



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Welfare Reform Bill: Briefing by the Northern
Ireland Human Rights Commission

30 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
Mr Michael Copeland
Mr Sammy Douglas
Mr Mark Durkan
Mr Fra McCann

Witnesses:

Mr Colin Caughey	Northern Ireland Human Rights Commission
Mr John Corey	Northern Ireland Human Rights Commission
Dr David Russell	Northern Ireland Human Rights Commission

The Chairperson: I welcome the representatives of the Human Rights Commission: John Corey, who is one of the commissioners; Dr David Russell, the deputy director; and Colin Caughey, who is a policy worker. Without further ado, I ask the representatives to kick off.

Mr John Corey (Northern Ireland Human Rights Commission): Thank you very much, Chairperson. I thank the Committee for inviting the commission to speak to our advice on the Welfare Reform Bill.

I must go through the formality of stating that the Northern Ireland Human Rights Commission (NIHRC) provides advice pursuant to our role under section 69(4) of the Northern Ireland Act 1998. The commission grounds its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), which is incorporated in the Human Rights Act 1998, and the treaty obligations of the Council of Europe and United Nations systems.

I will start with general points on the human rights analysis, which are addressed in the commission's advice to the Committee. The commission particularly welcomes the attention that this Committee has given to the human rights implications of the Bill. However, I must record that the commission is disappointed that there is a lack of evidence that the Department has undertaken the required human rights scrutiny of the Bill. We noted that, last Monday, the Minister for Social Development advised the Assembly that the Department had conducted a full analysis of the Bill against the European Convention on Human Rights. However, we are not aware that that analysis has been made available to the Committee or that it will be published. In addition, the commission points out that the Department is obliged to analyse the Bill against all relevant human rights standards in the treaty

obligations of the Council of Europe and the United Nations systems, not just on the European convention.

The commission also submits that the heavy reliance on secondary legislation complicates the task of providing a human rights analysis of the Bill. That is addressed in our submission, whereby we advocate that the regulations should be subject to affirmative resolution or confirmatory procedure to ensure scrutiny against human rights standards. I note that Mr Copeland is not here; however, we read the answer to a written Assembly question provided by the Minister in relation to the process and procedure of affirmative resolution. However, the commission still stands by its advice to you on that matter: the secondary legislation should be subject to affirmative procedure.

Our submission highlights a number of specific issues that require the Committee's attention. The commission's focus is on testing the Bill against human rights standards, not the politics of welfare reform. The commission can support the stated aim of the Bill, which is to assist people into work. The right of people to work is recognised in the European Social Charter. The measures included in the Bill, intended to assist and encourage individuals to exercise the right to work, must, however, take into account the particular circumstances of an individual. That can be taken forward into the particular measures. We cover universal credit in our submission and have raised concerns regarding the payment of universal credit to a single member of a household. That may compound difficulties faced by vulnerable families, particularly, for example, when domestic violence is present. In that context, the commission welcomes the Minister's announcement that universal credit payments may be made to two persons, but the commission will want to analyse the detail of the proposed arrangements on that.

The Committee will be familiar with the widespread concerns about the replacement of disability living allowance (DLA) with personal independence payments (PIPs). DLA or PIPs is an important benefit that assists disabled people to overcome societal barriers that they may face. The commission submits that the UK has ratified the UN Convention on the Rights of Persons with Disabilities, and, under that convention, the Northern Ireland Executive are required to protect the right of disabled people to live life as independently as possible. The commission's advice is that the convention requires the Executive to adopt the social model of disability and that that needs to be reflected in the assessment criteria for PIPs. The commission further advises that the Committee needs to investigate how the assessment process for PIPs takes account of the social, practical and environmental barriers experienced by claimants with disability.

We deal with the sanctions regime in our submission and have raised concerns about the potential for the sanctions regime, relating to the various work-related requirements. Our concern is that those will be imposed unduly harshly, with the result that an individual may become destitute. The Bill contains numerous safeguards, so that the sanctions should not be imposed without good reason, and allows for those who have sanctions imposed on them to apply for a hardship payment. However, our concerns remain. The system places a significant amount of power in the hands of those who are responsible for its administration, which is how the benefits system has traditionally operated.

Paragraph 7 of schedule 1 to the Bill provides for regulations that will define the circumstances in which a claimant could be determined as not having a good reason. The commission advises that it is important that those regulations take into account the particular circumstances of an individual. In that context, we have raised specific concerns regarding women with childcare responsibilities and have advised that the regulations should make specific provision for those with dependants. We also submit that that is an area in which the particular circumstances of Northern Ireland are relevant. We further advise the Committee to consider more generally how the absence of adequate and affordable childcare in Northern Ireland impacts and whether that should be reflected in the Bill.

We cover the issue of hardship payments in our submission. As I said earlier, when a sanction is imposed, individuals may apply for a hardship payment, provided they can demonstrate that they are or will be in hardship. The commission's advice is that the imposition of a sanction that has the potential to result in an individual becoming destitute engages the Northern Ireland Executive's positive obligation under article 3 of the European Convention on Human Rights. That is an obligation to prevent hardship at a level that may amount to "inhuman or degrading treatment". The commission's concern is that a sanction creates a significant risk that it may result in individuals or their dependants becoming destitute. For example, the commission is concerned that vulnerable members of society, particularly those with mental health problems or impairments, may encounter difficulties when applying for hardship payments. Again, the working arrangements for hardship payments are to be set down in regulations. The commission's advice is that those regulations should expressly provide that a sanction should not be imposed when there is a significant risk that it may

result in individuals or their dependants becoming destitute. The Committee may wish to investigate whether the regulations may make provision for an alternative sanction in circumstances in which there is a risk of destitution.

As a general point, the commission also advises that all staff who are responsible for the conditionality and the sanctions regime must be adequately trained and that every effort should be made to resolve a difficulty before a sanction is imposed. The sanctions regime must be proportionate and procedurally fair.

Clause 70 of the Bill provides for the abolition of the discretionary part of the social fund, which includes community care grants, crisis loans and budgeting loans, all of which have provided important safeguards when an individual encounters financial difficulties. Community care grants in particular have provided support to disabled persons. We understand that a replacement scheme is to be developed, and we encourage the Committee to interrogate the sufficiency of the replacement scheme to ensure that it provides similar safeguards to the current system.

Clause 69 empowers the Department to set an approximate maximum housing benefit. The precise details of how that will be calculated will, again, be set out in regulations. The commission advises that those regulations should provide for a specific assessment of the personal circumstances of an individual, particularly when an individual is disabled. Again, because of the particular circumstances of the Northern Irish housing stock, we think that specific provision needs to be made to monitor the implications of that proposal closely.

Clause 30 allows for contracted providers in the private and voluntary sectors to exercise the functions of the Department that relate to work-related and connected requirements. That could impact on individuals' entitlement and benefits and, by extension, on their right not to be treated in an inhuman or degrading manner and on their right to an adequate standard of living. The commission submits that it is important that there is no ambiguity about privately contracted providers being subject to the provisions of the Human Rights Act 1998. Private contracted providers should also be required to provide adequate training to their staff, which should include training in relevant aspects of human rights law and, specifically, on the rights of disabled people. The commission advocates that those matters should be covered in statute.

A final point that is not in our submission relates to migrant workers, which we understand the Law Centre has also raised with the Committee. Paragraph 7 of schedule 1 to the Bill allows for regulations to provide that claimants from the EU with a right to reside will be placed in the all-work requirements category. That appears to treat migrants in a discriminatory manner, and the commission advises that it may be in breach of article 14 of the European Convention on Human Rights. As pointed out in our submission, contributory and non-contributory benefits are proprietary rights protected by article 1 of protocol 1 of the European Convention on Human Rights (ECHR). The commission intends to analyse the issue further, and we advise the Committee to seek analysis undertaken by the Department on the matter.

Those are the points in our written submission that I wished to highlight to the Committee. My colleagues and I will be pleased to answer points of detail that Committee members wish to raise.

The Chairperson: Thanks very much for your presentation, which was quite comprehensive. Again, thank you for providing us with a written submission, which we were able to look at, and on which you further elaborated. A number of members wish to speak.

Mr Douglas: Thank you, Chair.

Thank you for your presentation. You mentioned what the Minister said in his statement on welfare reform. He said:

"As part of the process for bringing a Bill to the Executive, my Department has already conducted a full analysis of the proposals contained in it for their compatibility with their obligations under the European Convention on Human Rights."

He then went on to detail the various articles and finished off by saying:

"The Department's view and mine is that the Bill is compatible with the convention rights, as defined in section 1 of the Human Rights Act 1998. That view has been confirmed by the Departmental Solicitor's Office."

I note your concern about the absence of detailed human rights analysis of the Bill and of its potential implications. Either you are right or he is right, as you take totally different views. You also mentioned that there is no evidence of what the Minister detailed in his statement. Have you had any detailed discussions with the Minister or his Department on those details? Have you requested any of that information?

Dr David Russell (Northern Ireland Human Rights Commission): We are not disputing that the Minister has undertaken a human rights analysis or an impact assessment. In fact, we noted that he made that remark to the Assembly. The only thing that we are drawing to the Committee's attention is whether it has had sight of that impact analysis?

Mr Douglas: Have you seen it?

Dr Russell: No, we have not.

Mr Douglas: Have you requested it?

Dr Russell: No, we have not.

In response to your final question, just to jump ahead, the commission met the Minister when the Welfare Reform Bill was passing through Westminster. At that stage, the commission made it clear to the Minister and his officials that it was willing to engage at whatever level they saw fit. However, in the interim period, the Department has made no approach to the commission seeking advice.

Mr Douglas: Have you approached the Department?

Dr Russell: No, we have not.

Mr Douglas: Do you agree that it is a two-way process? We will certainly be asking the Minister for some of that evidence after what you have said; it is a good point.

Mr Corey: To add to that, when the legislation was being considered at Westminster, the House of Commons Joint Committee on Human Rights criticised the absence of a detailed human rights memorandum at the time. Given that that criticism is on record, we take the view that it was not unreasonable to expect the Department to produce a memorandum when the Bill came in front of the Assembly. The warnings were already there.

Mr Douglas: Are you saying that there is no memorandum at the moment?

Mr Corey: That is one of the issues. The additional point I made in the submission is that the Minister spoke about testing the Bill against the ECHR. However, we submit that the Executive, the Assembly and, indeed, the Committee have obligations under United Nations and Council of Europe treaties as well as the convention.

Dr Russell: Just to add to John's point, perhaps it would be useful to draw the Committee's attention to section 26 of the Northern Ireland Act, which states that Executive Bills have to be rendered compliant with international standards. The obligation falls, in the first instance, on the Executive and, ultimately, on the Secretary of State to ensure that Assembly legislation complies with binding UN law. We would like to see the Department bringing that forward and the Committee addressing it. The explanatory memorandum to the Bill contained a human rights compliance statement, but unless the Committee has seen otherwise; to date, that is certainly all that the commission has seen.

Mr Douglas: I have a couple of quick questions. You do not seem all that happy with your experience in this process to date. Compared to previous processes, has this one been very different when it comes to your discussions with the Department and the information that you requested?

Mr Corey: I cannot rely on a lot of personal experience on this. The first answer that comes to mind is that I think that everyone recognises that the Bill is almost unique in its scale and impact on people. What should properly happen in this case must be judged on its own as opposed to being compared to what happened previously with the Human Rights Commission's consideration of a relatively straightforward Bill that did not raise the same range of human rights issues.

Dr Russell: We are happy to give you a few examples of recent such Bills. The Department of Health, Social Services and Public Safety (DHSSPS) engaged extensively with the commission and sought its advice privately on the mental capacity legislation, as did the Minister of Education on special educational needs reform.

Mr Douglas: Finally, you talked about the absence of detailed human rights analysis. If there were agreement to do that, what would that analysis look like?

Dr Russell: I suggest that we take as a starting point the international standards that the commission has identified, and look for convention compliance article by article relevant to each clause of the Bill; in much the same way as we assume that the Departmental Solicitor's Office would have done for the ECHR, which the Minister explained in his statement.

Mr Douglas: May I assume that that process would be fairly lengthy?

Dr Russell: It could well be. I caught the tail end of Mr Durkan's question raising the other alternative, which is for the Assembly to establish, under Standing Orders, an Ad Hoc Committee to undertake a detailed analysis. Westminster has the benefit of the parliamentary Joint Committee on Human Rights doing such analysis, but there is no Committee of that standing in the Assembly.

The Chairperson: By way of information; the Committee has sought legal advice on the specific issue around the migrant workers to which Les Allanby referred earlier.

Mr Douglas: Chair, may I ask another quick question.

The Chairperson: Sorry, Sammy; I am just putting on record that we have sought a legal opinion on that matter.

Mr Douglas: Some groups have told us that they may mount a legal challenge by seeking leave to apply for a judicial review. Would you be interested in doing that if we do not come to some sort of arrangement?

Mr Corey: There are many complications for the Human Rights Commission embarking on judicial review processes. Our engagement in this matter is under our statutory function. I see our duty as being to advise, in this case, the Committee of the human rights standards and issues that have to be engaged in its scrutiny of the Bill, and to clarify those to members. That is our role.

Dr Russell: The point is that court is the last resort. Within its competency, the commission's job is to make sure that the Bill is as compliant with human rights standards as we can possibly make it. That is our interest. We are certainly not interested in judicially reviewing anyone if we can at all help it.

Mr Colin Caughey (Northern Ireland Human Rights Commission): To amplify John's point: the European Court of Human Rights has emphasised that the more parliamentary scrutiny that there is of human rights issues the less likely it is that there will be a court challenge. The Committee's interest in the human rights issues raised by the Bill is one area of significant difference from previous processes.

Mr Douglas: OK. Thank you.

Mr Brady: Thanks for the very interesting and informative presentation. You are right to say that this legislation is unique. The most recent major change was instigated by Fowler in 1985 and enacted in 1988. This is much wider and more encompassing. I may be misreading your demeanour, and correct me if I am wrong, but it seems that there are certainly parts of this that you are not particularly happy about. Other groups have highlighted the Convention on the Elimination of Discrimination against Women and article 27 of the United Nations Convention on the Rights of the Child. There is

the whole issue about universal credit. Many have argued that payment should go to the main carer, which would then protect vulnerable members of the family, particularly children. I wonder what your views are on that.

You also raised the issue of the transfer from disability living allowance (DLA) to PIPs. I know from talking to numbers of people with particular disabilities that DLA is there for a specific reason. It is to enable people to have a better and enhanced quality of life which they may not have otherwise because of their particular disability. According to the Social Security Commissioners' case law on DLA at this point in time, it is not necessarily what causes your problem that matters; it is how it affects you. This Bill takes that a step further: it is now about how you can cope. One of the issues that you raised is that it is also incumbent on the private sector — like Atos, for example — to ensure that human rights are properly dealt with.

If you saw the 'Dispatches' and 'Panorama' programmes, it will be very clear to you that there are big human rights issues involved. The contract for the changeover from DLA to PIPs has not been decided here. However, I think that we can be reasonably assured that there will be a similar process put in place. That seems to be, in many cases, a denial of fundamental rights, particularly of disabled people. I wonder as to your views on that, though I do not expect you to comment on particular private companies.

As to the work capability assessment, some people have been asked how far they can walk. I have had people in my constituency office who have said, "I have mobility problems and I told them that I can walk 20 yards". They were then asked, "How far can you go in a wheelchair?" They responded, "I do not have a wheelchair and I have no intention of getting one." That is the kind of situation that is developing.

One of the things that you pointed out very clearly, and this is important, is that each case should be dealt with on an individual basis. It should be dealt with objectively by the assessor. We have argued, and I continue to argue, about the primacy of medical evidence. If you are dealing with a benefit such as PIPs, DLA or employment and support allowance (ESA) medical evidence is important. People get DLA because they are medically assessed initially, whether it be self-assessment or through medical evidence from their GP or consultant. It seems that the decision-maker who makes the final decision but is not medically qualified needs to have all that evidence to hand in order to make any sort of reasonable decision in relation to that person's particular circumstances.

I think it is important that you mentioned that there are not just physical and mental disabilities; there are also the social barriers that people face. That is all interlinked with their human rights.

Can you comment on those issues?

Mr Corey: I will ask Colin to pick up on some of the detailed points that you have raised. You commented on my demeanour. I think it important that I restate that the commission's focus is to test the provisions of the Bill, as we would any piece of legislation, against human rights standards, and not the politics of welfare reform. There may well be differing views about welfare reform, the background and reasons for it.

A second general point that I would make, without commenting on any private company, is that the media reports that have been quite widespread about individuals' experiences of the system so far in Britain, serve at least to put everyone on notice that this is a critical area for examination. That is one of the reasons why the commission included that, specifically, in its submission. We could see that human rights could be affected by this, and we have heard and seen that.

My last general point is on your references to how individuals who are applying for PIPs are treated, as in the current DLA system. We have submitted the issues around the societal model of disability, as against the medical model of disability. However, we do not suggest that there should be some utopia in which assessments disregard a person's medical condition. That is not real, in the context of a person applying for that type of assistance. What we say, quite clearly, is that the assessment should take account of a wide range of factors and the societal factors that affect or may affect that individual. Not every two people will be the same, and we are essentially saying that each individual's full circumstances must be considered and that there must not be a regime of box-ticking. That is our approach. I will ask Colin to pick up the other points of detail that you raised.

Mr Caughey: In our opening statement, we welcomed the Minister's indication that universal credit could be paid to two people. Certainly, it is written in the United Nations Convention on the Rights of

the Child (UNCRC) that children have the right to benefit from social security. So, our key concern will be to analyse whatever measures are proposed in that area so that they benefit the child. Similarly, with women; that the money there benefits female members of the family also.

I will amplify the PIPs point. As John said, the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) very much supports the social model of disability and encourages and requires Governments to look at how societal barriers prevent a disabled person from engaging fully in life. We feel that it is important that that is reflected in the assessments for PIPs. There has been much discussion on how to do that in England, Wales and here. We encourage the Committee to keep that under review as the assessment criteria further develop to ensure that it is looking at what assistance an individual needs to ensure that they are able to fully participate in life.

Mr Brady: I have one more point, Chair. Mark alluded to it earlier, and it was mentioned this morning by Age NI. Because of the change, one partner in a couple may be eligible for pension credit and one for universal credit, because they are younger. This is the norm for couples in our society in most, but not all, cases. That person will then be brought back into the work pool, and we heard this morning about the very stark example that the couple could lose £115 a week. You mentioned destitution, and when people are on a benefit that is, by government's own admission, at subsistence level, £115 a week is a huge amount of money and could lead to people being in destitution. If someone receiving that amount of benefit is trying to budget to a particular level and manage a particular lifestyle and loses approximately 50% of their benefit, how does that tie in with human rights? Presumably, it flies in the face of some conventions because of how the person's human rights might be affected. Ultimately, benefit is not their chosen lifestyle or chosen income but is how they have to manage.

Mr Caughey: That indicates the importance of closely monitoring the implementations of the reforms once they are brought in and trying to anticipate the impact prior to that. As we mentioned in our opening statement, the Government are under a positive obligation to ensure that individuals do not find themselves in destitution.

Mr Brady: The difficulty is that, by the time the monitoring is completed, people may already be in that situation. That issue has to be addressed.

Dr Russell: I have not looked in great detail at the point about the universal credit and the pension provision. However, we have looked in more detail at the hardship payment, for example, and, with that, we are concerned that destitution constitutes a violation of article 3. So, there would be a breach in that instance. The difficulty with the provisions of the Bill — and I heard it mentioned in the previous evidence session — is what its outworkings may mean for potential human rights breaches is hard to quantify due to the lack of analysis combined with the reliance on secondary legislation. We do not really know in practice, and we could not say one way or the other, that a breach would occur. It seems to us that the hardship payment would kick in after the sanction, and that someone could find themselves in destitution. As a consequence, they would apply for the hardship payment and maybe receive support. At that stage, a violation would have already occurred. It is too late and is like trying to shut the door after the horse has bolted.

On your other point about private sector contractors, the European and domestic case law is quite clear on that: private sector contractors carrying out a public function are public authorities for the purposes of the Human Rights Act. That should be made clear in private sector contracts.

Mr Brady: Hardship payments will be recoverable. Although people may get a hardship payment to get them out of short-term destitution, they will be below subsistence level when their benefit kicks in again because they will have to pay back the hardship payment. The regulations may well deal with the amount. However, I think that it is true to say that, with respect to social security benefit and parity, it has always been the case that recovery from benefit here is more than its equivalent in Britain. People here have always had to pay back more. That was my experience when I worked for many years as an advice worker, and it puts people here in an even worse position.

Dr Russell: If people find themselves in that circumstance, the multiplier effect is a possibility. Until the new regime kicks in, it is hard to justify it. One thing we considered regarding the migrant workers point, for example, is that, with the work-related requirement categorisation of EU migrancy and the right to reside, because of some other aspect, such as a disability, migrant workers would find themselves subject to a sanction regime. As a consequence, their hardship payment would kick in too late after the violation had occurred. They could find themselves in the repeated scenario that you paint.

Mr Copeland: I would like to put to you one question that I asked previous witnesses. It is about the UN Convention on the Rights of Persons with Disabilities with particular reference to articles 19, 22 and 28. What are the potential consequences of legislation being enacted here that breaches that convention? To the best of your knowledge, has Northern Ireland or any other constituent member ever breached such a rule?

Dr Russell: Do you mean the UNCRPD?

Mr Copeland: The UN Convention on the Rights of Persons with Disabilities, which sets out some clear responsibilities.

Dr Russell: There are two aspects here. The question is this: what would be the impact if the Assembly brought forward legislation that had not been sufficiently scrutinised as regards compliance? It is a statutory requirement. However, the conventions are not justiciable. Therefore, if, as a consequence of the legislation, there was an unbeknown breach of the UNCRPD, the likelihood is that that would become part of the reporting process back to the United Nations.

However, the more immediate worry is how the unbeknown breach of the CRPD would be linked to a potential breach of the European Convention. One possible scenario would be where, under the new regime, there was a withdrawal, or partial withdrawal, of payment of PIPs from someone who is disabled and who is subject to the new cap for housing. They could easily find themselves facing a choice between keeping a roof over their head and feeding themselves. That would constitute an immediate breach of article 3. It would also engage article 19 of CRPD.

When people talk about the particular circumstances of Northern Ireland, we hear well-versed arguments about how we are different from the rest of the UK in respect of, for example, the housing stock. Something else that we think that the Committee should consider, which we mentioned in our submission, is the fact that there are a number of reforms taking place in a variety of Departments in Northern Ireland that coincide with the introduction of welfare reform and could also have a potential impact. As a consequence, in the scenario that I have just painted, someone could easily find that they would better-placed in a residential care home. However, we know that Transforming Your Care from DHSSPS will reduce the number of residential care homes in Northern Ireland. So, the situation could be compounded by the impact of another government policy.

Mr Copeland: What are the consequences of that for the legislation, for those who enact the legislation, and for those who carry it out?

Dr Russell: If, retrospectively, it were found that there was a breach, the legislation would have to be amended. You could easily find yourself with an individual claimant taking a judicial review.

Mr Copeland: Would the legislation then have to be changed?

Dr Russell: If there was found to be a breach, yes.

Mr Copeland: If I picked you up correctly, you said a few moments ago that there is a duty to ensure that this legislation is as compliant as possible. Is there an interpretation of "compliance"? I suppose that there must be. What did you mean by the phrase "as compliant as possible"? I would have thought that something is either compliant or it is not, in the absence of a legislative process to decide that.

Dr Russell: It is. However, ultimately, there is always the possibility that a legislature could unknowingly pass legislation that is then found to be in technical breach. It is the proper role of the courts to determine whether that is the case.

Mr Copeland: So, are you the arbiter here, in so far as you are the font of all knowledge about whether something is a breach? Does an onus, therefore, reside not only with the Department, to ensure that what it is proposing does not breach human rights conventions, but with us in our scrutiny role?

Dr Russell: Our role is to provide the best analysis, from a human rights perspective, as we can to the Committee and the Assembly in order to assist them to make good, compliant human rights

legislation. A number of other actors have that responsibility as well, such as the Departmental Solicitor's Office. As has been suggested, there is the possibility of the Assembly formulating an ad hoc scrutiny Committee to deal with this serious legislation. There are a number of avenues open to the Assembly under Standing Orders, and the commission will play its part.

Mr Copeland: If I were to give two lawyers a piece of paper with x, y and z written it, they would argue about the relevance of x, y and z for hours. I have always found that to be the case.

Basically, at the end of this process, if we have done our job properly, we should be advised about whether what we are proposing to recommend, accept or declare as scrutinised is compliant. Even at that point, however, it could be subject to an interpretation from someone with a different view.

Dr Russell: It could be. However, the Committee has at its disposal the possibility of making the recommendation about the secondary legislation under affirmative or confirmatory resolution. We certainly think that that would add in an extra layer of protection in respect of human rights compliance for those parts of the Bill that we have not yet seen and do not know the impact of. From a human rights perspective, that would be an extra safeguard.

Mr Copeland: Sticking strictly to the human rights aspects of this, I presume that the rest of the United Kingdom is bound by the same conventions. Your view is that it would be unsafe for us to accept their findings because we have another layer of consideration to apply from the equality legislation and stuff. Some would say that we really are making a whip to beat ourselves. Given that this has gone through Westminster, there is an assumption that it has already been human rights-proofed and that everything is hunky dory. Are there implications for Westminster if we raise issues here about compliance with the human rights conventions?

Dr Russell: This is a devolved matter. It is within the competency of the Assembly to pass this legislation. So the duty is on the Assembly to ensure compliance. Whether the welfare reforms that have been introduced in England and Wales, and Scotland are compliant is a matter for those Parliaments. In this instance, the commission is advising you. However, we engaged in the Westminster process as well, because we knew full well that the Act would be replicated here according to the parity principle. The Joint Committee on Human rights, a scrutiny Committee in Westminster, raised very similar issues to the ones we are presenting today. It may be worthwhile for the Committee to look at what the Joint Committee concluded and advised the Government.

Mr Copeland: If, at the end of this process, we are faced with legislation from Westminster that satisfies its requirements but does not satisfy the requirements here, does responsibility for any financial implications arising from potential breaches and mitigating factors that have to be put in place lie with those who sent the legislation to us in that form or does it reside with us from our own meagre resources?

Dr Russell: Responsibility for the implications of a breach would reside with the Department, because it is exercising the legislation. I am not sure what you mean by potential financial implications, but if you are talking about the possible impact on the block grant —

Mr Copeland: Yes. In other words, that the legislation sent to us was not attuned to our needs, and that the cost of attuning it to our needs in order to comply with as much as we could was rested in the fact that the expectations to be realised in the Bill were not achievable in our context.

Dr Russell: The Committee may conclude that. It would not be for the commission to analyse that. I can give you an example. The shift from DLA to PIPs, for example, is premised on a 20% cost saving. We do not doubt for a minute that 20% may be saved as consequence of the shift from DLA to PIPs. Our concern is that it might be a blanket approach determined in advance. Who knows? As a consequence of moving from DLA to PIPs and analysing people individually, you may well find that the government's requirement to support people, while complying with convention requirements and the Convention on the Rights of Persons with Disabilities (CRPD), will cost more, and resources would be better diverted from other parts of the pot.

Mr Corey: Some of your questioning bears out the point that we made about the importance of secondary legislation or regulations being subject to scrutiny, even though the equivalent regulations may not have been subject to scrutiny or may have gone through the Westminster Parliament by negative resolution. We are saying that affirmative resolution or confirmatory procedure should be

applied. We would almost say that you should apply that approach to all the regulations that will come through on this. It reminds me of a phrase that we used in the past when we talked about parity in other areas, which is, "We are interested in parity but not parrotry."

Mr F McCann: Much that I was going to ask has been covered, but I will go ahead anyway.

Mr Durkan: Parrotry — who's a pretty boy? *[Laughter.]*

The Chairperson: He does not really mean that badly.

Mr F McCann: Do you want us to be here until 5.00 pm?

Thanks for your very informative presentation. Things would be different if we were talking about a Bill that does what it says, which is to change or reform. The Bill that we are dealing with is, however, more ideologically driven than it is aimed at bringing changes for the better to people in England. Obviously, I will not ask you to comment on that. It is also sanction-led, as you, quite rightly, said. In the Assembly, some time ago and more recently, we tried to get at the "two strikes and you are out" issue. You could be sentenced for a particular social security issue through the justice process, then, on release, you walk into an office where you can apply for and get benefit. However, if you are caught doing the double, your benefit can be suspended for 26 weeks, two years or whatever. So, if you are charged with a benefit offence and apply, you will be refused benefit. Something in that seems unfair: you could be done for robbing a bank and be accepted as a legitimate claimant, but if you make an error claiming benefits, you are refused benefit.

As I read through the information, I noted the case of *Ásmundsson v Iceland*, which I think that you quoted. What were the consequences of that? Does the judgement have a knock-on effect on how sanctions are applied here?

Housing is the other issue. Is there an international standard for the size of rooms? Most of the old Housing Executive or social housing providers' homes had a box room that measured about 6 feet by 10 feet or 8 feet by 10 feet and could take a single bed, but now we are told that it can sleep two people. Is there anything in law that states that, at a certain age, people of opposite sexes have to stay in a separate room or even people of different ages?

Mr Corey: I will ask David to pick up your first and third questions, and Colin will deal with the second.

Dr Russell: The *Ásmundsson v Iceland* case was a European Court judgement on a sanctions regime. The court determined that the removal of social security benefits was disproportionate. So, yes, case law has been set down. You raised the issue of how long a sanction should go on for, and sanctions could be subject to a test. We have included the case law in our presentation to indicate that there is the possibility of sanctions being tested when the new sanctions regime kicks in. What the court would consider in that instance is whether it was a proportionate and reasonable response to fulfil a legitimate aim of the sanction. There is nothing adverse to human rights standards in imposing the sanctions regime; the question is whether it is a reasonable and proportionate response and, vitally, and what most concerns us, will it push people into destitution? That would be unacceptable, and it would be a clear breach under inhuman and degrading treatment. As the sanctions regime sits now, our concern is that that might happen. However, that comes with the caveat of our not knowing what the secondary legislation will be. European case law would have relevance in this jurisdiction, because the Human Rights Act 1998 is read in conjunction with European Court judgements.

Mr Caughey: Another judgement is *Limbuela*, which is equally difficult to pronounce. That case related to an asylum seeker's eligibility to apply for benefits, and a restriction had also been placed on his working. The House of Lords ruled that it was possible that making someone unable to access benefits could be considered as leaving them in destitution.

There is nothing as specific as that case on your point about the size of rooms. However, under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the right to independent living, it may be that someone will require a carer to enable them to live more independently or will, occasionally, require a carer to stay. There are ways in which the size of a room or the availability of additional rooms in a house would be relevant to someone's enjoyment of rights that are protected under international human rights law.

Mr F McCann: Are there different definitions of destitution?

Mr Caughey: The principal definition is contained in the Limbuela case. That comes from the Nationality, Immigration and Asylum Act 2002 definition, under which someone would be considered as being destitute if they lack:

"accommodation, and food and other essential items".

Dr Russell: In essence, we are talking about the choice between having a roof over your head and feeding yourself. Everyone should have the right to shelter, accommodation, food and clothing. Where people are faced with choosing between those, there is the potential that we could overstep the mark and be in breach.

The general reference of the UN's Committee on Economic, Social and Cultural Rights is to "adequate housing". However, there is no definition of what constitutes that. Once again, the focus on human rights is on individual need. These decisions should be premised on individual circumstances. What a family of four requires not to be destitute will be completely different from what a single person living alone requires.

Mr F McCann: On the housing issue, would the legacy of conflict, underoccupancy and the difficulties that remain with people moving from one area to another have an impact on people's human rights? They may have been asked to move but refused because they feared for their life.

Dr Russell: There is a clear, positive obligation on the state to ensure that there is no potential breach of the right to life. Given the nature of society here and the threat of sectarianism and all that goes with it, the choice of housing stock in which it would be appropriate to accommodate people is limited. That is only one particular circumstance. We also know that there is a higher level of DLA claimants as a consequence of the impact of conflict here. We do not, necessarily, have the highest level, as there is some debate about how the UK is broken up regionally.

Mr F McCann: That is interesting. I have one final question on the cap on benefits. We were told that 520 or 580 families will be directly affected by that. However, over 13,000 people on DLA may also be affected by the transition to PIPs. Obviously, through the Bill, it has been decided to place a cap at a certain level. That will penalise a certain section of the community — those with large families. Is there anything there that you see as impacting on destitution or taking away people's right to quality of life?

Dr Russell: The right to family and private life under article 8 of the European Convention on Human Rights would be engaged at that point, and there would also be a potential breach of article 14, as it may be discriminatory.

Mr Corey: It almost comes back to the earlier point of how you measure destitution and hardship and the impact that they have. If benefits are capped, it may not affect a small family, but it could start to have the impact that you described on a large family.

Mr Durkan: Those comments are timely, as I was going to make a point about the UN Convention on the Rights of the Child. In my opinion, the inclusion of child benefit in the benefit cap is a breach of that convention. Further possible regulations will certainly be a breach, particularly as we have heard Iain Duncan Smith talking about stopping child-related benefit at two children. Article 26 of the convention states:

"Parties shall recognize for every child the right to benefit from social security".

There is no mention of just the first two children. What would be the implications if the UN Convention on the Rights of the Child (UNCRC) were breached? Do you think that this could constitute such a breach?

Dr Russell: The Convention on the Rights of the Child is binding law on which the UK Government and the Northern Ireland Executive have to report back periodically to the United Nations. I am sure that the UN's Committee on the Rights of the Child will look at that issue closely. It is not dissimilar to the previous point. I would imagine that, in the first instance, because you are talking about a move from the family unit with two children to the three children scenario, the most likely first avenue to explore would be whether family life was impacted in a discriminatory fashion, which would engage article 14 of the European Convention on Human Rights. You would then bring in the UNCRC on top of that. Domestic human rights protections and international protections quite often mirror each other.

Mr Durkan: It is proposed that the mobility component of PIPs be removed from someone in a hospital or care home. Would that be a breach of human rights?

Mr Caughey: The UNCRPD requires that disabled people be supported to live life independently. If a car was a necessary element of enabling someone to live life independently, there is certainly the potential for their not having one to have adverse implications on their right to an independent life. As far as I understand it from my reading of developments in England and Wales, the mobility component is to be retained for persons in care homes. However, that may be inaccurate.

Ms Brown: Thank you very much for your very interesting presentation. I want to ask you about the lack of a childcare strategy and the necessary infrastructure and resources. That places women at an obvious disadvantage in relation to welfare reform. Will you give us your view of placing work-related requirements on women with childcare responsibilities and the possible sanctions? Northern Ireland is unlike England and Wales, where there is a responsibility to provide childcare. Are there any apparent human rights issues?

Dr Russell: Yes. We addressed that issue in our submission, which lays out the standards quite clearly. Article 22 of the United Nations Declaration on Social Progress and Development 1969 provides for:

“the establishment of appropriate child-care facilities in the interest of children and working parents.”

As with all the treaties mentioned in our submission, that has been ratified by the UK and is binding on the Northern Ireland Executive. Furthermore, article 8 of the European Convention on Human Rights might also, potentially, be engaged in that area, as could article 1 of the Convention on Eliminating All Forms of Discrimination Against Women (CEDAW), which does not allow for discrimination against women on the basis of sex and in comparison with men. It demands equality in political, economic and, vitally in this instance, social life. All those could potentially be engaged.

We are conscious that the situation with childcare here is different. There has been some indication — I do not have the figures to hand — that the demand for childcare is higher and would outstrip the current supply. So the requirement to attend interviews, for example, will obviously be onerous on women, and there is potential for discrimination. Again, I do not know. All this has to come with the caveat that we do not know what the regulations will say. A regulation could provide adequate protection to deal with this circumstance.

Mr Brady: Fra talked about the double-whammy effect. We have been told that someone who receives an overpayment of £50,000 in benefit, or is jailed for an offence relating to social security fraud, will have their benefit sanctioned for three years. So someone who has spent two years in jail and is released will have their benefit sanctioned for a further year. He will return to the household with, say, his partner and three children, and they will not get benefits. Presumably, though it will depend on the outworkings of the regulations, he will be living in a household that receives a certain amount of money for his partner and children, but not for him. Presumably, he will be assimilated back into the household. Then we come back to the issue of possible destitution, whatever the definition of destitution may be. There seems to be no provision made for those circumstances. That sanction may well lead to the break-up of the family, because money will be coming in for only four people, not five. There are all sorts of implications connected with that. Would that particular situation be considered as a breach of human rights?

Fra made the point that, if you commit a crime, you go through the judicial system and are punished. When you come out, you can immediately claim benefit, but not if the crime related to social security. Since 2008, here in the North, the incidence of social security fraud has continually decreased, whereas the incidences of claimant error and departmental error have risen. DLA, for example, is the

benefit least prone to fraud: it is less than 0.01%. Yet the demonisation of people on benefits has contributed to the general atmosphere around so-called welfare reform. There is almost an acceptance by some people of the attitude, "I am working, so why should those people be better off?" The reality is that all the changes to contributory benefits, such as ESA being paid for only a year, irrespective of how many contributions have been paid, will have an impact, not just on the working poor, the unemployed, or those on benefit, but on people who work.

Dr Russell: Your first point was on the demonisation of those on benefits. The commission's views are quite clear: the human rights requirement on the state, under the European Social Charter, is to ensure that there is an adequate social security system.

On the specific issue of prisoners, the deprivation of liberty is the punishment for the crime. The further punishment, which you suggest may be introduced after a prisoner has been released, raises a serious human rights concern. The commission would have to look at that in more detail. To date, we have not analysed that, but we will be happy to do so should the Chair or Committee see fit to ask.

Mr Brady: We talk of demonisation, but what has been forgotten in all this is the duty of care that the state owes to the most vulnerable. If you listen to some of the media here and in Britain — I have said this before and will continue to say it — you would think that the Social Security Agency was some sort of charitable institution that gives out money like a church organisation or the Society of St Vincent de Paul. There is a duty of care to be met, and, as you said, a requirement on the state to provide an adequate — "adequate" is an important word in this case — social security system for the betterment and enhancement of people's lives. I can say in all honesty that no one to whom I have spoken has ever said that they like being on benefit, or that they are there by choice. It is as simple as that.

Mr Corey: Absolutely. You refer to the duty of care owed by the state to the most vulnerable. From the perspective of the Human Rights Commission, our priority is the most vulnerable people. People in prison are among the most vulnerable, and on their release they are also amongst the most vulnerable. As David said, the commission staff have not yet examined that, but if asked, we will pick up that point.

You made a wider point about the demonisation of individuals by, for example, allegations of benefit fraud. At the end of the day, we all want a benefit system that is there for everyone. This is not about examining benefit from the point of view of people who have committed fraud but about benefits for people who are ill, disabled or lose their job, and the system should be there to protect everyone with dignity and respect. That is what this should all be about.

The Chairperson: John, David and Colin, thank you for the commission's written submission and for your contribution today. It has been very important and very illuminating for all of us.

I want to make one point. Most organisations that come here refer to the recent announcements by the Minister. Last week, he announced that the Bill would be modified to facilitate direct payments to landlords, for example, for people in receipt of universal credit and rent support. That will go, by default, to the landlord directly. However, there was a question about split single payments or monthly payments. The implementation of universal credit has been deferred from October 2013 to April 2014 to facilitate the development of the IT system to provide for the modification of the method of payment, either by way of single or monthly payments. Last week, however, I had discussions with David Freud, who in no way accepts that the default mechanism will be that people can get their choice of fortnightly payments. That will still have to be negotiated by way of some type of special circumstances. The detail has not been worked out yet, but he made it very clear that they still want to pay as many people as possible monthly and by way of a single payment. I am just making the point that the Minister took that at face value, but it is for the panel to examine that, and people will submit their views on what form split payments might take. You have ideas, and the women's sector will have ideas. As yet, there has been no agreement on the ultimate nature of any modifications. Our difficulty, as a Committee, is that we will have to decide on the Bill at Committee Stage before any of those deliberations have been concluded, but it is up to us to grapple with that.

For your information, we will complete Committee Stage and provide our report to the Assembly on 27 November. Your contribution has been a very important part of our deliberations. Thank you, and we will, no doubt, engage with you again.

Mr Corey: Thank you very much, Chairperson.