Northern Ireland Assembly

Ad Hoc Committee on Conformity with Equality Requirements, Welfare Reform Bill

OFFICIAL REPORT (Hansard)

Law Centre (NI)

10 December 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Trevor Lunn (Chairperson)
Mr Robin Swann (Deputy Chairperson)
Ms Paula Bradley
Mr Mickey Brady
Mr Colum Eastwood
Mr Tom Elliott
Ms Bronwyn McGahan
Mr David McIlveen
Lord Morrow
Ms Caitríona Ruane
Mr Peter Weir

Witnesses:
Mr Les Allamby Law Centre (NI)

The Chairperson: I welcome Mr Les Allamby from the Law Centre (NI). If you have a mobile phone, please make sure it is turned off.

Mr Les Allamby (Law Centre (NI): It has been turned off already in anticipation. I saw Peter heading outside to make a phone call, which reminded me to do that very thing.

The Chairperson: I invite you to give your presentation.

Mr Allamby: Thank you, Chairperson. I intend to give a reasonably short presentation that will cover what I think are the Human Rights Act 1998 issues and some equality issues that may arise in the Welfare Reform Bill. I will be happy to take questions on what I present or on anything else that is in the submission that we produced for the Committee for Social Development.

It is probably worth starting by saying, and without going into any great depth or detail, that the Human Rights Act 1998 was an incorporation of the European Convention on Human Rights into domestic legislation in 2000. Effectively, that allows domestic courts to read into domestic legislation key principles and provisions of the convention.

At the same time, it is probably worth saying that the traditional role of the European Court of Human Rights has not been to substitute the decisions of domestic courts but usually to look at whether legislation or legal decisions in the signatory states effectively apply the convention principles

appropriately. It does not mean that Strasbourg takes a different view than Westminster, for example, and substitutes its decisions. It looks at whether the signatory state has followed the principles underpinning the convention.

It is also worth saying, fairly briefly, that when the European Court of Human Rights examines these issues, it usually looks at the legality of a provision or a restriction by examining three things. The first is whether that provision or restriction has a legitimate aim. It takes a fairly broad view of what is a legitimate aim, but the provision must have one in the first place. The second is whether that legitimate aim corresponds to meeting a pressing social need. Thirdly, it asks whether the approach is necessary and proportionate. Proportionality is a key test.

The European Court of Human Rights has, traditionally, taken a very strict approach with some parts of the convention. For example, it looks in a fairly rigorous way on things such as freedom of expression or private life. However, on other issues — for example, property issues — it tends to take a less rigorous approach. The court tends to look at things such as whether a provision has a reasonable relationship between the interference of a right and the legitimate aim being pursued, and whether a fair balance has been struck between competing general interests on the one hand and the individual impact on the other. So, it is that kind of recognition. For example, would the European Convention, in general terms, say that it is legitimate for a devolved Assembly or the UK-wide Government to decide how to spend their money on social security? The European courts would say yes, it is not their job to determine that policy. They would then look at the question of whether the issues have been applied proportionately, including the decision to cut expenditure. Again, the European courts would tend not to intervene and say that you cannot cut expenditure, but that the issue is the way that you have gone about doing it.

I want to address some issues in the Welfare Reform Bill that I think are problematic. I know that this may be the longest preamble in history, but one final thing to say at the outset is that this Bill is enabling legislation. Therefore, much of the detail of what the Assembly will be dealing with over the next three or four months or so will be in the regulations. I will use the quick example of what is euphemistically called the "spare-room tax" or, to give it its proper title, the social sector size-related criteria. In other words, if you "overoccupy" Housing Executive or housing association housing, you will lose housing benefit if you have more than one bedroom that is not in use. All that the Bill does is give the powers, in very broad terms, to produce that kind of provision. The regulations, and we have seen draft regulations in Britain so we have some idea of what they will look like, will tell us how that provision will apply, the level of the penalty and what exemptions there are. So, the detail is in the regulations, and a great deal of our Welfare Reform Bill is being left to detail in the regulations.

When dealing with the Bill, you must bear in mind that you have to see the regulations and where the two elements fit together. Some Human Rights Act issues are as likely to arise from the regulations as from the Bill. Therefore, although I will confine my remarks to the Bill, that does not escape the fact that, as everyone likes to say, "The devil is in the detail". It certainly is in welfare reform.

I will take four areas to give you some flavour of potential legal issues that may give rise to Human Rights Act concerns. The first, which is mentioned in the submission, is that schedule 1(7) provides for European migrant workers to be treated differently in that they will be placed in what is called the all work-related requirements regardless of their circumstances.

In practice, there are five categories that you can fall into, and they range upwards from no work-related requirements at all. So, if you have a very serious disability — for example, a learning disability — and you get certain disability benefits, you are unlikely to be expected to look for work. However, slightly more onerous conditions will be applied depending on your circumstances. For example, someone who has just had a child can be in a category that has a fairly light-touch approach. The categories go right through to the all work-related requirement that — we know now from having seen draft regulations and the Department for Work and Pensions (DWP) announcements in Britain — you must spend 35 hours a week looking for work. Therefore, schedule 1(7) is saying that, regardless of their circumstances, EU migrant workers must spend 35 hours of every week looking for work.

In effect, what will happen is that you will have two workers living next door to each other who have recently become unemployed. One is a European Union worker from Poland, who has perhaps worked for almost 10 years since coming here in 2004, and the next-door neighbour is a British or Irish national who is in exactly the same situation. If the British or Irish national is looking after somebody full time — for example, a child or adult family member with a disability — and they get carer's allowance, the conditions for looking for work will be relatively light touch. However, if the Polish

worker next door has full-time care commitments or has recently given birth, they will still be expected to look for work for 35 hours a week.

That will become doubly onerous in that it will have a knock-on effect in other areas, as we know from draft regulations in Britain and other areas. It is called the minimum income floor — and I am sorry to have to throw so many technical terms at members. If you are a self-employed person, under the new universal credit arrangements, there will be an assumption that you are making a certain amount of profit, whether you are making it or not. So, for a short period early in a business, there will be an assumption that you may not be making a net profit. After that, the assumption in universal credit is that there is a minimum income floor. Whether you make money or not, the assumption will be that you are generating an income. That is designed to stop people with a self-employed business being able to claim full universal credit.

That minimum income floor will not apply to people outside the all-work requirement. The British or Irish national who has given birth relatively recently or who has caring commitments will be allowed to go and seek self-employment, because that may well suit them much better in respect of their care commitments. However, if you are from another part of the EU and you decide, because of your caring commitments, or whatever, that you want to try self-employment, the assumption will be that the minimum income floor will apply to you.

In effect, what we are doing is treating EU workers differently. In any examination of the legality of that, it seems to me, first of all, that social security and universal credit will be treated as a property for the European Convention. The question then is this: is it discriminatory? The freedom from discrimination in the European Convention on Human Rights is not a freestanding right and has to be attached to another right, such as the right to property. As the courts and the UK Government have now accepted, both non-contributory and contributory benefits and social security are a property. So, the answer to the question of whether it is discriminatory is clearly yes. However, the further question then is this: is there an objective justification for treating EU migrant workers differently from others? In my view, it is very difficult to see what that objective justification is.

Universal credit will also have a right-to-reside test built into it. One of the traditional attempts to justify this is to say that we do not want people to arrive and simply claim social security — the so-called benefit tourists. In my experience, benefit tourists are a phenomenon that you hear more about than see in practice. That will be dealt with by the provisions for right to reside. There will be a group of people who, like local workers, have been here, lost their job or had a change in circumstances, and still want to find work but will be treated very differently from non-EU workers. I cannot for the life of me see any great policy definition for that.

Personally, I think that it is being driven by a broader political agenda in respect of Europe that applies at Westminster. It has nothing to do with policy, and, in my view, we do not need it in our Bill. If we put it in our Bill, it is likely to end up in the courts in any event. If it is not contrary to the convention, we are likely to find that it is contrary to European law and the European Court of Justice, because, on the minimum income floor provision, for example, in treating people differently, European directives say that migrant workers, provided that they are workers, are entitled to the same social and tax advantages as local workers. Again, this is not applying that provision under what is called article 7(2) of (EEC) No 1612/68. I am sorry to throw in rather a lot of law. I know that there is a lawyer or two sitting around the table.

That is the first provision that I think is problematic and likely to lead to a legal challenge. The second one is the issue of the size-related criteria — the spare-room tax, if you like. Having a spare-room tax is not necessarily unlawful of itself, in my view. I do not like it. I do not think it is necessary or appropriate, but I could not say that a Government could not decide to do something like that if they wish to do it. The issue for Northern Ireland is that the Housing Executive is on record before the Social Development Committee as saying that, at the moment, it is not ready for it. So, in effect, in evidence given to the Social Development Committee, the Housing Executive has said that if everybody offers to move into alternative accommodation in order not to have their housing benefit cut, because they are on a low income and cannot afford to pay it, the Housing Executive will not be able to provide or find alternative accommodation. It is quite open about that. We know that we have got discretionary housing payments, but those are considerably less than the amount of money that is going to be saved by the provision on the spare-room tax.

A person may be told that they will lose up to 14% of their housing benefit because they have a room more than they need. They may well have a son or daughter at university who is coming home, or they may want to offer care to somebody on an occasional basis, or whatever, but that will not be

good enough. If they then say that they will move somewhere else, the Housing Executive will say that it cannot find them smaller accommodation but will still take money from their benefit. In those circumstances, I think there is an argument about whether article 8 of the European Convention on Human Rights — the right to family life and the right to private life — will have been breached.

The second area that gives rise to concerns — and in Britain we have seen exemptions to it — is that there are very few exemptions. Although it is very welcome that, for example, people living in supported living accommodation are exempt from the spare-room tax, beyond that, the exemptions are relatively small in number in Britain. Therefore, if we decide to make parallel provision in Northern Ireland, we will have, for example, cases in which foster carers who are "in between" caring will not be exempt from the tax. So, if you have a spare room that is being used for a foster care placement and you provide temporary provision, and if that child moves on to someone else and there is a gap before your next foster care placement, currently, you will be faced with the spare-room tax. We know that there is a real shortage of foster care placements. Barnardo's issued a very good report about the dangers and vulnerabilities of young people in care. This seems to be going completely in the opposite direction from what everybody else would like to do, such as encouraging foster carers, for example.

If you have two children under the age of 10 and you put them in separate bedrooms because one has a disability and keeps the other awake at night because of the need for care, the disturbance at night, etc, that will not be exempt from the provisions, and so, again, you will potentially find yourself losing housing benefit. You can go for discretionary housing payments, but they are discretionary. They are not meant to be paid in perpetuity, etc. Interestingly, there was a case in Britain against the local authorities, Birmingham City Council and Walsall Metropolitan Council, concerning the equivalent provision in the private-rented sector. One of the three cases — I will not go into the other two because they have decided to make them exemptions — involved two children under eight, both of whom had disabilities and needed to be in separate rooms. The Court of Appeal said that the fact that you lost housing benefit as a result of having two disabled children in two separate rooms was unlawful under article 1, protocol 1 and article 14 of the European Convention.

For reasons best known to itself, the Department for Work and Pensions has not decided to make that an exemption even though the Court of Appeal has said that it is unlawful. The Supreme Court may decide to overturn that; we do not know. It will be at least a year, in my view, before it gets to the Supreme Court.

The interesting issue for me is that DWP in that case, and, I have heard, the Department for Social Development (DSD), have argued that they have discretionary housing payments for those types of hard cases — for foster carers in between placements, for people with disabilities, etc. However, in the Burnip, Gorry and Trengove case, the Court of Appeal said that discretionary housing payments are not the answer and they do not allow you to say that we can have this provision.

They were really saying that those provisions are not in perpetuity and that that provision is not available as a right. Therefore, it is not sufficient to be able to say, well, you can ask the local Housing Executive office to make up the difference because you have children with disabilities. That is the second area where there is a real problem with the Bill when we get to the regulations.

The third one is what is called the claimant commitment. The claimant commitment is a replacement for the current provision whereby you have to sign a jobseeker's agreement, you have to be actively seeking work, etc. There will be a new kind of agreement, called the claimant commitment. Our difficulty with that is that under current arrangements that are going to apply in universal credit — it is coming in before universal credit — the Department in Britain has said that if one member of a couple signs the claimant commitment but the other refuses, they will not get any benefit at all. I understand that we are likely to follow suit here. Common sense might dictate that if one partner refuses to sign and the other signs, you might pay a lesser amount of benefit. For example, it might be more proportionate to say that the single rate will be paid until the partner signs. However, nothing will be paid to the couple or the children.

In our view, that leaves families in a position where partners or children can be left with nothing. We have experience of this — sometimes people with mental health problems, sometimes family disputes where one partner simply refuses to sign almost in order to spite the other partner. That almost certainly means that you either have to persuade your partner to sign, which, presumably, might be very difficult in some cases, or alternatively, you split up or you survive without any benefit at all. Again, that raises issues to do with the right to private and family life, and it would be very easy to find a way of dealing with that. However, the current Bill and regulations in Britain do not.

The final one that I will mention as important in the Bill is the time-limiting of employment and support allowance (ESA) for people on contributory benefit for those in the work-related activity group. We know that some people who are on contributory benefit — in other words, who have paid their contributions and have got their national insurance — will be able to go on income-related benefit after 12 months. However, there are two groups of people who will come off the benefit altogether. The first are people who have a partner who is working, and the second are those who have savings over £16,000.

We know from the equality impact assessment (EQIA) in Britain and in Northern Ireland that the vast majority of people who will be affected by that are people who are aged 45 or over. Seventy per cent of the people who are on contributory ESA are aged over 45. The figure is nearly 40% for people aged over 55. That group of people will probably be those who have saved up £16,000 or more. They have done what the Government said that they should do, which is to prepare for retirement and save for that. That is the group that will be impacted by this proposal.

The questions on that one is, I suppose, whether the interference is proportionate. Does it strike the right balance between, on the one hand, a Government that want to save money and, on the other hand, the impact on individuals? There was a case in Iceland, the Ásmundsson case, where an occupational pension scheme was taken away. The European Court decided that the removal of the pension altogether was disproportionate. A way to ameliorate that could have been found, and it was held unlawful. There are a number of other cases in which the court has said that the interference, if you like, with existing social security payments is lawful in terms of the convention.

The interesting issue for me, and one thing that the Assembly is going to face — the two of you here from the Social Development Committee will face it first — is that, almost certainly, the Bill and regulations will come to you at the same time. The Department's intention is not just to get the Bill through as quickly as it can with a timetable but, for some parts of the Bill, it wants the regulations to follow almost immediately. The social rented sector provisions will follow almost immediately; the ESA provision will follow almost immediately. In Britain, they wrote to people in advance to say, "This is going to happen to you in terms of your ESA contributions conditions, and you may find yourself losing benefit, but we will give you some notice of that." The 12-month rule is going to be retrospective. In other words, if, on the day it was introduced in regulations in Britain, you have already been on benefit for 12 months, you will come off on the day that the provision is introduced. There is no start from now and spend 12 months on benefit; it starts from day one. However, we have not done any of that preparatory work. So, if we decide that we are going to provide the Bill and the regulations at almost the same time, you are going to give people no forewarning as individuals at all. I think that there is a set of legal issues that revolve around that.

Those are four examples of Human Rights Act 1998 implications of the Bill. I will turn fairly quickly to equality. I want to confine my submission to some specific issues because I think that you will probably have had a more detailed overview of section 75 from other people who have come before the Committee. I will give you some very quick examples of concerns I have.

One practical example is about the incentives to work. It is fair to say that work incentives under universal credit will, by and large, for those who can find work, be considerably better for lone parents, single people and couples with a single earner. By and large, those people will be better off if they find work under universal credit. However, I strike a small note of caution. The Department in Britain has announced — and I have no reason to believe that we will not do it here — that it is going to introduce what is called a zero earnings rule for mortgage interest. What that means is that, if you are a lone parent, for example, universal credit — and it is a principle that I have no difficulty signing up to to encourage people to get into work wherever that is possible. The new arrangements will allow you to work for less than 16 hours and get into the mini-jobs world, work one day a week. That suits your childcare when your children are very young, and that can lead to you moving to perhaps two days a week and, eventually, full-time employment. The trouble is that if you get any work at all, you will lose all your mortgage interest help straight away. That is the intention. So, if you have a mortgage and are getting help with payments, and you do even half a day a week to try to start getting back into the world of work, you will lose your mortgage interest help. So, there will be groups of people who will lose as a result of that. I have not seen much work done through the equality impact assessment to factor that in. More importantly, perhaps, the Department's EQIA acknowledges, on page 40, that in couples who have two earners, if both of them get into work, they will not necessarily be better off under universal credit. Therefore, the incentive to work for two earners is much less clear-cut. It says:

"Universal Credit is designed to encourage work at a household level, and is expected to reduce the number of households in which there is no-one working. As the focus of Universal Credit is to help workless households there is a risk of decreased work incentives for second earners in couples (primarily women)."

Women second earners could well be worse off as a result of universal credit, yet you march on 40 pages in the same EQIA, and the Department says:

"Where both members of a couple are out of work we consider it is right that both individuals should be required to find work or prepare for work if they are capable of doing so. Accordingly, under Universal Credit all couples will be required to make a joint claim. All claimants will have to meet conditionality requirements in line with their personal circumstances and capability."

In other words, if both members of the couple do not actively look for work — 35 hours a week in some cases — we will sanction you, even if we are admitting that universal credit has been devised in a way that will leave you worse off by finding work. No information on how they are going to mitigate this; it simply says that, on the one hand, this happens, and, on the other hand, we are going to do this. I understood that part of section 75 was that if there is an equality impact, you look at how to mitigate. I can find no attempt to mitigate that, and it seems a fairly fundamental principle to encourage you into work that you should not only be better off, but at least you should not be any worse off if you find work. In this case, it looks as if we are being quite open about the fact that people will be worse off. So, there are issues with the EQIA.

A second group is people with disabilities. As the EQIA states, 30% of people will be better off under universal credit, 30% will be worse off — some of those up to £39 a week worse off — and 40% will have no change. There are reasons for that to do with the current system, and DWP has said that it wants to channel some of the money that it is saving and that is leaving people with disabilities worse off into other ways of encouraging people into work. Our EQIA says that the transitional protection will deal with that and that no one will be worse off at the point of change. To an extent, that is true. However, there are two things that the EQIA does not go on to say, one of which is that the transitional protection is eroded. In other words, as your benefit goes up, the protection you have goes down. So, slowly but surely, you will end up moving to, in some cases, being £39 worse off. If you are a new claimant, you will not have any transitional protection. Two groups of people will be affected by that, one of which is the group of people who have had a disability since birth or childhood and who come into the scheme because they reach age 16, 17 or 18. They will not have any transitional protection and will be worse off. So, young people with disabilities will be affected. The second group is those who become disabled for the first time. You have a car accident or an accident at work, or something else. Until then, you were in reasonable financial circumstances but suddenly you are out of work and claiming universal credit, or your working ability has been reduced. You might still be in work but have to rely on universal credit. You will not get transitional protection, and there is nothing in this EQIA about how we will deal with those groups of people.

We have next to no information about who will be affected by the benefit cap. We know that the numbers are not that large in Northern Ireland compared to many other parts of the United Kingdom. That is, by and large, to do with the fact that our housing costs, on average, are lower. Sixty per cent of the people who will be affected by the benefit cap live in London and the south-east of England, but we will have some people affected. We know much more about who those people are in Scotland and in Wales and in regions in Britain than we do about those in Northern Ireland, but we need to do some work to drill down about who is going to be impacted and how we are going to deal with that group of people.

Much of what is in the EQIA is reliant on the 2008/09 family resources survey. The equivalent in GB uses much more up-to-date figures. We know that between one fifth and one quarter of social rented sector tenants will be affected and that a large number of those will be older people. We really need to drill down further as to who those people are. We know, for example, about the removal of national insurance benefits for people who are subject to immigration control. The EQIA conflates all those people and says that they are people who are working illegally. That is simply not the case. Some of the people who will be affected by this will be people who were here perfectly legitimately, were on visas to work and whose circumstances may have changed. They may well be appealing whatever their immigration status is. My organisation is involved in that to a very significant extent. Again, we need to know who those people are and what those circumstances are.

Finally there is the question of sanctions. The EQIA does not tell us how many people are currently sanctioned, who they are and whether they are people with children or without children. It gives us no

figures on the projected number of people who will be affected by sanctions. It makes a statement to say that the proposed changes to the hardship provisions will only affect non-vulnerable groups, that any recovery will be gradual and that there are not expected to be any equality impact issues. Well, under the new arrangements for hardship payments and sanctions, it will be much tougher to get hardship payments. In addition, they will be loans, where currently you get a reduction in benefit, but that benefit is not recoverable. You will get a reduction in your benefit and, when you get back onto benefit after a sanction, not only will you then have to have coped with having lost 40% of your standard allowance but you will have to pay the money that you have been given back. I can tell you, without having to see all the stats, that we need to know how many families are likely to be impacted by that. If you take 40% of a standard allowance of universal credit out of someone's household income, it will have a child poverty impact. People will not somehow stop spending only on themselves; it will affect what they can purchase for their children. Paying the money back will have an impact.

So, there are statements in the EQIA that, in my view, are not stand-over-able and are not accurate. Therefore, we need to drill down on those. I hope that that gives you a sense of some of the issues that apply, both in human rights terms and equality terms.

The Chairperson: Thank you very much. You have been very specific, which is good. You have raised things that other organisations have touched on as well. You are a member of the board of the social security advisory committee.

Mr Allamby: I am, yes.

The Chairperson: You are reporting on the regulations in Westminster. Are those being laid today?

Mr Allamby: They are. I am in the slightly bizarre position that I am not allowed to say anything about this until 4.30 pm this afternoon. I can tell you that they will be laid this afternoon. What I have told you about today was based on draft regulations. The universal credit regulations will be published, if not today, in the next couple of days, so we will know what the most current, up-to-date version for Britain is. The Department has said that there may well still be some show-stoppers and that it may look at them again, but we know where it is currently and what it intends to do. By the end of the day, we will know the response to the social security advisory committee's recommendations, and, without in any way treading on Parliament, I can say that there are a number of changes that will be made. I am not really in a position to go into detail on that.

If the regulations in Northern Ireland replicate the regulations in Britain — and I have no reason to doubt that that is the Department's intention — the kinds of things I have mentioned will give rise to real concerns. Some of the things that I have mentioned can, frankly, be dealt with and do not have an enormous price tag. I recognise that doing certain things differently comes with a price, and that price is quite significant. That raises a whole set of issues that, clearly, the Assembly would need to interrogate. However, there are other changes that, frankly, do not come with a significant price — for example, exempting foster carers in between placements from the housing provisions. If DWP says that that group of people should be able to be picked up in discretionary housing payments, why do we not simply pick them up with an exemption in a regulation? It frankly will not cost any more money, it is administratively more simple and it says to foster carers that we are not going to put up another barrier to them undertaking foster care if they happen to live in housing association or Housing Executive accommodation. So there are things that we can do differently that do not necessarily have financial ramifications for Northern Ireland.

The Chairperson: You spent quite a bit of time on the situation around EU workers here and the differences in treatment — the 35 hours a week looking for work, and so on. This is what I can never understand: why would the UK Parliament pass an Act that was so obviously going to be discriminatory or challengeable?

Mr Allamby: I think the answer to that is that they, presumably, believe that they can objectively justify why they are doing that. They must have a tenable legal argument. Lawyers can argue almost anything about anything, but you can find a counterargument to the legality, or otherwise, of most things. I suppose that I am saying that it is very difficult to see an immediate and obvious objective justification for what is being done here. I am sure that departmental lawyers will construct one in GB, but sometimes you will go into court knowing that you might rather be arguing the other side's case more than your own case, and other times the reverse is true. On this one, I would much rather be arguing the case that this is unlawful than trying to justify the lawfulness of it. I am not saying that

there will not be a very elegant peroration as to why it can be justified, but I think it will be quite a tough task for whoever ends up having to do that on behalf of the UK Government. I think it would be much better not to have to spend time over that in court here. Let us deal with it by not putting it in our Bill.

The Chairperson: Is there likely to be something in the regulations that you cannot talk about that would clarify that in any way?

Mr Allamby: No. There are draft regulations. I have seen the draft regulations and the explanatory memorandum. They are in the public domain; they are on the social security advisory committee's website. The Government are saying that they want to be better able to keep track of European Union workers and others, and they want this provision on that basis. The problem is the way it is crafted. There are all sorts of other provisions that are designed to be advantageous for people who are not expected to look for full-time work, because of their circumstances. You still want to encourage somebody who has caring responsibilities, such as somebody who has a child under 12 months, for instance, but still wants to enter into the labour market early. Those groups of people are encouraged to take up self-employment, and the rules are relaxed to allow them to do that. The rules are not relaxed for an EU migrant. Bizarrely, if an EU migrant has just had a child, is being told they have to look for work 35 hours a week, but decides to try self-employment instead, to try to get themselves off universal credit, or off full universal credit, we will immediately penalise that person for doing that. We would not penalise a British or Irish national for doing the same thing.

I find it very difficult to see what is an objective justification, and why you do not merely say, "You have got to look for work 35 hours a week". When you do other things, certain categories of EU migrant workers will have those closed off to them, even if the aim is to get you off universal credit. It makes no policy sense. It seems to me that it is designed in some way to have a negative impact on certain types of migrant workers.

There will be people who are work seekers who probably will not get into universal credit in the first place, because if you have never worked here, it is going to be very hard to get into universal credit. So, this is not about work seeking. This is about people who have come here, worked for a period and are not working currently. Given that we have had people from the accession countries since May 2004, you could have people who have been working here for six, seven or eight years. By the time universal credit comes in, it will be almost 10 years since accession. So you may well have people who will have been working for eight, nine or 10 years but who have lost their jobs and are going to find themselves being penalised within the benefit system, even though it is very clear that they are people who have, traditionally, worked very hard to get back into work, and we are not going to offer them flexibilities.

Trevor, I genuinely do not know what the rationale for that is, other than what I will call wider political issues. I have not heard the Department here give us a specific Northern Irish rationale about why we want that.

The Chairperson: I will come to members in just a moment. The Westminster Government have been through all of this, and presumably they have had advice from people like you, or maybe even you in person. They have had their Standing Committee on human rights and equality look at it in some detail, and they have gone ahead and passed the Act. Some of the matters you mention are maybe Northern Ireland-specific and some of them are not. I am not doubting what you say at all, but if it is so clear that it is almost inevitable that challenges will come up due to discrimination, why did they go ahead and do that?

Mr Allamby: I should probably be clear. I think that, on the issue of EU migrant workers, there is a really strong legal argument and legal challenge. Some of the other areas I have suggested are open to challenge. I am fairly strongly certain that there will be a challenge, but I cannot forecast what the outcome will be. It may or may not be successful. I have no doubt that there are credible alternative arguments about why, for example, with a claimant commitment that only one partner signs up to, you do not get any benefit unless both partners sign up. Social security is littered with legal challenges over the years, some of which have been successful and some of which have not. It is fair to say that, on the other three examples that I have given you today, there is no doubt that the Department and government lawyers will put the alternative arguments, and, hand on heart, I do not know whether any of the three of those will be successful. What I am really saying is that I think that they are credible challenges.

The Chairperson: OK, thanks very much.

Ms Ruane: Go raibh maith agat, a Cathaoirleach. Les, very much for your presentation. It is very useful. It is international human rights day today, as you know, so I think it is very fitting that we are looking at all of this. I also want to pay tribute to the work that your organisation has done, and I mean that very sincerely. You have done tremendous work, and you deserve huge credit. I have no doubt that elected reps right across the political spectrum understand that. I take arguments that the Law Centre makes and any advice that you give us very seriously.

I have just a couple of questions. You mentioned section 75 categories. One of the ones I am very concerned about is people with dependents. You mentioned a couple of different areas, but will you elaborate a little bit on the impact on people with dependents, especially given the lack of childcare that we have here? Last week or the week before we saw the amount of money that it costs to keep your child in childcare provision.

The second and last question I have is about something that concerns me greatly. At one of our meetings, we were informed that DSD does not collect data on the section 75 categories, which I found astounding at this stage, given that section 75 has been part and parcel of our governance for many years now. If you do not collect data, you cannot predict. Maybe that is why the EQIA is so sparse. Will you comment on the lack of data and the impact that that can have on having a proper EQIA?

Mr Allamby: There are two issues there. I will give you a quick example of people with dependants and the issue of sanctions or conditionality attached to benefit. In Britain — and, if we follow suit, in Northern Ireland — we are introducing very severe increases in sanctions. They range from low to medium and high. The high level of sanctions will effectively say that the first time you breach sanctions, it will be a 26-week loss of benefit and, on the second occasion, if it is within a certain period, it can be 52 weeks. If you fail to meet a requirement three times within a year it will mean three years off benefits. It feels a bit like three strikes and you are out.

Those groups of people can have access to hardship payments, but there is a 40% reduction in the standard allowance and the payment is recoverable. Somebody who has dependants may be sanctioned, but, frankly, the children have not done anything wrong. A household in which somebody, for whatever reason, falls foul of the system three times, is taken off benefit for up to three years. The question then is this: what happens to the children, and what happens to the other partner who may well have been actively looking for work?

The worry that we have with sanctions is that research to date suggests that certain groups of people are disproportionately affected by them, such as people with mental health problems, people with learning disabilities, people for whom English is not a first language and people with literacy and other difficulties. They are not the only people, but they are the kind of people who are prone to sanctions. Those groups of people are already considerably vulnerable. Hardship payments by way of loans may be offered.

Under the new arrangements, the sanction is designed to change your behaviour if you have done something wrong. Your benefit will be stopped for a period. In the normal world, you would expect that if you then re-engage, the sanction would cease. However, in some cases, that is not what would happen. I find it hard to see a sensible justification for that. The sanction will not cease when you re-engage; you will have to serve a further period, almost as if to punish you to make sure that you do not do it again. Again, you have hardship payments, but they are loans. That is one example where people with dependants will be impacted in a particular way. In reading the EQIA, you get no sense of either the child poverty impact or the section 75 issue of people with dependants and people without.

We do not have section 75 in Britain, but we have an Equality Act and a set of provisions that are different. If you look at the EQIA of the Bill in Britain, you will find a considerable amount of data that has been kept that will tell you the impact of various provisions of the Bill based on issues of race and ethnicity. You can find virtually nothing like that in our EQIA. We had a considerable change over the past 10 years in particular. We have long-standing migrant communities and communities from abroad, but, in the past 10 years, we have had a very significant change in our ethnic make-up. It really is inexcusable that, in 2012, we have not started collecting data on, for example, the issue of race and ethnicity. It is not that difficult to do that if you decide that you want to do it. It may well take time before you have the kind of data that you can use, but we should have been thinking about this when the EU expanded and people started to come here from other countries. We really need to be able to say meaningfully what the impact will be based on race.

There are ways in which we can collect data that are not disproportionately expensive but that will help us to inform policy. It is important to remember that section 75 is about trying to have due regard to equality, but it is also a tool to help you to understand the policy impacts in advance, rather than having to sweep up after the event because something has happened that you were not expecting or having to pay more as a result of having to put through amendments and other policy, as often happens. This was designed to avoid that kind of thing. Doing more effective data collection would be money well spent.

Ms Ruane: The Department of Education has data on every ethnic minority child in a school. I agree with you that it is an easy thing to do if you put your mind to it.

Mr Weir: Thank you, Les, for your presentation. In light of what you said about time constraints, perhaps you should leave us a sealed envelope that is not to be opened before 4.30 pm.

I found it quite useful. I have a number of points, which I will go over fairly quickly. First of all, you have dealt with the legislation itself. Would it be fair to say that your bigger concerns are potentially about the implications of the regulations?

Mr Allamby: Absolutely.

Mr Weir: Secondly, I want to ask you about the human rights implications, because that was not quite clear. You mentioned the human rights implications on the zero-earnings rule and, as you put it, the intention with regard to mortgage relief. You said that it looks like something that is coming down the track, but, presumably, it is not in the Bill. It is just something that is quite likely to be coming in our direction.

Mr Allamby: It is not in the Bill. However, it was flagged up in the explanatory memorandum, which is in the public domain. When the universal credit regulations were being consulted on over the summer in Britain, it was flagged up that that is the intention. In other words, any form of work will immediately mean the loss of all your mortgage interest payments. It is not going to be tapered for people working more than a certain number of hours or earning over a certain amount. Bizarrely, if you do two hours of work a week at the national minimum wage and that brought you in £12 —

Mr Weir: I appreciate the point. That seems to be fairly ill-conceived, to be perfectly honest. However, strictly speaking, our role is to look specifically at the Bill.

The other point is that, in a number of the areas that you touched on, we would agree that there are major concerns. You mentioned the impact on foster carers, the claimant commitment in terms of nothing being paid to a couple and the retrospective time limit. I appreciate that this is one of the areas where we, as a Committee, in looking at these specific aspects, must take into account that there has been a process with the Social Development Committee. Those are all areas where people would say that there are concerns. Correct me if I am wrong, but I thought that the Social Development Committee was looking at amendments around all those areas.

Mr Allamby: I think it probably is. Some of them are probably to do with regulations. For example, there is nothing in the Bill about the impact on foster carers. All the Bill says is that we are giving ourselves powers as an Assembly, and giving the Department powers, to implement, if you like, a spare-room tax for public sector housing. I cannot immediately see a legal argument that says that, somehow, the Assembly could not give the Department those powers. It is then about how you use those powers and apply them, so we are back into the regulations.

My issue is that it is very hard to decouple the Bill from the regulations because the Bill is so broad-ranging —

Mr Weir: I understand that, but the remit of this Committee is to look specifically at the equality and human rights implications of the Bill rather than of the potential regulations.

It will be interesting when we get some response from the Department; you are not the first to raise it. Paragraph 7 of schedule 1 is the work-related bit for EU migrant workers. I cannot think of a particular reason why that is framed the way it is. You have highlighted that. Presumably, this is something that

is being put on a UK-wide basis. I think that, of all the areas, this is most likely to end up being challenged in the courts if it goes ahead the way it is.

With the impact of a legal challenge, through whatever arguments are used by DWP, the courts are likely to say either that they can accept it for whatever reason, or alternatively, it will effectively be declared unlawful across the whole of the UK. To some extent, this bit will stand or fall together. There is no way that we will be in a position to go it alone on that.

Mr Allamby: If we decided not to enact it because we think it potentially unlawful or because we do not see the policy rationale, the issue would then immediately become about whether it is one of the areas on which you can put a price. Is there a cost attached to doing something differently? If so, does it mean that there will be money coming out of the Northern Ireland block grant? It is impossible to know what the ramifications will be of saying to somebody who is a migrant worker and has a child under 12 months to go and spend 35 hours a week looking for work, even though their child might be only three months old. I will use the example of the hypothetical Polish worker again. The hypothetical Polish worker might decide to spend 35 hours a week looking for work in those circumstances and might endure hardship. If they do not, and they get sanctioned, there is a cost to that if we did not go down that road, but it will be very difficult to see what the physical financial cost will be if we decided to do something differently.

Mr Weir: If there is a challenge in respect of the main legislation across the water, and a court case shows that it is against EU law, any change would have to be replicated across the whole of the UK.

Mr Allamby: Technically, not necessarily, but, in practice, almost certainly, if that is not an almost lawyerist answer. What I mean by that is that if it was taken to the Court of Appeal or to the Social Security Commissioners, it would probably have to go. Interestingly, there is a technical issue, which is that our Bill is probably not primary legislation for the purposes of the Human Rights Act. Therefore, a challenge is more likely to happen here. I need to do a bit more work on this, but we could challenge this with the Social Security Commissioners because they would have powers to deal with this as secondary legislation, but, in Britain, it may well have to go direct to the court. If the Court of Appeal makes a decision in Britain, it is not absolutely binding here, but, traditionally, they are very likely to follow.

Mr Weir: If something is declared to be against EU law in Birmingham, it would be very difficult to say that it is within EU law in Belfast.

Mr Allamby: In fairness, I think that the Department would almost certainly follow the judgement, although it may well find its way through the Court of Appeal, the Supreme Court, etc.

The Chairperson: How would you prove or disprove that somebody had spent 35 hours a week looking for work?

Mr Allamby: That is one of the interesting things. You are going to have primary legislation, the regulations and a lot of guidance, and I am pretty sure that the 35-hour rule will be written into the regulations rather than the guidance. The reality is that I do not know, short of electronically tagging everybody and finding out what they are doing. As I said to the Committee, if I became unemployed tomorrow, I could probably spend 35 hours a week in the first two or three weeks looking for work. What I mean by that is that I could do up my CV, look at all the websites, prepare myself for work, etc, but, after four or five weeks, short of knocking on doors and saying, "gis a job", it would be very hard to know how you would spend 35 hours a week. There are only so many libraries and jobcentres, and there are only so many times you can send off your CV, so the reality is that it is built in in a way that is unenforceable. I do not think that it should be in regulations. It is designed to give the message, rather than actually being real.

The Chairperson: Peter asked you about the loss of mortgage interest payment if you work a couple of hours a week. You said that it is not in the Bill, but you are gleaning that from the explanatory memorandum. Is there anything in the draft regulations that clarifies that situation?

Mr Allamby: The draft regulations state that your mortgage interest simply stops if you go into employment, so any form of employment will mean that you will lose your mortgage interest. In fairness, that is the position at the moment if you work more than 16 hours a week because then you can move into the tax credit system. The argument is that the tax credit system will be generous

enough to compensate you for the loss of your mortgage interest. What is new on universal credit is that, if you work two or three hours a week, you will not end up being sufficiently compensated for that, which goes against the idea of mini jobs.

Mr Brady: Thank you very much for the presentation, Les. I have to say this is the first time that I have known you to be embargoed, and you have only three quarters of an hour to go.

We are obviously dealing with the primary legislation, and I think it is important that we get the enabling legislation right, because the regulations will flow from that.

Talking of legal challenges, a precedent has been set in the European court. In 1984, the Drake case changed the whole emphasis of invalid care allowance. So, there are examples.

As has been mentioned, the Housing Executive said very clearly to the Committee for Social Development that if the underoccupancy rules were implemented in the morning, it simply would not be able to cope and that it would take a considerable period of time before it felt able to do so. I know that there has been a lot of talk about the box room in social housing, which most people use as a store room rather than as a bedroom, because you would be lucky to get a bed into one, unless you were to sleep diagonally. My point is that that could be an area for exemption.

One of the things the Department said is that if one person from a couple does not sign the claimant commitment, there would be a four-week cooling off period. That would mean that, during those four weeks, no benefit would be paid to either claimant. That is an obvious difficulty.

In Britain, people have been given at least a year's notice of contributory ESA, but that certainly would not the case here. So, there is no parity in that regard.

Surely, zero earnings is a disincentive for people to go and look for work. Who is going to work for two hours a week and lose their mortgage interest? It is nonsense and is totally irrational.

You mentioned hardship payments, which will be recoverable. By the Government's own admission, benefits are at subsistence level, so the people affected will be living a long way below subsistence level, and it will become very difficult for them.

You touched on the obvious issues of fostering, and all that. We are looking at the human rights and equality aspects of the Bill, but we cannot project who or how many may be affected because of the vast lack of data on those issues.

If we make changes to the primary legislation, that will be rolled out in the regulations. So, that is a possibility.

Mr Allamby: This goes back to Peter's point. I think the issue for the Ad Hoc Committee is that although you are considering only the human rights and equality implications of the Bill, the Department's timetable suggests that it wants to introduce some of the key regulations almost immediately after the Bill has been passed. In some cases, we are talking about a tiny number of weeks — less than a month. If that is the case, we are in a different position from Britain. In Britain, the Bill was given Royal Assent on, I think, 8 March 2012, and the 12-month ESA rule, for example, came in on 30 April. That was only six weeks later, but people had been written to beforehand. The housing provision, for example, will come in April 2013, which is 13 months after the Bill was passed. We know that that is on its way in Northern Ireland, and if the intention is to get it in as quickly or as close to the GB timetable as possible, it almost certainly means that you will get the regulations, if not the day after, very shortly after the Bill has been passed. So, any scrutiny of the real detail will be very difficult.

Trevor, you pointed out earlier that all this has been scrutinised in Britain. There was an enormous amount of scrutiny of the Bill. However, apart from the social security advisory committee, there has not been and is no legal requirement to scrutinise the regulations in anything like the same detail. So, we have a democratic deficit in what are quite important parts of this welfare reform package. You cannot look at the Bill in isolation from the regulations; you have to at least recognise that the two come together. How much of that can be dealt with in the terms of reference is a matter for you rather than me. Given the ramifications, you need to look at the two together.

The Chairperson: That surely means that all we can do is reserve judgement.

Mr Allamby: Well, you can reserve judgement in that sense, but it is a reserving of judgement knowing what the regulations are likely to look like. In the same way as our Bill looks almost the same as the GB Bill, I would not be rushing down to the bookies to put money on any notion that our regulations will look significantly different from GB regulations unless, frankly, the Assembly decides that it wants some of those regulations to be different.

The Chairperson: We have to report the result of our deliberations on the Bill within 30 working days of when we started — 22 January 2013 is our last date. We will not be in a position to comment on the regulations at that point.

Mr Allamby: I would not suggest or recommend that you comment in detail on the regulations. What I think you probably need at least to be able to comment on is the Department's timetable and how the timetable for the Bill and certain of the regulations will impact given that some of the human rights and equality aspects seep into the regulations.

Mr Weir: Surely the reason the regulations are so hot on the heels of the Bill is that we had the Bill later. People can discuss why that is the case, but if we are not to fall behind and break parity and cost ourselves a considerable amount, there is some catch-up to be done.

Mr Allamby: Yes. There are two things I would say about parity. We are already out of sync. The 12-month stopping of contributory ESAs has been in place in Britain since last April, so we have already fallen behind the timetable. Even if we had had accelerated passage last year and rushed the Bill through, I do not think we would have had some of the provisions that came in in Britain on time.

The other issue, of course, is that we are doing some things differently. We do not have parity in the sense that we do not have a council tax benefit that is being subsumed to local authorities. We are going to have rate rebates and take a longer look at what rate rebates do. We are almost certainly going to retain a social fund in a way that Britain has not. There are already quite significant differences in parts of the Bill that recognise almost historical issues and social security here. So, we are already in an area where there is not a dispute between DWP and DSD. There will be a break from parity because, historically, we have already broken with parity on certain things. Every welfare reform Bill that I have seen has had some differences to reflect Northern Irish nuances.

Ms McGahan: Thank you for your presentation. I represent Dungannon town. We have a large foreign national population due to the meat industry — Moy Park, and so on. There is not a week goes by that I do not deal with people from that community, so I am concerned about EU workers being treated differently from others. I fill out passport applications every week for their children. Would the fact that their children have Irish or British passports make any difference?

You talked about housing. We have almost 1,000 people on the housing waiting list in Dungannon. The flip side to that is that I obtained figures earlier this year showing that we have 600 vacant properties. What condition they are in I do not know, but we need a joined-up approach among all the organisations that deal with housing. My guess is that that would kill the housing waiting list in Dungannon. It would also mean people contributing to the economy in Dungannon and potentially creating employment.

Also, we had a look at figures this morning showing that the number of children in care in the Southern Health and Social Care Trust area has increased by 7%. The recession and poverty are probably playing a key role in that. Although I represent Dungannon town, I live in a rural area with a population of 8,000, and we do not have one full-time day-care facility. In fact, last week, I was dealing with mothers who could not get their children out to school; roads were not gritted because of the gritting policy, and some pupils were missing GCSE modules. That is a massive issue in the rural area that I come from.

That is really just a commentary on those issues. To go back to the first point about passports, does the fact that people's kids are born here have any implication at all?

Mr Allamby: It has implications in other areas of law, but, under this provision, even if you are an EU migrant worker whose children were born here, I do not think you will be exempt from the all-work requirement, regardless of your circumstances. So, no, I do not think that the fact that one's children may have British or Irish passports will allow a person to be exempt from the provision.

I will turn to the other things that you mentioned, the first of which is the size-related issue. We are going to have to come up with a range of proposals to deal with that. As I understand it, the difficulty with the box-room provision, for example, is that if you say that it is not a bedroom, that has ramifications for the amount of money and income that comes into the Housing Executive. If a house has three bedrooms but is now classed as having two bedrooms, there is an issue about the level of rent. There is a knock-on impact elsewhere. It does not make sense, given the large numbers of people who are homeless across Northern Ireland, in Dungannon and beyond, to have vacant properties that could be occupied while you incur a very considerable expense by putting people into hostels and bed-and-breakfast accommodation that is not generally ideal for families or other households in any event.

Childcare is really important. One of my bugbears is that this Government talk about universal credit as if the only people who will claim it are those who are out of work and need to get into work. Actually, the majority of people who will be on universal credit will be those who are in work but are not earning sufficient wages to live on. They have to have the national minimum wage, but universal credit works in the same way as our current benefit system, which pays large numbers of people tax credits because they are in work but their wage alone is not enough to live on. It is exactly the same, so we focus on that issue. For lone parents, however, unless the economy changes dramatically, the kind of work that is out there does not generally offer family-friendly hours, and suitable childcare is not available. Unless you have informal childcare, you will not be able to take work, no matter how motivated you are to do so. The other thing about our childcare provision is that it is very expensive.

One of the other things about the childcare debate is that childcare is not just about having somewhere safe to put your children. It is about child development. If we want to move away from informal childcare into a much more structured and formal child development approach, we have to do something about the level of childcare. We have only just, finally, produced a consultation document after what seems to have been an age to do even that. We are way behind what has been happening in Britain and we need to catch up, otherwise this welfare reform provision will not work for lone parents.

The Chairperson: Mickey, do you want to follow up on that?

Mr Brady: I have another point to raise with you, Les. In its presentation to the Committee for Social Development, officials from the Housing Executive talked about a pilot scheme in Craigavon that is targeting people who they think may be affected by the underoccupancy provisions and encouraging them to take in lodgers. I am not sure about the logic or illogic of that, because I assume that if you take someone in to use a bedroom that will be underoccupied according to what we are hearing, that person presumably will be contributing to the household. If you are on benefit, presumably that would be taken in as income and you could lose more than you would lose on your housing benefit. That seems to be a totally illogical process, to be honest with you. I cannot imagine for a moment that the income from the lodger is going to be exempted.

Mr Allamby: I understand from Lord Freud that if you take in a lodger who brings in income, that should not have an impact. I cannot remember whether he said that you would be able to keep the whole of your income from your lodger or, at least, that the income that is the shortfall of housing credit or universal credit will be disregarded. My understanding is that, with regard to taking in lodgers, you will not, if you like, be giving with one hand and taking with the other.

The difficulty that I have with the lodger scheme is that although it makes some sense, the problem is that some people keep a spare room because they want their grandchildren to be able to stay over with them or they want somewhere for their kids to stay when they come home at Christmas, because they have grown up and live away from home. There is a whole variety of reasons why the rest of us, if we are relatively middle-class and homeowners, have a spare room for family circumstances. So, although taking in a lodger for some people might be a possibility, for others it really is not the answer. Others will want to be able to free up that room at Christmas, during the summer holidays, outside of university terms, or whenever it might happen to be. A lodger is not really the answer to that kind of provision.

Mr Eastwood: Thank you very much for your presentation. It is very useful. Unlike others, I think that the regulations are actually very important to the Committee and the Assembly because they flow from the Bill. What you are telling us is that they are going to come in maybe the next day or even that very day. If you look at the zero earnings rule, you see that it is completely ridiculous. The whole argument about welfare reform is that people should be better off in work than out of work. This

contradicts that completely. Do you have any information from the Department about whether it is looking to change some of the regulations that are clearly ridiculous and about which there are some significant issues with regard to human rights legislation? From what you have said, I do not think that you have any information to suggest that. I suppose that my question is why DSD is not flagging up those issues and trying to create regulations that actually make sense.

Mr Allamby: It may well be flagging them up privately, or it may not be. I genuinely do not know. I have no information to suggest that, at present, the Department here is planning regulations that will look significantly different to those of GB, other than where the issues are to do with our legislative references being different, etc. In what I will call substantive terms, I am not aware of that currently. So far, the things that we will do differently are the things that were announced by the Minister about six or eight weeks ago. I am not privy to anything else that we are about to do differently. I hope that there are some things in the pipeline, but, if there are, I am not aware of them.

Mr Eastwood: I understand that the Committee has a very short time period to consider this. However, I think that we should be flagging up to the Department that we have heard evidence that suggests that there are serious human rights issues with some of the regulations.

The Chairperson: If somebody gets mortgage interest support payments and they take on some work, your interpretation is that they will lose their interest payments. What happens if they take in a lodger?

Mr Allamby: What will happen to their mortgage interest payments? I should know the answer. Under current provision, you can keep a small proportion of the money that you bring in from a lodger. Off the top of my head, I think that it is something like £20. I am not sure what the provision will be for universal credit. I do not think that it is one of the areas that they intend to change. The bedroom tax, if you like, or the spare-room tax, is aimed not at homeowners but at public sector tenants. So, if you are a couple whose kids have grown up and you own your three-bedroom house, even if you claim help with mortgage interest, there is no spare-room tax for homeowners. It is only for those who rent in the public sector.

The Chairperson: I was not thinking about the size-related criteria, as you call it. I was thinking about somebody who is getting mortgage support. If they get a couple of hours' work in the week, they will lose that support, but if they take in a lodger, they will not lose it.

Mr Allamby: That is right. If you take in a lodger, you can keep some of that income.

The Chairperson: In other words, you provide income to yourself. However, there is a contrast between the two positions.

Mr Allamby: I guess that the difference is that lone parents are now expected to be much more actively engaged in looking for work, whether they bring in a lodger or not. The paradox is that if you turn down a job opportunity, you may be sanctioned. It would be interesting to see what would happen to a person who turned down a job because taking it would mean that they would lose their mortgage interest payment and would be left so much worse off. Is that a reasonable ground for turning down a job? I suspect that that will be the kind of issue that will end up at an appeal tribunal. You would hope that personal advisers would recognise that if the maths is so clear-cut, that decision is reasonable in those circumstances.

The issue for lone parents is that if they get a job for 35 hours a week, the chances are that they will be better off, and, therefore, losing their mortgage interest would not be such a worry. The problem is that if a job of four or five hours a week is taken as a stepping stone, the loss of the mortgage interest becomes a far bigger issue. So, it is almost saying to lone parents that they should find full-time work or significant part-time hours, whereas everything else that this Government have said about universal credit is about how it is designed to get you into a mini-job as a stepping stone to eventually finding full-time work. Quite often, people with young children are not looking for 35 hours a week; they are looking for seven or 10 hours, and then eventually 14 hours, 21 hours or 35 hours.

Mr Brady: I have a quick point to make on sanctions. Obviously, there will be primary legislation and regulations, but the guidance will be very important because the guidance that is given to decision-makers and to front line staff will determine what sanctions are applied and in what circumstances. That goes back to your point about working out the maths. However, the guidance may well say, "Do

not worry about the maths. If we accept that that is not reasonable, you will be sanctioned". The difficulty is that we do not have sight of the guidance or the regulations. The guidance varies so much in many local offices; some are zealous in applying sanctions and others take a more pragmatic approach, and that is the difficulty.

Mr Allamby: Yes. In fairness to the Department, I think that the proportion of people on benefit who are sanctioned here is lower than that in Britain, and that reflects, in part, a more liberal attitude. It also reflects, in part, the recognition of issues such as childcare and the understanding that childcare is a real barrier to finding work.

Mr Elliott: I have one question around the regulations. Thanks for the very interesting presentation. Are you saying that it is very difficult to make any judgment, particularly on the human rights aspect, without first seeing the regulations?

Mr Allamby: I am saying that in some of these areas the challenge may not be based on the Bill but on the regulations under it.

Mr Elliott: I thought that you were indicating that, in most cases, it is very difficult to make a judgement on the Bill without seeing the regulations. Did I pick that up wrongly?

Mr Allamby: I think that on the issue of migrant workers, for example, you can reach a judgment based on the Bill. The other examples that I have given are based on the Bill and what the Government have announced is coming down the track in the regulations. So, in some cases, it is both.

Mr Elliott: OK. Thanks.

The Chairperson: Well, thank you very much. That was very informative.

Mr Allamby: Thanks, and good luck with your deliberations.