lot of people very adversely. In many cases, it led to people having to give up their houses or to repossession.

In the claimant commitment, is one partner signing the equivalent of a split payment?

Mr Allamby: Yes.

Mr Brady: If accepted, that could be factored in. Someone may have mental health problems. Years ago, I had a case of a man who was a paranoid schizophrenic. He spent all day in bed and all night up in the attic tramping about and keeping everybody else awake, refusing to have anything to do with anybody, so his wife had to find out what benefits they might be entitled to. In a sense, she was totally isolated from him. Those cases do happen, and they are probably more commonplace than most people think.

The other issue, which you also covered, is the requirement to look for work for 35 hours a week, which is completely ridiculous. People will be fired up about that, particularly at the moment. Statistics from the Department show that there are 5·8 applicants for every available job. There was an item on the radio last week about Kilkeel, where 446 people are signing on, but only nine jobs are available. I am sure that the remaining 437 will not necessarily want to spend 35 hours looking for jobs that are simply not available.

The xenophobia that you highlighted is just the Bill carrying on Tory policy from Peter Lilley in 1995, when the concept of habitual residence was introduced. That also affects people who are not necessarily foreign nationals; it could affect somebody who was born here, lived here for 20 years, went to work in America or Australia and then came back and had to show that they were habitually resident. The case law on that is arbitrary: some offices accept that someone is here for two weeks;

others say that people have to be here for three months and show all sorts of proof. Those issues need to be clarified.

Last week, we asked the officials about sanctions. What happens when a person who is convicted of fraud and spends two years in jail, but has had sanctions of three years imposed, leaves jail facing another complete year without benefit? If hardship payments are to be recovered, that leaves the individual in an almost impossible position. What happens to the partner and children? Who then becomes the claimant? If the person is back in the household and the two are living together as a couple, they would normally have to claim as a couple. If the partner was looking for work, surely both would have to sign the claimant commitment. All sorts of issues need to be resolved.

Another concern is the erosion of benefits for young people. Severe disablement allowance has already been abolished. In my experience, the young people who were getting severe disablement allowance had quite severe learning difficulties. When that allowance was abolished, there was young person's incapacity benefit, for which the contribution conditions were waived. Now, those young people will have to be absorbed into the pool and, presumably, have to make themselves available, or show whether they are capable. It is worse than we thought, to be honest with you. I mean, Jesus, I was depressed enough —

Ms P Bradley: You are now really depressed, Mickey.

Mr Brady: — and I mean that in the nicest possible way. I think that we are all really depressed after that. You covered some issues that had been raised before, but provided more detail.It is certainly not a pleasant picture that you paint. There are a lot of answers that may or may not come back. Irrespective of the statement yesterday, the Department seems to be wedded to the whole concept of "welfare reform".

Mr Allamby: One of my ambitions in life is, one day, to come to the Social Development Committee and leave it more cheery than when I start. However, I have yet to realise that ambition. *[Laughter.]*

The Chairperson: You might need to consider bringing a box of mulled wine or something. *[Laughter.]*

Mr Allamby: It may take that.

The Chairperson: Members are open to offers.

Mr Allamby: You are quite right about the waiting period for mortgage interest. One of the arguments that I have heard advanced by DWP is that, because they have mortgage interest to pay, owner-occupiers have a real incentive to get back to work. If they have to wait even 13 weeks, never mind 39 weeks, they will really be wanting to get back into work.

That is fine, well and good. The problem is that, given the number of jobs out there and the number of people looking for them, even the most assiduous person, who has lost his or her job but who wants to find work tomorrow, will find it hard to get a job straight away. That is the case even if people are flexible and willing to work unsociable hours, and so on. Some people who are homeowners will, if the period changes to 39 weeks, which equates to nine months without having the mortgage paid, find that really difficult to deal with. If you have worked for 20 years and have built up savings, you might well be able to manage it. You might if you have insurance. However, for people who are unemployed, the insurance market has suffered because of various other things that have happened with insurance products, and I think that that will affect some people very adversely.

You mentioned the idea about the EU stuff. We have had lots of examples of UK and Irish nationals returning to Northern Ireland who have fallen foul, for at least a period, of the habitual residence test. We have had everything: people who have come back, either temporarily or permanently, to look after parents who are seriously ill; people who had gone abroad but whose marriage has broken down and who have decided to come back to Northern Ireland; and people who have decided to come back to Northern Ireland for whatever reason. Unless there is something in the regulations that makes exceptions for those people, some will find it tough to get into the universal credit system when they first come back — even if they are coming back for reasons that will probably save the government money. If you come back to look after your mother or father who is now terminally ill, for a year or whatever, it is pretty harsh to say that there will be a period before we will give you any benefit, even

though you are probably saving us a very considerable sum of money by doing that. Yes, we need to look at what the regulations will contain.

As to fraud, yesterday I understood that we were going to have an "intelligent approach" to the issues. We would have retribution on the one hand and rehabilitation on the other. However, the Bill seems to be a bit stronger on retribution, and I do not see much on rehabilitation. If you remove benefit for up to three years in some circumstances, it strikes me that you are probably removing it from people who have been punished once, and probably quite rightly. If you make it almost impossible for them to go back to their family without them losing all their income and having to work through all that, you are saying to the family that it must split from the person, which is presumably not going to be very good for rehabilitation. I suspect that most prisoners will find it easier to make their way back into society if they have family support. Or you push families into the fiction of pretending that separation has occurred when it has not. That is not a very attractive proposition, either for the state or the family. It does not seem to me to be, to use the Prime Minister's words, an "intelligent approach" to the issues.

Mr Brady: I will raise just one other thing that I meant to mention, Les. When people fall below a specific threshold — let us say that they are in part-time work — they will have to go into the work capability stuff. I am sorry, but I mean that they will have to be actively seeking work — whatever the terminology is. When officials told us about universal credit and the tapers, they said that it was designed to encourage people to move in and out of part-time work. Essentially, however, they are saying in this that people will be penalised if they go below a certain amount. As you say, if you have a part-time job and are doing the required minimum hours, you will still get some tax credit.

Mr Allamby: As I understand it, the threshold will not be hours as such but earnings. In other words, if you are in very lucrative part-time work that gets you out of universal credit, that is fine — you can do that part-time work. I do not think that it has really been formulated how that will work for a part-time worker on universal credit. That is why the Government want to do pilots, and they have said that they are not going to introduce it straight away. They are going to run some pilots, and I am not sure where those are at. The powers are in this Bill, and were in the Bill in Britain, to say that, just because you are doing 17 and a half hours a week, it does not mean that you will not be expected to look for work. You are not going to be expected to look for work for 35 hours a week, but, in theory, I guess that you should be looking for work in the other 17 and a half hours.

Mr Brady: The difficulty with pilot schemes is that one might be run in the south-east of England, where more full-time or part-time employment may be available. The results of that scheme could be favourable or more encouraging, and its results could be imposed here. That happened in the previous mandate where pilots were run on certain issues. That is not parity, because parity compares like to like. In our area, we have the highest unemployment figures since 1997. If there is to be a pilot scheme, it has to be equitable, in that it has to be run here to reflect local circumstances. Unfortunately, that did not happen previously. I assume that the British Government have no intention of doing it here at the moment.

Mr Allamby: If I were DEL, I would be looking at this aghast. DEL will have its work cut out. It has large numbers of people migrating from incapacity benefit to employment and support allowance who, for the first time, will come into the work-related activity group. That is already happening. Therefore, there is already a new cohort of people whom you will be working with who are, to use the terminology used, a long way from the labour market. There is intensive work to do with that group. There are increasing numbers of unemployed people. Increasingly, DEL will have to engage with both the husband and wife or the male and female partner in looking for work. On top of that, DEL is taking on the challenge of people who are in work part-time and working with them to find full-time work. It looks as though the average person in a jobs and benefits office through DEL will be spending more than 35 hours a week dealing with this, because it is an enormous undertaking.

Our view has always been that you should use what limited resources you have — DEL will tell you that its resources are limited in a jobs and benefits office — where you can the most effective outcomes. It seems to me that that means, without writing anyone off, working with people who have 40 years of their working life left rather than with people who have five years of their working life left. At the moment, I do not get any sense that any of that is being considered.

We should have a lighter-touch arrangement on sanctions and on what you have to do to look for work for someone who is 60, for example, than for someone who is 20. Should the same level of resources be spent to encourage or help back into work a person who is 60 and in poor health when the time

that that person will spend in work will be relatively limited compared with that of someone who is 20? It is a tough call, but, if you have limited resources, you have to make those tough calls.

Mr Brady: It is not that long ago that, when they reached the age of 50, people did not have to sign on. Now, people with a younger partner will have to be absorbed into that market, if you like. They could be in their late sixties. The example that you gave was of someone who is 71. That adds another tier to the people who may be considered.

Mr Allamby: Absolutely.

Mr Copeland: Thank you, Les, for an interesting afternoon.

Mr Brady: Depressing.

Mr Copeland: It is very depressing, because I can picture someone whom I know in every category that you raised. What is waiting for them is not particularly pleasant.

Les, you may be aware of concerns in some quarters, if not all, regarding the compliance with human rights legislation and, particularly, equality. You may also be aware of the findings in the report of the joint Lords and Commons Committee, which highlighted concerns. Are you sighted on the level of discussions that have taken place between the relevant commissions here and the Department to ensure that we are not in the process of enshrining or recommending something in law that will subsequently be open to successful challenge?

Mr Allamby: I am not. I know that the Human Rights Commission has commissioned a piece of work. It may have been published, but I am not sure. It commissioned that piece of work to look at the human rights implications of the Welfare Reform Bill. I am not sure whether it is in the public domain; I just know that the work has been done.

I know that the Human Rights Commission was looking at producing a submission for you, so, if one is not with you, I am pretty sure that you will be getting it. I am not sure what is happening on the Equality Commission side.

There are a number of things in the Bill, and I will put them into two categories. There are potential human rights challenges, the strongest of which relates to the idea that EU migrants have to be in the all-work requirement, regardless of their circumstances. I would much rather be arguing our case than arguing the Department's case.

There are other potential legal challenges out there, and I have mentioned them. There is the potential to challenge the ESA reduction straight away if you have been on 52 weeks, for example. I will put my hand on my heart and say that that would be a much tougher case to win. There are potential challenges to some of the housing issues, such as the size-related element, particularly if the Housing Executive and housing associations have not got credible alternatives to offer people. There are legal challenges there. Again, I will put my hand on my heart and say that there are arguments that the Department can make.

Therefore, there are some areas in which it would be very difficult to call. There are other areas in which, I think, the Department will find it a struggle to win a legal argument. That is why it might be worth getting some of your in-house advice and possibly exploring with the Human Rights Commission, for example, whether it thinks that there are issues, particularly with migrant workers.

I am a lawyer. I know what lawyers will attempt to do, in most areas. If you ask lawyers whether they can argue against something, they will sometimes say that there is absolutely no argument, but, on most things, they will say that there is a credible argument. In some cases, they will have a credible argument, but, in others, there will be a struggle to provide one. I do not know how you would quantify the costs that would be saved. If migrant workers fall into the all-work requirement, as local workers, they should be subject to the same conditions. However, if they do not, because they are a full-time carer, have just given birth or are doing any of the other things that arise, they should be treated the same as anybody else.

Mr Copeland: There should be parity.

Mr Allamby: Yes. Parity appears to apply only —

Mr Copeland: There is selective parity.

Mr Allamby: Yes. There does not seem to be parity across the European Union, but that is probably going a bit far, even by my standards.

The Chairperson: There are no more questions, but I have a couple of points to make. This is timely, given your last point. Next Tuesday, we will hear from the Equality Commission and the Human Rights Commission, among a number of other stakeholders. We will be taking advice and evidence from both of those organisations. We intend to look at some of the, if you like, legalese points that you raised. We will likely take advice from Assembly Legal Services. That will be available to us.

Les, we have taken note of your contribution today, your submission and your responses to Committee members' questions. I thank you for your comprehensive presentation. As always, it was very informative and provided an expert point of view. I thank you, and I thank members for diligently pursuing your presentation. No doubt, we will take your views on board. Obviously, you know the process that we are involved in. This is the Bill's Committee Stage, and it will be followed by Consideration Stage. This is part of the evidence-gathering, which will continue. Our schedule dictates that we are due to finalise our report by 27 November.

Mr Allamby: Thank you. If you are feeling overly euphoric and need to be brought back down to earth, I will come back to talk to you at any stage.

Mr Brady: That is not going to happen before 27 November anyway.