



Northern Ireland
Assembly

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

OFFICIAL REPORT (Hansard)

Disability Action/Mencap Briefing

4 December 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Trevor Lunn (Chairperson)
Mr Robin Swann (Deputy Chairperson)
Ms Paula Bradley
Mr Mickey Brady
Mr Tom Elliott
Lord Morrow
Mr Alastair Ross
Mr Peter Weir

Also in attendance:

Mr F McCann
Mr McDevitt

Witnesses:

Ms Karen Hall	Disability Action
Ms Jenny Ruddy	Mencap

The Deputy Chairperson: I welcome Jenny Ruddy, campaign officer for Mencap; and Karen Hall, information and policy officer for Disability Action. Would you like to make an opening statement?

Ms Karen Hall (Disability Action): We were due to meet a couple of organisations at about 4.15 this afternoon to produce a joint briefing for the Committee. We will get that to you. I know that some of you have the briefing from the Social Development Committee, but I will start with some of the equality issues and touch on a little bit of human rights. Jenny will follow on from that.

The Deputy Chairperson: Members, there are tabled briefing items in your packs.

Ms Hall: I am not working off our Social Development briefing paper. Disability Action provided a response to the consultation on the equality impact assessment (EQIA) in November 2011; it is available if the Committee wishes to see it. We raised a number of concerns in our response. In fact, some of those concerns still exist with regard to the final EQIA. One of our main concerns related to the consideration of data and research, and we raised that with the Social Development Committee. The EQIA states that the departmental analytic service unit is continuing to work with the Department for Work and Pensions (DWP) and HMRC to develop its policy simulation model that will better equip us to analyse the impact of the policies across various section-75 groups. As far as we are aware, the policy simulation has been done in relation to universal credit. It is not available to us. It still has not been done in relation to disability living allowance (DLA) and the personal independence payment

(PIP). That was the case a couple of weeks ago when we last checked. Therefore it is unclear what the impact will be in certain areas. We need the policy modelling.

In our initial response, we recognised that it is sometimes difficult to monitor and capture data, but it is not good enough to say that no data exists. Where none exists, there should be consideration of comparable national or international data or reference qualitative data.

One of the main issues with the EQIA was whether it considered persons with and without dependents. We will perhaps talk about that a little more as we go through, but that is particularly important for those with caring responsibilities. The EQIA did not consider the data that is available in the Northern Ireland Survey of Activity Limitation and Disability. There is significant data in that; it is one of the biggest surveys in relation to disability, inactivity and limitation. It was done in 2007 and the data exists in NISRA.

The equality impact assessment showed that some disabled people will be worse off under universal credit. We were concerned that the EQIA did not look at the impact on disabled children and only reflected households. Under the proposals for universal credit, disabled children will be affected. Children who are in receipt of the higher rate of DLA care will get the higher addition, which will be paid at a similar level. However, children who receive the lower level of support through the disability element, because they receive the low- or middle-rate DLA component, will now receive the new disability addition, which will only be worth £27 instead of £54. The equality impact assessment did not look at or consider the impact on disabled children.

There were also worries about housing benefit entitlement in the social rented sector. The EQIA recognised that the measure on households containing a disabled claimant or partner suggests that a higher proportion of households containing a disabled person would be likely to be affected by the new size criteria. One of the mitigations in that is the extra bedroom to allow for an overnight carer. In our response to the draft EQIA, we said that it was not enough to have that for an overnight carer, because disabled people need additional room for many reasons. It could be that they are receiving therapy and need room for dialysis, for example, or need room for additional equipment.

The reason why the additional room criteria came into effect was because of a case taken under human rights law that related to the same thing in private households. That case was taken by a Mr Burnip, who had a severe disability. He was living in private rented accommodation, and his housing benefit was reduced because it was considered that he needed only a one-bedroom property; however, he needed room for an overnight carer. The case was taken under discrimination legislation under article 14 of the European Convention on Human Rights (ECHR), and that is why the additional bedroom mitigation was entered for the social rented sector. However, we still think that consideration may need to be given not just for overnight carers but for additional space for therapy and equipment.

There were many interesting outcomes from that case, and I will certainly reference it in our briefing paper. It threw up some interesting stuff in relation to the UN Convention on the Rights of Persons with Disability (UNCRPD), and the judge referred to that in his judgement. It was not part of his overall decision, but he implied that had he not been able to make the judgement under the ECHR, he would have gone back to the UNCRPD.

If we consider the UNCRPD in relation to that element of the Welfare Reform Bill, article 19, which deals with the right to live independently and to be included in the community, states that:

"Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement".

(The Chairperson [Mr Lunn] in the Chair)

We wonder why the Department included a narrative in the EQIA to different conditions when considering the time limiting of contributory employment and support allowance (ESA) for those in the work-related activity group. The work capability assessment is not condition-based, but is meant to be an assessment of the ability to carry out work-related activity. An earlier narrative in relation to different section-75 groups expected that 53% of people losing their contributory ESA would be wholly or partially compensated by income-related ESA.

In relation to mitigation and disability, it states:

"Individuals with low or no other income may apply for income-related Employment and Support Allowance. This will act as a safety net to support those who have no means of supporting themselves. In addition individuals who do not qualify for income-related Employment and Support Allowance will still be able to access the support offered by the Work Programme to help them continue to move towards work."

What the mitigation does not take into account is the impact on disabled people. For example, if the mitigation is that the work programme is there, the work programme as it is in GB has clearly demonstrated its limited capability of getting disabled people into work. The mitigation does not take into account any of the discrimination that disabled people face in trying to access the workplace as well as the significant attitudinal barriers that they face.

Jenny will talk more about the removal of ESA youth, but the EQIA stated that:

"Removing the 'youth' provisions will affect young disabled people. The Executive is committed to promoting employment prospects for younger people, with and without health conditions, by investing in employment support, apprenticeships and further education."

However, we have yet to see the detail of how that will be mitigated or how those who lose youth ESA will be supported.

In relation to DLA and PIP, I spoke earlier about policy modelling. Without policy modelling, we do not know how many people it will affect. Taking a crude measure, which was the 20% that the Chancellor mentioned in his Budget statement in 2010, that would mean 23,400 people who are currently entitled to DLA will not be eligible for PIP. It does not say how that will be mitigated or what will happen to those people. The mitigation in relation to that talks about universal credit and contributory ESA, but that is not relevant under DLA and PIP.

The other key consideration is around long stays in hospital, which will reduce to 28 days for people in receipt of PIP. We are really concerned about how that will affect people's right to independent living. With regard to social fund reform, the Department said that no data was available. However, that should not be a reason not to try to find some way to model. We know that a significant number of those who receive community care grants will be young people, their families and carers.

I will pass over to Jenny, who will talk about *[Inaudible due to mobile phone interference.]*

Ms Jenny Ruddy (Mencap): I thank the Committee for giving Karen and me the opportunity to present. *[Inaudible due to mobile phone interference.]* As Karen talked in detail about the EQIA, I thought that I could look at the Joint Committee on Human Rights at Westminster and what it said about the Bill. I will highlight some of the inequalities that face the 33,000 people with a learning disability who live in Northern Ireland.

It is estimated that less than 10% of people with a learning disability are in paid employment due to the barriers that they face in trying to find work. Many people with a learning disability do not drive and rely on others for transport or need specific travel training. They use public transport. People with a learning disability still leave school without any form of qualifications despite improvement in the curriculum.

There is a need for more accessible information across the sector. There is a lack of understanding of learning disability among medical professionals. Therefore some of our key asks for ESA were the removal of time limits and to put safeguards in place for people with a learning disability who do not understand what is being asked of them or who have communication difficulties and who do not get the support that they need in claimant responsibility. We believe that it is unfair to put those time limits on benefits for people with a learning disability who have paid into the system and who have the right to expect that they will be supported as they move towards paid employment.

The Joint Committee on Human Rights outlined that although the European Convention on Human Rights does not preclude states from setting conditionality requirements in respect of work, there is a risk that the conditionality and sanction provisions in the Bill may, in some circumstances, lead to destitution. The Committee urged the Government to take steps to establish an appropriate hardship

regime, train staff to ensure sensitivity to the issue and carefully monitor the impact of the sanctions regime on people with particular circumstances, which would be very relevant to people with a learning disability. Conditions placed on claimants should be reasonable, and claimants with a learning disability may need extra support to help them to understand and make decisions about the process that they are involved in and what they will have to do to meet those requirements. It is important that they have access to independent advice providers and advocacy services as well.

The Joint Committee also highlighted that the decision to introduce a time limit to ESA has not been taken on the grounds of evidence that someone could find a job within a 12-month period, requested the justification for the time limit and advised the Government to scrutinise closely to ensure that article 14 of the convention was not breached.

We also suggest an amendment to exclude DLA and PIP claimants from the new size criteria, and we also suggested that the Social Development Committee should ensure that, in the case of somebody with a disability or families with a child with a disability, where adaption is in place and additional spaces are needed for treatment and equipment or where services are only available in a specific area, they will not be required to move and will not have their benefits reduced.

There are many issues for people with a learning disability who may access their package of support or who have built up support networks in their area. It is also very important for people to live near their families. The proposals in the Bill do not take account of any of the factors relating to learning disability or the importance of living in a particular area; for example, being close to family and friends, who often provide support, accessing community services and the public transport system and being part of their community.

The limited provision of accessible housing options may already significantly reduce the choice that a person with a learning disability has over where to live due to the segregated housing that we have in Northern Ireland. By implementing the housing criteria as they currently stand, people with a learning disability may not have the option of living independently in their own community. The Joint Committee highlighted that by stating that although the Government were prepared to look at exemptions for individuals with a disability where their homes have been subject to extensive adaptations — therefore focusing mostly on people with a physical disability — that would not address the disruptive patterns to care and support networks that can be vital for people with a learning disability.

We also asked the Social Development Committee to put in place protections for those who may not meet the criteria for PIP and for their carers in relation to poverty and social exclusion. We also asked the Committee to consider an amendment to ensure a review after the first year of PIPs being introduced to Northern Ireland, and every two years after that. We also asked the Committee to retain youth entitlement to ESA. We have asked the Department for figures on the number of people who get youth entitlement, but, unfortunately, they are not available. We often get told by our community-based advisers who advise people on benefits that that is a particularly important benefit for people with a severe learning disability, and it gives young adults some independence and financial support as they stay on at school or go on to further education.

In our paper to the Social Development Committee, which I think you have, we highlighted a survey that Mencap carried out in 2010 entitled 'DLA: why it matters'. The survey's findings highlighted the central role that DLA plays in the lives of people with a learning disability, helping them to afford the support that they need to live an independent and fulfilling life. Mencap believes that access to all rates of DLA must be protected; otherwise people with a learning disability will be left socially and financially vulnerable and isolated. The Joint Committee on Human Rights discussed the potential impact of the replacement of DLA with PIP in relation to article 19 of UNCRPD. During its inquiry into the right to independent living for disabled people, it received evidence about specific concerns regarding potential unjustified retrogression in relation to the UK's obligations under the UNCRPD.

The Joint Committee suggested a trial period for the new assessment process and a report on its implementation to ensure that its impact was fully assessed and analysed in light of its operation in practice. We also raised concerns in our written submission about the assessment process of PIP. It is important that private contractors be explicitly required to adhere to the requirements of section 75 of the Northern Ireland Act and to other relevant conventions.

Finally, it is important to highlight that we are different in Northern Ireland because there are certain policies that we do not have in place that the rest of the UK has. I want to draw attention to the lack of a childcare strategy for children with a learning disability in Northern Ireland. The Joint Committee

looked at a particular risk of disproportionate impact on lone parents if those opposing sanctions fail to take account of the poor availability of jobs with flexible working hours and affordable childcare. For a lone parent with a child with a learning disability it would be even more challenging to find suitable employment. In 2011, Employers for Childcare produced a report entitled 'Childcare for All?', which consulted families of children with disabilities and special needs about childcare and employment. Some of the findings were as follows.

The main source of childcare for families with children with a disability or special needs is informal, at 66%, with grandparents being the most common choice, at 35%. Thirty-nine per cent of respondents reported that they did not use any formal form of childcare provision, with the majority indicating a preference for looking after their children themselves. That desire was interlinked with their concern and perception that there are no childcare settings to meet their child's specific needs. Sixteen per cent of respondents said that childcare providers would not accept their child because of their disability.

Thanks again for this opportunity. I will hand back to Karen to sum up.

Ms Hall: As organisations, we have been talking about some key issues such as the right to advice and representation to make sure that people get that appropriate support, whether it is advice or advocacy support. There is also a need to ensure that private contractors are implicitly required to adhere to the requirements of section 75, the Human Rights Act and the Disability Discrimination Act, and that the regulations get full scrutiny. As Jenny said, there is a lack of certain other strategies, such as a childcare strategy, and we are yet to see final version of the disability strategy, even though it has been consulted on.

The Chairperson: Thank you very much. That was quite a run-through. It reminded me of the complete works of William Shakespeare in 45 minutes. I am sorry that I missed the start of your contribution, but you said that you will leave us a paper.

Ms Hall: We are working on it this afternoon, and we will get a formal paper to you in the next day or two.

The Chairperson: You spent quite a bit of time talking about the joint Committee at Westminster. As it happens, Robin and I are going to see the Chairman tomorrow. Is there any chance of —

Ms Hall: We can give you what we have written.

The Chairperson: That would be very useful for us.

Mr Brady: Thanks very much for the presentation; it is déjà vu all over again. I have a couple of points. The point was made earlier that universal credit will subsume five or six of the main benefits, and there are about 30 benefits altogether. It is predicated on work and moving people towards work, and I raised the issue about the youth ESA. That replaced youth incapacity benefit, which had replaced severe disablement allowance. Young people were eligible for that from the age of 16, and it was accepted that they were never going to be able to work, in the normal sense, because of particular conditions, such as learning disability or whatever. They will now be shoved into that work pool, irrespective of what is wrong with them and will then be assessed using a tick-box exercise. They are being assessed in that way at the moment; people are being migrated as we speak. There are inherent difficulties with that.

You raised the issue of the change in the disability premiums, particularly where children and families with children with disabilities will be affected. It seems that the EQIA was done in isolation. I am not sure if you were consulted about how the changes may impact.

Carers will be impacted big time because of the knock-on effect. A carer gets about £57 a week for looking after somebody for a minimum of 35 hours, and that is about one quarter of the minimum wage. OK, they say that carers can work, but they can earn a very minimal amount, and if they go 1p over the allotted amount, they lose all their benefit. There are issues with that.

The other issue is that the mobility component for people with a learning disability or who have particular types of conditions could be removed under PIP.

You mentioned the private contractor. We have been told about Capita, which is very similar to Atos in its make-up, with data-processing and stuff for the statutory bodies and all that. Like Atos, it has no background in doing medical assessments. I am not sure if you want to answer this, because you mentioned that it should be imbued with section 75 and how that will impact, but are you confident that it will do a better job than Atos?

Ms Hall: I could not comment on whether it would or would not. We know about the accessibility problems at Royston House, where the work capability assessments are being done in Belfast. That is an equality issue: people are being treated differently because, essentially, they cannot get down a flight of stairs during an evacuation procedure. That is what we are saying: it needs to be clear that those organisations have to comply with that type of legislation.

Ms Ruddy: I can add a little to that in terms of the make-up of the national organisations. We are in three countries — England, Wales and Northern Ireland. I have heard from my colleague who works in welfare reform in London that Capita has a slightly better reputation than Atos. It has a slightly better knowledge of mental health in particular, it has been actively working with the voluntary and community sector, and it has set up a forum that involves Mencap. We hope that Capita will set up a similar working group in Northern Ireland.

Obviously, there are lots of organisations, and we are fortunate that we are a national organisation. However, organisations such as Disability Action would not have access to that group. Obviously, we have different circumstances in Northern Ireland: we have a higher rate of mental health disability and a higher rate of disability in general. So, it would be nice to see that reflected in Northern Ireland, but, from what we have heard anecdotally, it does have a better reputation than Atos.

Mr Brady: That is about the only good news that we have heard all day.

On the whole issue around mental health, there are people who suffer particular types of conditions. Fra and I sat on the Social Development Committee during the previous mandate. I am going back to 2007 when the initial stages of welfare reform were introduced, and one of the big issues was around the training of staff, because people were being migrated across and they were being assessed for work. Staff were being trained to look for mental health conditions such as bipolar disorder. Some people have mental health conditions that have not even been diagnosed. I know that there will be champions for autism and all of that — at least that is what we are being told. It will be interesting to find out how it all pans out.

Has there been any discussion around the type of training or the qualifications, if you like? We argued at the time that, if somebody had quite severe mental health problems, they should be interviewed by a clinical psychologist, a psychiatrist or a community psychiatric nurse — somebody who would have some in-depth knowledge.

Ms Hall: Obviously, we all work together in different elements of welfare reform, and I know that some of the other organisations are looking at how to influence the training.

Mr Brady: You feel that is obviously very important?

Ms Hall: Definitely.

Mr McDevitt: You raised the question of the EQIA again. Do you think that the EQIA is fit for purpose?

Ms Hall: I think that it is, particularly in relation to children with disabilities and carers. I think that there is a lot of missing information in relation to the policy simulation modelling. We still have not seen that and have not had a chance to respond to it. As it stands, we do not know the impact of different parts, particularly around PIP and DLA, so the legislation is going through without that evidence.

Is it complete? I would say no. In our response in 2011, we referred to quite a few things that needed to be looked at. Certain elements of it could be improved significantly, particularly around children with disabilities. It did not really look at the impact, even though, as we became more aware of the changes, we realised that that impact would be quite significant. It also did not do too much to look at the impact that it would have on carers. If somebody is to lose DLA/PIP, and they have somebody in their household who is providing care, which might be a passport to carer's allowance, they will, essentially, lose that. So, there is an impact on that person as well.

Mr McDevitt: So you believe that the Bill could be very discriminatory against children, particularly children with disabilities, and carers.

Ms Hall: Yes; a lot of the detail of universal credit is in the regulations. What we have here is what we know at the minute. There is so much detail in the regulations to work out. We do not know the rates so sometimes we cannot work out whether somebody will be better or worse off. The content of the regulations is key, and that is why we said that we must ensure that the regulations are scrutinised. As we get more detail about how it will impact, we will look at how that can be mitigated.

Mr McDevitt: I was taken by your citation of the UN Convention on the Rights of Persons with Disabilities, which is on page 3 of your submission, particularly the article 19 duty, which is the duty on the state to uphold a disabled person's right to independent living and their full inclusion and participation in the community. When it scrutinised the legislation as it applies in GB, the Westminster Committee had grave concerns about its compliance with article 19.

Ms Hall: It looked not just at the Welfare Reform Bill but at the reform of social care, which is probably slightly ahead. So, it looked at the overall impact of all of those things, including how the eligibility criteria for social care support would fit in with disability living allowance. In an earlier briefing to the Committee, we referred to that in relation to what is happening in adult social care and its review here. It was about taking a holistic approach about how the impact on disabled people will be cumulative.

Mr McDevitt: Given that we are a separate jurisdiction, that this is a fully devolved matter and separate legislation, and that we are equally bound by the convention as Westminster when it enacts laws for England, do you believe that the Bill as it stands is compliant with article 19 of the UN Convention on the Rights of Persons with Disabilities?

Ms Hall: No; and that is why I brought in the Burnip case, which was obviously taken after the 2009 Bill in GB. However, the detail of that judgement shows that the judge, in effect, said that the UNCRPD should be used more often in such cases. He also referred specifically to article 19. Even though the case happened after, it showed that there was clear discrimination against that disabled person; three different families actually, but one case is not resolved.

Mr McDevitt: Just to be clear: you do not believe that the Bill as it stands is compliant with article 19.

Ms Hall: Not in terms of being able to enjoy the key rights to independent living. If a significant number of people is moved off DLA and do not receive PIP, obviously the rights of those people to independent living will be significantly impacted and be reduced. Back in 1991, DLA was brought in to look at the extra cost of living with disability. Removing it will impact on a disabled person's right to live independently, and there is the housing element as well.

Ms Ruddy: Look at learning disability. Our London office took 19 people with mild to moderate learning disabilities through the actual draft assessment form to see how many of them would qualify for PIP, and I think that only two of them would. Consider the fact that they are people who are more likely to live in the community rather than in supported living or at home, yet they will not be entitled to PIP, and you will see how there will be as accumulative effect. They will probably also lose out on other benefits under universal credit.

Ms Hall: We have to think of the big picture as well. Other things are happening around the independent living fund in 2015. The consultation on that is closed. It affects only a small number of people here, but the impact on them will be significant. It is a question of looking at the cumulative effect of all of those things as well on the right to live independently in your own community.

The Chairperson: Nobody has indicated that they have any more questions, so thank you very much for coming. You have given us a lot to think about.

Ms Hall: We will leave you our copies.

Ms Ruddy: Forgive my typos. *[Laughter.]*

The Chairperson: That will be useful for us; thanks.