



The Welfare Reform Bill 2012

Submission of Evidence to the Social Development Committee

by

Niamh (the Northern Ireland Association for Mental Health)

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Executive Summary

i Introduction

Niamh is the largest and longest established mental health charity in Northern Ireland. We deliver community based mental health services in every Assembly constituency through Beacon and Carecall. Welfare reform will significantly impact the lives of our service users (members). We note Minister McCausland's assertion that the first principle of welfare reform is to protect the vulnerable in our society. We welcome the cross party recognition that welfare reform will have specific impacts on persons who experience mental ill-health.

Northern Ireland is distinct from other parts of the UK not only because of the higher prevalence of mental ill-health recognised as a consequence of the conflict, but also because of the human rights and equality protections provided to this group through the unique legislative framework under the Northern Ireland Act 1998. Our views have been informed by legal analysis on the Bill's human rights compliance and justiciability.

We note that the policy simulation modelling results have not been published. Consequently it is not possible to present detailed figures about those impacted by the various components of the Welfare Reform Bill.

This submission is structured in three sections. In this Executive Summary we present the recommendations made in each section. Sections One and Three deal respectively with the overall Bill, and key themes in the implementation of the legislation. Section Two contains reference to specific clauses that we seek to have amended.

1. Section One Recommendations: Human Rights Compliance and Justiciability

We recommend that the Assembly applies the *Northern Ireland Act 1998* mandatory legislative provisions to the Welfare Reform Bill so that the Bill is both human right compliant on the face of the legislation and moulded to the particular needs of those seeking welfare assistance in Northern Ireland, in particular those individuals who experience mental health problems.

2. Section Two Recommendations: Amendments to the Welfare Reform Bill

2.1 Evidence

We recommend that there is a mandatory requirement to seek independent, mental health expert opinion from health professionals and / or voluntary organisations with which the claimant has an established relationship at all stages of the welfare reform process including before sanctions are imposed.

2.2 Sanctions

We recommend that an individual has access to independent advice and representation in order to compile and present his / her evidence in situations in which sanctions are being considered.

2.3 Employment and Support Allowance

We recommend the removal of the time-limiting of Contributory ESA for WRAG claimants. **We recommend** that individuals are able to re-qualify for ESA if they meet the eligibility requirements for either the Support or Work Related Activity Group at the end of the 365 day period (if this is retained) or subsequently, should their condition fluctuate or deteriorate.

2.4 Personal Independence Payment

We recommend that the arbitrary rotating 12 month assessment period is amended to allow for discretion in relation to persons experiencing mental ill-health.

2.5 Advice and Representation

We recommend the inclusion of mandatory access to independent advice and representation for persons experiencing mental ill-health through accredited organisations within the voluntary sector.

3. Section Three Recommendations: Implementation of the Welfare Reform legislation

3.1 Regulations

We recommend the timely publication of draft Regulations to ensure full scrutiny including human rights compliance.

We recommend the passage of regulations by affirmative resolution of the Assembly.

3.2 Public Information

We recommend an effective public information campaign for vulnerable groups.

We recommend that all individual and public communications regarding welfare reform are reviewed in order to minimise anxiety and harm.

3.3 'Digital by Default'

We recommend the development of a short form to register an application for welfare benefits, which would be used as the commencement date for the claim i.e. the full application form does not need to be completed before the commencement date is registered.

We recommend that supports are put in place for non-digital application by persons who have no or limited digital access or who do not have the skills to undertake their application online by themselves.

We recommend clear guidance regarding the completion of applications with the assistance of third parties.

3.4 Stigma and Welfare Reform

We recommend that MLAs agree to avoid the use of stigmatising and inflammatory language about welfare reform and benefit claimants.

We recommend that MLAs use their influence to promote a measured and informed debate about welfare reform that recognises the necessity of social security provision for vulnerable members of society.

3.5 Procurement

We recommend that there are stringent performance requirements linked to the quality of medical assessments; and that mental health assessments are specified within this.

We recommend the inclusion of mandatory monitoring and review systems for private sector contracts including the use of proportionate, escalating and timely sanctions such as financial levers for poor performance.

i. Introduction

This is a submission to the Social Development Committee on the Welfare Reform Bill by Niamh (the Northern Ireland Association for Mental Health). We note that we issued a briefing of mental health and welfare reform on 9 October when the Bill had its Second Reading and that this was circulated to all MLAs and political parties.

Niamh is the largest and longest established mental health charity in Northern Ireland. We have been providing community based mental health services through Beacon to persons with experience of significant mental ill-health since 1959. In 2011 – 2012 Beacon delivered support for people with experience of mental illness, through supported housing (351 places), day support (accessed by 1139 people) and advocacy (totalling 5600 cases). Through our Carecall service we cover 435 842 lives in workplace and further education settings. In 2011 – 2012 Carecall provided counselling and psychological therapies through 19 000 sessions to 4 500 people, as well as mental health and wellbeing programmes.

We have a research unit, which generated evidence on which this submission is based. In 2010 our research unit conducted a needs assessment of our housing support services; and in 2012 it conducted a review of our day support services. We have a public affairs and policy unit, which compiled this submission.

Welfare reform will have a direct impact on the people that we work with across Northern Ireland. In our Beacon Housing Support Services research in 2010 found 75% of residents were in receipt of DLA, 36% Incapacity Benefit, 10% State Pension, 50% Income Support, and 10% Housing Benefit. In our Beacon Day Services research in 2012 found 95.8% of members are in receipt of state benefits; this includes: 79% DLA, 50% Income Support, 39% Housing Benefit, 19% State Pensions, 11% Incapacity Benefit (and 2% Employment Support Allowance), 5% Tax Credits, 5% Child Benefit, 3% Job Seekers Allowance, and 7% Statutory Sick Pay. (2012) Carecall's clients include those in low paid work and further education for whom welfare benefit payments form an essential part of their income.

Niamh is a member of the Northern Ireland Welfare Reform Group (NIWRG). In this submission of evidence we focus on specific issues related to persons who experience mental ill-health. We concur with the broader issues and recommendations made by the NIWRG in its submission of evidence for example with regard to frequency of payments, payment of housing benefit directly to landlords, and splitting the payment of benefits.

While the call for evidence from the Social Development Committee has directed a specific format for response in so far as each response must be on a clause by clause basis, it is our considered view that it is essential that certain matters of general applicability to the entirety of the Bill are highlighted at this stage so that a view may be taken by the Committee as to the appropriateness of the overall context, applicability, human rights compliance and justiciability of the current provisions of the Bill.

We consider that this particular approach to be crucial as it is evidential that people experiencing mental ill health will be impacted by many of the proposed changes.

Therefore, our overarching concern that the Bill, as drafted, is not human rights compliant must be viewed as permeating all our concerns throughout this submission. *This is dealt with in Section One.*

We consider that the provisions of the Welfare Reform Bill will have significant impacts on individuals who experience mental ill-health. We focus on a number of specific clauses that we recommend are amended. *This is dealt with in Section Two.*

We consider that there are a number of matters regarding the implementation of the legislation, which it would be valuable for the Committee to take a view on. *This is dealt with in Section Three.*

1. Section One: Human Rights Compliance and Justiciability

This section is informed by legal analysis on the human rights compliance of the Bill.

1.1 Overview and comments of general applicability to the Bill

1.1.1 The Bill makes provision for the welfare landscape in Northern Ireland corresponding to provision in the *Welfare Reform Act 2012*, applicable in England and Wales.

1.1.2 As such, the Bill is deemed to be part of the ongoing process of welfare reform and modernisation of the benefit system. This objective is consistent with the ethos of many international human rights instruments, which recognise the right to work, and the right to an adequate standard of living.

1.1.3 In seeking to justify the human rights compliance of the Bill, each proposal must be considered to be reasonable and necessary and in pursuit of a legitimate (in this case, social welfare) aim.

1.1.4 It is inherent on the government that, in seeking to utilise the law to advance more widely applicable human rights standards, they act compatibly with both national and international human rights law.

1.1.5 This notion of advancement of human rights is inherently linked to the legal concept of retrogression. This requires that once acquired, rights should not be removed or limited so as to result in a move away from a previously more beneficial position.

1.1.6 This presumption against retrospective measures, and indeed a states continuing obligation under human rights principles, is viewed within the context of available state resources. However, we at Niamh consider that the Bill as currently drafted identifies significant areas of retrospection vis-à-vis people with mental health problems. These will be highlighted below in the 'Comment on selected clauses' below (1.5).

1.1.7 It has in the past been the case that Bills seeking to reform matters relating to social welfare are accompanied by human rights memorandum.¹ These memorandums highlight the informed parliamentary scrutiny process undertaken to ensure that the relevant Bill(s) are human rights compatible, which in turn suggests that they are more likely to withstand judicial scrutiny. The outward matching of legislative proposals with human rights obligations would serve to demonstrate both a commitment towards and an ongoing

¹ For example the Child Poverty Bill and the Education Bill.

awareness of national and international treaties and conventions to which the UK is a signatory state.

1.1.8 It is our view at Niamh that the absence of such transparent scrutiny will make any subsequent legislation vulnerable to judicial review, both on fact specific cases as well as general challenges to the compatibility of such legislation with human rights law.

1.2. Responsibilities under the *Northern Ireland Act 1998*

1.2.1 While the UK government did not attach a human rights memorandum to the *Welfare Reform Act 2012*, there is nothing to prevent the devolved government in Northern Ireland carrying out such an exercise.

1.2.2 It is our view in Niamh that it is in fact mandated by the *Northern Ireland Act 1998* that an analysis of impact and obligation viewed through the lens of existing human rights provisions is carried out when the proposed legislative provisions are to impact in a wide ranging way throughout in relation to those most vulnerable in society.

1.2.3 We further consider that discussions around parity requirements should be informed not only by the different characteristics of Northern Irish society including its experience of conflict, levels of socio-economic deprivation and high rates of mental ill-health, but also the distinct legislative framework provided by the Belfast Agreement and *Northern Ireland Act 1998*.

1.2.4 We note that equality is a fundamental commitment within the Belfast Agreement. The *Northern Ireland Act 1998* sets down the politically agreed and socially mandated legislative framework within which the Assembly must operate.

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

1.2.6 For example, in the 1998 Act:

Section 6 provides that a provision is outside the legislative competence of the Assembly if it is incompatible with any of the Convention rights;

Section 24 provides that a Minister or Northern Ireland Department has no power to introduce subordinate legislation or to do any act in so far as that would be incompatible with any Convention rights; and

Section 75 requires a public authority to have due regard to the need to promote equality of opportunity between categories of persons, which includes matters surrounding disability.

1.2.7 These specific provisions within the 1998 Act focus attention on both the human rights compliance requirements of the legislature in Northern Ireland while also, under section 75, enabling specific emphasis to be placed on the particular context of Northern Ireland when considering human rights obligations.

1.2.8 The 1998 Act also served to create the Equality and Human Rights Commissions in Northern Ireland, and it is our view that these two bodies should have a significant role in participating in and scrutinising the human rights implications of the Welfare Bill within the particular circumstances of Northern Ireland.

1.2.9 At present, there is no evidence to indicate that any or any detailed analysis has been carried out into the impact of the Welfare Reform Bill on individuals who experience mental ill health.

We recommend that the Assembly apply the *Northern Ireland Act 1998* mandatory legislative provisions to the Welfare Reform Bill so that the Bill is both human right compliant on the face of the legislation and moulded to the particular needs of those seeking welfare assistance, in particular those individuals who experience mental health problems.

1.3 The international framework

1.3.1 As well as considering their human rights obligations under the European Convention on Human Rights (ECHR) and any impact the welfare reform provisions may have on protected rights (most notably Article 3, protection from inhuman or degrading treatment, and Article 8, respect for private and family life), the Assembly must also take cognisance of a variety of international treaties and conventions to which the UK, as the member State, is a signatory.

1.3.2 There would appear to be a complete absence of any analysis of compatibility having been carried out under the ECHR, the International Covenant on Economic and Social Rights (ICESR) and the United Nations Convention on the Rights of Disabled People (UNCRDP).

1.4 Absence of Regulations providing legislative certainty

1.4.1 We at Niamh are concerned that a significant level of detail as to the administration of Schemes and the way in which discretionary powers are to be exercised under the Welfare Reform Bill will manifest in secondary legislation in the form of Regulations.

1.4.2 The absence of draft Regulations to be considered and assessed concurrently with the draft primary legislation makes it impossible to properly scrutinise, from a human rights perspective, the likely impact of the outworking of the Bill's reforms.

1.4.3 This is all the more concerning if subsequent Regulations under the Bill are subject to negative affirmation rather than positive affirmation, as this will greatly limit any subsequent Assembly scrutiny. This concern also applies given the proposed 'confirmatory procedure' to which the Regulations are to be subjected.

1.4.4 We at Niamh are of the opinion that the planned provision of safeguards and the outworking of the primary legislation under the Welfare Reform Bill in secondary legislation, such as Regulations, are impossible to assess in a vacuum, yet may prove fatal to what may currently be considered human rights compliant provisions under the Welfare Reform Bill.

1.4.5 To this end, we would welcome a future opportunity to consult on the regulatory framework, which will serve to bring the provisions of the Bill to life.

1.5 Comment on selected clauses

The following are representational of our overarching concern that the Bill is not human rights compliant and are therefore illustrative rather than exhaustive.

1.5.1 Part 1, Chapter 1 – Universal Credit, Sections 1-12 (so referred to in the Bill)

- Payment of universal credit to only one member in a household could result in a reduction in the personal autonomy of individuals who suffer from mental ill health.

1.5.2 Part 2, Chapter 2 – Employment and Support Allowance; Sections 51-58

- The sanction of reducing benefits for individuals who fail to comply with work related requirements may result in destitution, arguably engaging Article 3 of the European Convention on Human Rights. The positive act of the state in introducing provisions which restricts the availability of benefits coupled with a resulting situation which falls within the definition of “inhuman or degrading treatment” would serve to violate an individual’s Article 3 rights. This would apply particularly to individuals with mental ill health who are, *de facto*, unemployable and who as a result of the manifestation of their mental ill health, lack the awareness or understanding of the need to inform the authorities within five working days of their “good reason” not to work. Such a test also inherently fails to take into account the fluctuating nature of mental ill health.
- In the absence of detailed Regulations, it is not possible to predict how the government may provide for vulnerable people to be assessed as to whether a particular activity is appropriate for that person or not. The complexity of factors affecting those with mental ill health negates against a Regulation being able to be significantly flexible and sensitively applied so as to allow a proper and appropriate assessment of that person to be carried out.

1.5.3 Part 4: Personal Independent Payment (PIP); Sections 76-94

- PIPs may result in a negative impact and a possible rights violation on the right of disabled people to independent living.
- PIPs fail to take into account the matrix of social, geographic and practical barriers experienced by those people whose interaction with society is limited through disability and mental ill health.
- PIP timeframes for qualification and assessment may leave people exposed at a very vulnerable time.
- The timeframes detailed throughout the provisions relating to PIPs seem arbitrary and without any evidence base.
- The absence of a discretionary power within the context of timeframes is unnecessarily harsh and practically challenging.
- Eligibility for PIPs continues to focus on the medical model of assessment rather than the social model, thereby resulting in significant factors such as social and practical issues, being delegated in significance or worse, ignored.

2. Section Two: Amendments to the Welfare Reform Bill

2.1 Evidence

We stress that full and fair assessment, decision making, appeals procedures and consideration of sanctions about persons who experience mental ill-health must be informed by independent *and* mental health opinion.

We note the misperception within the social security system that anyone with a health qualification is able to provide a valid opinion of a person with a mental health condition.

Mental health is a specialist area of knowledge and many health professionals have only a basic training in this area.

We note the misunderstanding within the social security system that an individual's GP or statutory mental health team is always best placed to provide an opinion. If an individual's mental health has stabilised then the best source of current knowledge may be from a voluntary service which provides housing, day or other support.

As well as being fundamental to assessment, decision making and appeal, evidence is of central importance to the issuing of sanctions, discussed below.

We recommend that there is a mandatory requirement to seek independent, mental health expert opinion from health professionals and / or voluntary organisations with which the claimant has an established relationship at all stages of the welfare reform process including before sanctions are imposed.

2.2 Sanctions - The need for an evidence and advocacy based approach

Given the severity of the sanctions proposed in the Bill, we consider there is a need for an evidence and advocacy based approach to decision making.

We recommend that an individual has access to independent advice and representation in order to compile and present his / her evidence in situations in which sanctions are being considered.

Clause Specific Changes

Part 1, Chapter 2:

Claimant's responsibilities:

Clauses 26 and 27 - Relate to work related sanctions. It is clear from the wording of Clauses 26 and 27 that there is a requirement that "no good reason" should exist for a failure of a claimant to comply with requirements imposed under the Bill relating to work. Clause 25 provides for Regulations to make provisions for the circumstances in which a claimant may be treated as having complied with a requirement. The Explanatory and Financial Memorandum to the Bill does not indicate how the Regulations provided for by Clause 25 will be made, i.e. affirmative, confirmatory or negative resolution. We are of the view at Niamh that Regulations created under Clause 25 should be subjected to the affirmatory procedure for the reasons we have outlined above in light of the democratic and human rights benefits of this procedure.

In addition, we consider that possible "reasons" for failure to comply with work related requirements should specifically consider and address the particular vulnerabilities faced by people who suffer mental ill health and provide for a sufficiently flexible evidence base to allow for these vulnerabilities to be properly considered and given due weight. We also consider it essential that there is a legislative presumption, clear on the face of the legislation, that people with ill health be encouraged and facilitated to utilise independent mental health advocacy assistance in helping them prepare their evidential basis for seeking to establish their "reasons" for failing to comply with work related requirements. Such assistance should also be extended to allow independent advocate to assist the individual in

the articulation of their case to the relevant authority, acting as the persons advocate should that be required.

Part 2, Chapter 1

Jobseeker Allowance

Clauses 46 - Interviews: Clause 46 amends Article 10 of the Jobseekers Order and requires attendance at and participation in an interview. People with mental ill health subjected to such interviews should be permitted to bring an independent advocate with them to assist them in participating fully in such interviews. The advocate should also be permitted, should the applicant wish it, to represent the views of the applicant at such interviews. We at Niamh are of the view that there should be a legislative presumption inserted into Article 10 of the Jobseekers Order 1995 as to the use of such independent mental health advocates rather than a discretionary power to allow them to be utilised in the way advocated for by us. A presumptive permission permitting the use of such advocates would limit any potential inconsistency in the use of discretionary powers as to when an advocate may or may not be used. This will provide legal certainty as well as arguably limiting the potential to challenge the Jobseekers Order by way of judicial review.

Clause 47, relating to Jobseekers Allowance, seeks to amend Article 21 of the Jobseekers Order. This should also include a regulatory presumption as to the use of an independent mental health advocate as both an assistant to create an evidence base for any reasons relied on and as an oral advocate at any subsequent hearing.

Clause 50 replaces provisions in the Jobseekers Order 1995 that relate to the responsibilities that JSA claimants must meet and the imposition of sanctions where JSA claimants fail to meet those responsibilities. The legislative intention for the amendments to the Jobseekers Order 1995 is to impose requirements on JSA claimants which are the same as for those who are subject to all work related requirements in universal credit. We therefore reiterate our previous request for the insertion of a presumption of advice and assistance to allow people with mental ill health to collate the necessary evidence base to enable them to fully articulate their position and to have access to the use of a mental health advocate to assist them in doing so, in whatever way is most effective for them.

Part 2, Chapter 2

Employment and Support Allowance

The above comments and recommendations, relating to the necessity to provide for legislative basis for facilitating a claimant with mental ill health prepare an evidence base and utilising an independent mental health advocate is also applicable to Clause 58, which deals with a claimant's responsibilities for employment and support allowance.

Part 4

Personal Independence Payment

The above comments and recommendations, relating to the necessity to provide for legislative basis for facilitating a claimant with mental ill health prepare an evidence base and utilising an independent mental health advocate, apply also to Clauses 79 and 80, which

deal with the tests relating to a claimant's ability to carry out daily living activities and/or mobility activities.

An example of how the "particular circumstances" of NI may be reflected in the Regulations

The provisions of Clause 79 permit extensive use of regulatory powers to provide further detail required when assessing each individual claimant. For example, Clause 79 (3) (c) provides that Regulations "may" make provision about matters which are or are not to be taken into account in assessing a person. The use of the word "may" denotes a discretionary power to so act. It is, therefore, completely within the gift of the Assembly to ensure that Regulations introduced under the provision of Clause 79 (3) (c) reflect the particular mental ill health faced by people in NI as a result of the conflict and ensure these matters are dealt with appropriately and sensitively within the Regulations drafted.

A further example of how "particular circumstances" may be provided for within the legislation is Clause 79 (4). The wording of this Clause also includes the word "may" as it relates to Regulations detailing the information or evidence required for determining the questions when assessing a person's functioning relating to their activities of daily living and/or their mobility. This allows the Assembly to focus on particular on the type and methodology of data required and to ensure that people with mental ill health have access to the services they need to establish their individual evidence base. Clause 79 (4) (a) ostensibly provides a flexible approach which would also allow for the presumption of the use of an independent mental health advocate in the ways detailed previously.

2.3 Employment and Support Allowance (ESA)

We note that the policy intent of the one year time limit for contributory ESA Work Related Activity Group (WRAG) claimants is to underline the principle that it is considered as a short-term benefit and that claimants placed within the WRAG are expected to move towards work with the right support in place (EQIA p17). However we are concerned that this short time limit will not allow for adequate support for individuals experiencing mental ill-health to recover and stabilize their mental health to a level that enables them to seek work. The focus of mental health care is on recovery, which is an individual journey that is influenced by the person's fluctuating mental health and well-being. Many individuals in the WRAG may have no or limited work experience, low educational attainment, and poor knowledge and skills that are necessary for employment. Such skills include self confidence, emotional regulation, problem solving, and inter-personal communication. The pressure of short timeframe may create undue stress and anxiety and undermine the individual's mental health.

The one year limit to the contributory ESA WRAG payment has been described as arbitrary, unfair and stressful, and without an evidence base. It provides an insufficient period of time for individuals to find employment. Coalition Government figures indicate that 94 per cent of people in the WRAG will need ESA for longer than 12 months. In the House of Lords debate, Lord Patel commented: "I believe that people with a disability or illness who have paid into the system should be able to receive support for as long as they meet the eligibility criteria for ESA and are unable to work due to their condition. What they need is enough

time and the right support. What they do not need is to be penalised for not recovering quickly enough.” (Hansard House of Lords, 11 January 2012, Column 150).

Further, he noted that it is extremely important that a person in the WRAG who has been subject to the ESA time limit of 365 days is able to re-qualify for the contributory benefit at any time that they are subsequently assessed as eligible for the support group. This is very relevant to individuals with fluctuating conditions including mental ill-health. (Column 155)

It is noted that the Coalition Government acknowledged that it had not conducted a robust assessment about the impact that time-limiting ESA would have on the number of people in poverty, on health and social care budgets, and on the demand for benefits advice services. (Columns 153-4). This chimes with our concerns about the hidden costs of welfare reform for the health and advice sectors.

We recommend the removal of the time-limiting of Contributory ESA for WRAG claimants.

We recommend that individuals are able to re-qualify for ESA if they meet the eligibility requirements for either the Support or Work Related Activity Group at the end of the 365 day period or subsequently, should their condition fluctuate or deteriorate.

Clause Specific Changes

Part 1, Chapter 2

Employment and Support Allowance

Clause 52 inserts amendments after section 1 of the Welfare Reform Act (NI) 2007. The proposed new 1A (1) and 1A (4) (a) provide that the period for which a person is entitled to a contributory allowance must not exceed 365 days.

2.4 Personal Independent Payment

We note that the experience of ESA assessment, decision making and appeal foreshadows similar processes under PIP. It is difficult to have any confidence that these processes under PIP will cause any less anxiety and distress.

Niamh considers that the rotating 12 month assessment period appears to be an arbitrary period that does not properly reflect the subjective nature of mental ill health and its fluctuating character with regard to: manifestation, pattern and behaviour over a period of time.

The requirement that a person has their condition at the same level for three months prior to and six months following assessment is not appropriate for persons with fluctuating mental health problems and / or those who are trying to progressively recover their mental health. The requirement of a continuous level of mental ill-health is contrary to the principle of mental health recovery.

It is our view that, should flexibility in approach not be regulated for when considering people with significant mental ill health, then there exists a very real risk that such people

may be made vulnerable and be exposed to factors which may serve to greatly exacerbate their condition.

We recommend that the arbitrary rotating 12 month assessment period is amended to allow for discretion in relation to persons with mental ill-health.

Clause Specific Changes

Part 4, Clause 80 - Niamh recommends the insertion of a provision in the Regulations relating to the "required period condition", provision for which is made under Clause 79 (2), which gives cognisance to the likely impact of frequent reviews on persons with significant mental ill health. There is specific mandatory flexibility contained in Clause 80 (4) (a) and (b), which would allow discretion to be exercised in relation to this particular group of people.

2.5 Advice and representation provision

We at Niamh work closely with colleagues in the independent advice sector and recognise the essential work undertaken with local services and communities. The value of this advice and representation has been apparent in the successful rates of ESA appeal decisions. We note that there is not currently a clause providing mandatory access to independent advice and representation.

We recommend the inclusion of a clause(s) that establish mandatory access to independent advice and representation for persons experiencing mental ill-health through accredited organisations within the voluntary sector.

3. Section Three: Implementation of the Welfare Reform legislation

3.1 Regulations

The issue of Regulations is raised in Section One of this submission with regard to ensuring that the Welfare Reform legislation is human rights compliant. We note that much of the detail of welfare reform will be contained within the Regulations. It is difficult to anticipate the full implications of the provisions of the legislation without the draft Regulations.

We are concerned that the draft Regulations may be published so close to the commencement of the Welfare Reform legislation that it will not be possible to have full Assembly and public scrutiny. We are concerned that the Regulations will be a direct mirror of those introduced in the rest of the UK and will not reflect the specific characteristics of Northern Ireland, particularly with regard to the prevalence of mental ill-health, lack of employment opportunities, and the limitations on freedom of movement to access employment due to the sectarian geography of certain parts of the jurisdiction.

We recommend the timely publication of draft Regulations to ensure full scrutiny including human rights compliance.

We recommend the passage of regulations by affirmative resolution of the Assembly.

3.2 Public Information

Responses to discussions about welfare reform amongst our service users (members) range from acute distress and fear to assertions that 'it is nothing to do with me' by individuals who have been assured by social security staff that they are on DLA for life.

It is widely acknowledged that the welfare reform agenda represents the most fundamental change to the social security system since the establishment of the welfare state. We are

seriously concerned at the lack of public information currently available about the scope of the reform, and the lack of planning for an effective public information campaign that will reach vulnerable groups. We consider that a public information campaign with specific supports of the scale and quality of the recent 'Digital Switchover' is required to ensure effective communication of welfare reform.

Niamh's Housing Needs Assessment (2010) and Day Services review (2012) found low levels of educational attainment, low levels of literacy and numeracy; in addition to the comprehension challenges of cognitive impairment associated with mental ill-health and the effects of some psychiatric treatments.

We recommend an effective public information campaign for vulnerable groups.

We recommend that all individual and public communications regarding welfare reform are reviewed in order to minimise anxiety and harm.

3.3 Digital by Default

The Niamh's Day Services Review provides an insight into the levels of digital access and competence amongst individuals experiencing mental ill-health. It found that almost one half (143, 46.9%) of Beacon members did not have access to or own a computer while more than a half (162, 52.9%) did not have access to the internet. Over two fifths are incapable of using a computer (41.8%, 127) or using the internet (48.6%, 148). Capability of using a computer and using the internet both decreased with age. (2012)

Concerns raised by the NIWRG regarding the 'Digital by Default' approach have included individuals low access to a private computer and quality of internet access; the lack of privacy and time limitations in accessing a public computer (for example in a library); the delay in registering a claim if the full form has to be completed; and the lack of clarity about the role of third parties in assisting individuals to complete the application form.

In terms of ongoing communication between the claimant and the social security office, we are concerned that this lack of access to computers and the internet, is compounded by individuals on low incomes and who are experiencing mental ill-health having access to a telephone.

We recommend the development of a short form to register an application for welfare benefits, which would be used as the commencement date for the claim i.e. the full application form does not need to be completed before the commencement date is registered.

We recommend that supports are put in place for non-digital application by persons who have no or limited digital access or who do not have the skills to undertake their application online by themselves.

We recommend clear guidance regarding the completion of applications with the assistance of third parties.

3.4. Stigma

Negative attitudes towards persons experiencing mental ill-health within neighbourhoods, workplaces and families have increased according to the Equality Commission for Northern Ireland's report 'Do You Mean Me?' (2012). Research by the Strathclyde Centre for Disability

Research and the Glasgow Media Unit found increasingly negative reporting of disabled people with articles focusing on disability and benefit fraud; the alleged 'burden' disabled people place on the economy; and an increased use of pejorative language to describe disabled people that reinforced the idea of disabled claimants as being undeserving (October 2011). Disability Rights UK's study 'Press portrayal of disabled people. A rise in hostility fuelled by austerity?' (August 2012) reported that such portrayal has led to disabled people feeling: hounded, humiliated, harassed, ashamed, depressed, inferior, degraded, devalued and scared. Persons who experienced mental ill-health reported deterioration in their condition.

We have launched Niamh's anti-stigma guidance for political representatives as part of our Change Your Mind campaign (October 2012).

We recommend that MLAs agree to avoid the use of stigmatising and inflammatory language about welfare reform and benefit claimants.

We recommend that MLAs use their influence to promote a measured and informed debate about welfare reform that recognises the necessity of social security provision for vulnerable members of society.

3.5 Procurement

We note the National Audit Office's report on DWP's management of the contract with Atos Healthcare: 'Department of Work and Pensions: Contract management of medical services' (produced June 2012, published 18 October 2012). The report found that only 10% of the penalties triggered by poor performance had been applied; that the DWP had failed to check the accuracy of performance data submitted by Atos Healthcare; and that problems with the accuracy of forecasting data and the apparent lack of impacting the consequences of policy change hindered the Department's efforts to manage under performance.

We recommend that there are stringent performance requirements linked to the quality of medical assessments; and that mental health assessments are specified within this.

We recommend the inclusion of mandatory monitoring and review systems for private sector contracts including the use of proportionate, escalating and timely sanctions such as financial levers for poor performance.