



Northern Ireland  
Assembly

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

# OFFICIAL REPORT (Hansard)

Committee Consideration of Evidence

7 January 2013

# NORTHERN IRELAND ASSEMBLY

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**Members present for all or part of the proceedings:**

Mr Trevor Lunn (Chairperson)  
Mr Robin Swann (Deputy Chairperson)  
Ms Paula Bradley  
Mr Mickey Brady  
Mr Colum Eastwood  
Mr Tom Elliott  
Ms Bronwyn McGahan  
Lord Maurice Morrow of Clogher Valley  
Mr Alastair Ross  
Ms Caitríona Ruane  
Mr Peter Weir

**The Chairperson:** We agreed at the meeting on 11 December that we were content that we had taken sufficient oral evidence and that the meetings scheduled for today and tomorrow would be used to scrutinise written submissions and the record of oral evidence received. Members have copies of the 14 written submissions received, and there is a very good summary of the various issues raised. That is in table format and has a brief indication of the position of the Department for Social Development (DSD) on each issue. So I propose that we now move to the summary table and consider each of these issues in detail to determine whether they significantly impact on the conformity of the Welfare Reform Bill with the requirements for equality and the observance of human rights. Do members agree?

*Members indicated assent.*

**The Chairperson:** The first item in the table is the adequacy of the equality impact assessment (EQIA), so we are back to that again. A number of responses, most notably that from the Equality Commission, raised serious concerns about the process and adequacy of the EQIA. These concerns include the lack of consideration of up-to-date and relevant data, the adverse impact and alternative policies. So the question for us is whether the equality issues and adverse effects have been properly identified and to what extent they impact on the Welfare Reform Bill.

**Ms Ruane:** My position remains that I have serious concerns about the inadequacy of the EQIA. Its inadequacy came up in various submissions. There are certainly four categories for which DSD admits that it has insufficient data. It has not even equality proofed against race, sexual orientation, religious belief or political opinion, and there are some questions about disability, as raised earlier. That is very worrying. The Human Rights Commission has made a very clear statement that is well recorded in this document. The EQIA is inadequate and major questions remain.

**Lord Morrow:** Chair, I would just like clarification on something that you said. You referred to the Equality Commission's having "serious concerns", but I do not see those words in the document. I may have missed it. The document states that the commission has "concerns". Which is it?

**The Chairperson:** That is a fair point. I am reading the notes provided for us in the table. I do not see the word "serious". I think that was my impression from the evidence given by the Equality Commission. Frankly, I would have to review the Hansard report to see whether the commission used that word, but it was pretty explicit in expressing its concerns. I think that "serious" is not too heavy a use of language in the circumstances.

**Lord Morrow:** It was just that the member said that she had "serious concerns". She is entitled to say that, but we are not entitled to interpret what is not there. The document specifically states that the Equality Commission has:

*"Concerns about the way in which the EQIA was conducted".*

The member can say that she has serious concerns about the EQIA. That is fair enough, but we cannot say that the Equality Commission has serious concerns unless it has said that.

**Ms Ruane:** I would just like to respond to that. I have concerns, and, of course, I am entitled to say that.

**Lord Morrow:** Yes, and I have said that.

**Ms Ruane:** Yes, but I have concerns about the fact that a number of organisations that made written submissions had concerns, many of them serious concerns, about the EQIA. With respect, I think that the fact that four of the nine categories were not even part of the EQIA shows how serious the concern is.

**Lord Morrow:** Does the commission use the word "serious"?

**Ms Ruane:** I think that it is serious that the adverse impacts on four of the nine categories were not even looked at.

**The Chairperson:** Members have a copy of the Equality Commission's written submission. In reference to the EQIA, it states:

*"the Commission expressed considerable concerns".*

**Lord Morrow:** That is different from serious.

**Mr Eastwood:** We will go with "considerable" then.

**Mr Weir:** Chair, without getting too worried about whether the concerns are "serious", "considerable" or whatever way you want to put it, I am happy enough to reflect the fact that concerns have been raised about the EQIA. However, expressing my opinion, just in case it is interpreted in any other way, the DSD response covers the situation fairly well. First, on the disability issue, which is clearly germane to the Welfare Reform Bill, DSD disputes some of the claims made about that, including those about the personal independence payment (PIP). At times, we get so hung up on ticking particular boxes that we lose sight of common sense. Issues such as belief or sexual orientation have absolutely no relevance to the Welfare Reform Bill because it is based on entitlement in that regard. So, from that point of view, I suspect that there will not be a great meeting of minds on this. We could probably all acknowledge that concerns have been raised. Perhaps the report needs to reflect in some way the concerns that have been raised. However, I certainly do not believe that those concerns ultimately hold water.

**Mr Brady:** Before we go on to discuss how many angels we can balance on the point of a needle, we need to move on from that. One serious issue is that Mencap and Disability Action — Paula and I are both on the Social Development Committee and it is mentioned in this document — said that the change to PIP had not been dealt with by the EQIA. That is a major policy change, and it will affect a

huge number of people. That seems to me to be a serious omission — a considerable omission, or whatever you want to call it.

**Mr Weir:** I am not disputing the use of the word "serious". I am saying that that assertion is disputed by DSD. Specifically, at the bottom of page 2, it states:

*"Either Mencap or Disability Action told the Committee for Social Development that no assessment had been done on PIP in the EQIA. That is incorrect; there are nearly 10 pages covering the reform of disability living allowance (DLA) and PIP."*

Taking the most objective view, there is at least a dispute about the evidence. So, I think it is wrong to simply say, in a black and white way, that there has not been an EQIA on that. There has been.

**Mr Brady:** Mencap and Disability Action are very clear that if there was an EQIA — the Social Development Committee got the evidence from them — it was totally inadequate. We have been told that this EQIA is a "living document", whatever that means. I would have thought that if you are going to do something, you should do it properly initially and then, as it evolves, continue to do it properly. As far as I am concerned, that is what an EQIA is all about. It is about dealing with the issues as they arise. This reference to a living document seems to be a very euphemistic way of saying, "We did not do it right the first time, but maybe we will do it right the next time or, possibly, the time after." Again, excuse me for being cynical, but having listened to the evidence, it seems to me that a proper assessment was not done of disability in regard to the move from DLA to PIP, and that is a huge issue. There are 184,000 to 187,000 people in the Six Counties in receipt of disability living allowance, and a huge number of them could be affected. That needs to be dealt with.

**The Chairperson:** Is there scope for a continued monitoring role for the Equality Commission? Is that where you are going with this?

**Mr Brady:** The difficulty is that if you do not get it right, and if it is going to be monitored, say, yearly, a large number of people will be affected. One interesting thing is that the statistics for the standard conditions for which people received DLA in the past, such as back problems and all of that, have not really altered. What is happening now, specifically in the North, is that a number of people are coming forward with mental health problems, particularly younger people. We have a huge problem. If the condition is not dealt with properly initially, it will be exacerbated and will traumatise the person and do all sorts. You need to get the monitoring right and have it set in such a way that it can be dealt with adequately. Of course you need to monitor to make sure that it is being done properly, but they are saying very specifically that, in their opinion, the issue has not been dealt with adequately through an EQIA. I think that needs to be addressed.

**Ms Ruane:** There was a discussion around entitlement and whether we accept what DSD is saying. My difficulty with accepting what DSD is saying is that there is inadequate information. There are four categories for which it has carried out no equality impact assessment, and to say that people in the gay community or lone parents are not going to be adversely impacted is wrong. You carry out an equality impact assessment to identify particular areas of concern around the nine categories. Cara-Friend has outlined where it sees there will be difficulties for people who are gay or lesbian. It is not for one minute suggesting that people will have to fill out a form to say whether they are gay or not, but it is saying that there should be qualitative data showing housing and some of the areas where they will be adversely impacted. It is the same with gender. Women's Aid has identified where victims of domestic violence will be adversely impacted on. I suppose that the question for the Committee is whether we believe that DSD has answered the questions. I do not see how anyone on the Committee can say that it has, because DSD has accepted in a letter that it has not looked at four of the nine grounds — race, sexual orientation, religious belief and political opinion — and that it has looked at only parts of disability. That is a glaring gap.

**Lord Morrow:** That takes us right back to the point that Peter Weir made earlier that the ultimate test for this will come one day in a court of law. Let that be in one month, one year, two years or whenever, because the member has spoken about groups, or categories. If categories feel that they have been in some way disadvantaged under the legislation, they must test it. No clear evidence is coming out that that is the case, because the issues that she talked about are not the eligibility issues.

I do not agree with Mickey Brady when he talks about a living document. My interpretation of a living document is one that is flexible and changeable, that lives while the process goes on and that can change and be changed to meet changing circumstances.

**The Chairperson:** I think that he said a "living document".

**Lord Morrow:** That is what I said.

**The Chairperson:** Sorry.

**Lord Morrow:** What do you think that I said?

**The Chairperson:** I thought that you said a "little document".

**Lord Morrow:** No, I said a "living document".

**The Chairperson:** I have ordered my hearing aid.

**Mr Swann:** DSD's response recognises the data deficits. One of the things that DSD talked about was updating the living document that Lord Morrow mentioned. It added HM Revenue and Customs data and tax income and said that the family resources survey 2010-11 data would be available over Christmas. DSD also said that it would be able to produce a further module from the policy simulation model early in the new year. Do we know what stage that is at and how that might answer some of the concerns?

**The Chairperson:** We do not know.

**Ms McGahan:** On the back of the member's point, the Equality Commission flags the data deficit, and DSD has not taken on board all the information from the Department for Work and Pensions policy simulation model. The issues paper does not seem to state that DSD is going to look at that, so it will be interesting to know why it will not be doing so.

**Ms Ruane:** First, Lord Morrow must not know my name. It is not "she"; it is "Caitríona".

Secondly, on the point that Lord Morrow makes about the legislation being tested in a court of law, obviously lots will be tested in courts of law, but a Department has a statutory duty to carry out a full equality impact assessment, and the reality is that DSD has not done that. It has admitted that itself, and that is the worrying thing.

We can talk about courts of law until the cows come home, but we are looking at a reality here.

**Mr Brady:** I accept the point that the legislation may well be tested in a court of law, but I thought that one of our functions in all of this is to protect vulnerable people. We are talking about individuals who will be impacted on by the legislation if it is flawed, and one of the reasons why we are here is that there is a degree of that inherent in the legislation. Although cases may be brought by organisations that are of a mind to do so and have the wherewithal, we are talking about individuals who may be impacted on who may not have the wherewithal to bring a case. By the time that the legal cases are sorted out, it may be too late for people, particularly those who suffer from mental health issues and/or a disability.

If you go back over social security legislation, you will see that there have not been that many cases taken. There was the Drake case in 1984, which tested the fact that married women could not claim invalid care allowance. That went to Strasbourg, where the woman won her case. Almost as she was flying back, the legislation was changed to ensure that it would not have that much of an impact. That was done not for carers but so that it would not cost the Government that much. So, again, you have to be cynical about some of these things. However, if we are here to protect individuals, it is individuals that we need to be aware of. Organisations may well take legal cases further down the road, but if this legislation goes through in its current format, a lot of vulnerable individuals may be impacted on adversely. I just wanted to put that point on record as well.

**Mr Eastwood:** At the minute, we are talking only about the adequacy of the EQIA. No matter what any of us — or even the Department — think about the potential impacts on any particular group, the Department has recognised that the EQIA was not sufficient because it recognised the data deficits. Before we move on to the individual elements, I think that, right now, we have, obviously, to come to

the conclusion that the EQIA was not sufficient because of the lack of data. The Department could, therefore, not carry out the job that it was supposed to carry out. Whatever that might have told either it or us is a different debate.

**Mr Weir:** Sorry to interrupt Colum's point, Chair, but, with respect, although it may well be recognised that there is a data deficit, that does not mean what Colum suggested. Again, you are putting words in the Department's mouth. The Department has not said that it does not regard the EQIA as being sufficient or adequate. It clearly thinks that it is, and I share its view that it was sufficient and adequate.

**Mr Eastwood:** That is fair, but given that the Department has said that there are data deficits and that it has left out large sections of society in the equality impact assessment because it did not have the data, my analysis is that we can only conclude that the assessment was not adequate or sufficient.

**Mr Weir:** You may, but the rest of us may not necessarily.

**Mr Eastwood:** I think that some of us will. I think that we can talk about all the other issues later, but the fact is that the Department just did not go to all the sections that it was supposed to or address what it was supposed to. So, it is kind of obvious.

**The Chairperson:** The Department has said that it intends to screen the regulations that arise from the primary legislation. The Equality Commission appears to have a formal role to play.

**The Committee Clerk:** The Equality Commission stated:

*"The Commission also has the power to initiate investigation, where it believes that there has been failure to comply with an approved equality scheme or in pursuance of a complaint by a directly affected individual. ... Determinations of whether public authorities are in compliance with their Equality Scheme follow such investigations and a report is completed by the Commission.*

*In this instance, investigation by the Commission is an option, and if a failure to comply with its Equality Scheme was found, then a possible recommendation may be to the Department to conclude its equality impact assessment properly. The Commission is monitoring closely what the Department is doing to address its concerns about the Equality Impact Assessment and to ensure the effective application of its duties."*

So, the Equality Commission has outlined its role going forward.

**The Chairperson:** We do not appear to have a meeting of minds. It seems to me that the Department has acknowledged the deficiencies in the equality impact assessment and that it has agreed that it will screen the regulations as they arise. Under its terms of reference, the Equality Commission has a role to initiate investigations.

The Department seems to have addressed the question of the data as best it can. It is looking to update the policy simulation model, and it mentioned the further module that may be available early in the new year. However, it will not be available in time for us, that is for sure.

There is a clear difference of opinion on the section 75 elements. The Department is categorical in saying that the categories will have absolutely no bearing whatsoever on benefit entitlement. So, without going round all the houses again, where are we heading with this? Are we heading to a vote? Will somebody make a proposal?

**Mr Brady:** Could I just make a point, Chair? We have been told that the screening of the regulations will happen in a very short time frame. So, we are talking about regulations that are emanating from the —

**The Chairperson:** We are not talking about regulations.

**Mr Brady:** No, but the point that has been made is that the Equality Commission has said that it will screen the regulations that will arise. Now, I am not sure whether it will have adequate time to do that because, in Britain, you have the Bill and then the regulations, so there is a period of time between them. Here, we are having the Bill, if it goes through, and the regulations will be put into operation

immediately. So, it is a very tight time frame. I am not sure that it is adequate to enable it to properly screen the regulations for equality, etc. I just wanted to make that point.

**The Chairperson:** There is a proposed timetable for the regulations, which we have referred to. It is confidential, so I do not think we should be talking about it in open session, but it is before us and it gives dates.

**Ms Ruane:** Why is it confidential? Remind me of the reason why they want it to be confidential. I am trying to remember.

**The Chairperson:** Because it has not yet been offered to the Social Development Committee, nor has it been approved by the Minister. It is purely indicative.

**Ms Ruane:** OK; that, in itself, raises some questions. I presume that the letter from Will Haire to Evelyn Collins is a public letter. As I said earlier, it states:

*"There is not, as yet, any suitable data sources to enable us to assess the impact accurately on the basis of religion or belief; sexual orientation or race."*

That is in Will Haire's letter to Evelyn Collins. I think that, in itself, shows that they have not even carried out a proper EQIA. So, to screen it subsequently, when you have not even started with a proper document, raises major questions.

**The Chairperson:** We have been through this. The letter also —

**Ms Ruane:** I know, but I —

**The Chairperson:** — states there should be no differential impacts on any of the groups.

**Ms Ruane:** Yes, but they have not even carried out an EQIA, so how do they know? The whole idea of an EQIA is to carry it out to see whether there is any adverse impact.

**The Chairperson:** It is because it is entitlement-based; it does not depend on those categories.

**Ms Ruane:** But it does. An EQIA is a statutory duty for a Department. On that basis alone, I do not see how this Committee can accept that a proper EQIA has been carried out. I go back to Colum's point: I thought that we were discussing whether the EQIA is acceptable. An EQIA looks at nine grounds. It is clearly stated. There is a clear process. Four of the nine have not even been looked at, and there are questions around the fifth.

**Mr Eastwood:** The very fact that they say that there is other data to look at from HM Revenue and Customs and the new module or whatever means that they probably think that it was inadequate. Is that not the logical conclusion of that?

**The Chairperson:** You could turn that the other way and say that, in their opinion, it is adequate in terms of the data and information available to them at the time —

**Mr Eastwood:** Yes, but that is not the issue.

**The Chairperson:** — but that they are prepared to treat it as a living document, which will have to be amended, screened and scrutinised as time goes on.

**Mr Eastwood:** It does not really matter whether the information was available to them at the time. The fact is that they should have had that information. That is maybe the argument. If they did not have that information, why not? Why did they not get it before now for the equality impact assessment?

**Ms Ruane:** I would just like to make one further point, if I may. On page 2 of the summary of key issues, it is a bit rich for a Department to say:

*"Anything that is gathered is effectively an intrusion into someone's human rights, from the other side of the coin."*

That is absolutely not the case. In this case, it may be referring to someone identifying as gay, lesbian, bisexual or transgendered. Nobody is saying that you have to identify if you do not want to, but there should be qualitative data on the impact on the gay, lesbian, bisexual and transgendered community. In the past, it was said that it was an intrusion into someone's human rights to ask what their religious belief or political opinion was. I think that it is now accepted that you need to request that information to get good, fair employment. Obviously, it is up to an individual to decide how they respond. It is a bit worrying that a Department would even answer in that way.

**Mr Weir:** Where I draw a distinction on that is that, when you are dealing with employment, it is a question of a number of people competing for a particular post, but when you are talking about benefits and entitlement, it is an absolute entitlement on the basis of that. That is where, I think, there is distinction between the two.

The only point that I will make in relation to this, and I have no pressing appointments, so I could be here until midnight, is that it strikes me that there is probably a range of things that we may be able to agree on and others that there will be a degree of division on. I suspect that, broadly speaking, some folk will not necessarily accept my opinion on some of the stuff. In the same way, when you say that the Committee cannot do x, y and z in reaching a particular conclusion, I do not necessarily agree with you on that point. However, I am happy to acknowledge that concerns have been raised and that work on the data is ongoing to try to improve that situation and that there is an ongoing role for the Equality Commission.

There are certain things there that could probably be agreed on that basis. I would not agree with saying that the EQIA is inadequate or something of that nature, and I suspect that there will not be consensus on that. It may be that, with some of those propositions, it will ultimately be a simple question of testing out the opinion of the Committee to see what particular things will go in the final report. That may not be a matter for today; I am not entirely sure what way we want to take things forward. Maybe today is not about reaching definitive conclusions but about trying to give a flavour of opinions to the Committee Clerk. I do not know whether that is the case, but I think that there will be a number of things that, with the best will in the world, there will not be consensus on and on which votes will be taken.

**Ms Ruane:** The ideal would be to reach some agreement. I am not sure, Peter, that we would agree to word it in the way that you stated. Maybe we should also be noting, as a factual point, that there was no EQIA done on four categories out of nine.

**Mr Weir:** With respect, you cannot acknowledge that without also acknowledging the fact that this is an entitlement, and, consequently, I dispute the need for them on that basis. There is also ongoing work within that, so —

**Ms Ruane:** Well, you can note —

**Mr Weir:** Well —

**Ms Ruane:** No. You can note that assessments on four of the nine categories were not carried out and that there was a difference of opinion in the Committee on entitlement and impact. We need to include the fact about work on four of the categories not being carried out; that is fundamental.

**Mr Eastwood:** It is not just about entitlement. We have had evidence from different people throughout the process about some of the impacts that this would have on gay and lesbian people or whomever. So, it is not just strictly about entitlement. The assessment is supposed to be about impact, and whatever we think — whether you agree with it or not — we have a quite significant amount of evidence from people who told us that there will be an impact.

**Mr Weir:** We have an opinion.

**Mr Eastwood:** Yes, but it is evidence. It is their opinion but it is still evidence and we have to take it seriously. So, it is not just as simple as saying that it is about entitlement. However, I take Peter's point as well: we are not going to agree on this. It may be worth —



**Mr Weir:** I suspect, Chair, that there may be certain things that, broadly speaking, people can fully agree on and there may be some that a form of words can be reached on that people can agree. There are also going to be issues on which there will be division. Without claiming to have any great foresight, I suspect that that may not be restricted purely to the EQIA issue. There may be other issues for us to cope with about which there will not necessarily be 100% agreement.

**Mr Eastwood:** Maybe, Chair, given the discussion that we have had on this, the Committee Clerk can come back with some form of words next week, tomorrow or whenever. This is probably the least significant of the issues; there are fairly significant ones further into this document.

**The Chairperson:** It is probably an indication of things to come. I think —

**Mr Brady:** Sorry, Chair, but maybe the Committee Clerk should pray for the wisdom of Solomon because that may be required to write the report.

**Mr Weir:** What way is she dividing the baby?

**Mr Brady:** That is another question.

Entitlement has been mentioned as if there is some kind of blanket entitlement. Entitlement is done in a very strict, procedural way. It is done by individuals who are decision-makers and who take into account all sorts of factors. Various factors, including disability, affect entitlement. I am just saying that the opinion seems to be that if you are entitled, you get it, but it is not as simple as that. Entitlement is the end product of a rigorous criteria-based procedure.

**Lord Morrow:** Entitlement is the start.

**The Chairperson:** It does not include assessment of your race, religion or sexual orientation.

**Ms Ruane:** It can.

**Mr Brady:** It may do if you are a migrant worker.

**Ms Ruane:** Read Cara's submission on housing.

**Mr Brady:** The point was made about habitual residence. Habitual residence does not just affect people who are not native to Ireland. It can affect people who have moved abroad to work and have come back. There are all sorts of other issues surrounding that.

**Mr Weir:** Does that not actually mean that it is race-irrelevant?

**Mr Brady:** Not if you are a migrant worker from outside the European Union. For instance, if you come from America and you are an American, that can have an impact on your entitlement to benefit, even if you are married to someone who is a citizen here. There are all sorts of permutations that you could throw in. We could spend all day on that. I am sure that Peter's urgent appointment is looming large, and I do not want to keep him back.

I just wanted to make that point. It is not just simply that there is an entitlement; you have to go through all sorts of issues to arrive at that particular point. It depends on all sorts of things.

**Lord Morrow:** I just want to re-emphasise that these are section 75 categories, and, as it says here, they have absolutely no bearing whatsoever on benefit entitlement. I know that we are not going to get agreement on that, but there it is in black and white. That is now down to interpretation. I respectfully suggest that we should consider moving on.

**Mr Eastwood:** I agree with that last bit.

**The Chairperson:** The Committee staff have enough information to enable them to gather it together in some sort of format that we can agree on.

**Mr Weir:** The Committee Clerk might be having a nervous breakdown by the end of the meeting.

**Lord Morrow:** Let us be fair to the Committee Clerk. We are not going to ask the Committee Clerk to make our decisions for us. I suspect that she is not a wizard with words. She will do her best. At the end of the day, when all is said and done, this Committee will decide. We are either big enough to do that or we are not.

**The Chairperson:** OK. We will move on to the next item, which is subordinate regulations. As we know, the Bill is essentially enabling legislation. Can the equality and human rights implications be adequately considered separately from the regulations? The further question is to do with the level of Assembly resolution that we should recommend or demand: should it be strengthened by changing it from confirmatory to affirmative?

**Mr Brady:** I think the Human Rights Commission stated that it should be affirmative. I think I am right in saying that. I might have been misreading it.

**Ms Ruane:** And the Children's Commission.

**The Chairperson:** The Children's Commission did, yes.

**Ms Ruane:** So did the Human Rights Commission.

**Mr Weir:** There may be just an issue of language here. In its response, DSD reads confirmatory and affirmative as meaning the same thing. There is perhaps a slight difference in the way in which those words are used, depending on context. However, it seems to me that the debate is essentially about whether the resolution is affirmative or to what extent it is affirmative.

**Ms Ruane:** In its submission, the Human Rights Commission:

*"advises that the Committee ensure that Regulations provided for by the Bill are enacted by way of the affirmative resolution procedure."*

**Mr Weir:** The difference is that it seems that DSD has gone some of the way towards meeting that, but not, maybe, as far as some of those people who have raised concerns would like it to go. Essentially, it has said that, where there is policy change, the resolution would be by the affirmative procedure, but that regulations beyond that would not necessarily be subject to affirmative resolution — presumably by negative resolution.

**Mr Eastwood:** Yes, but what does that mean? I am sorry, Chair.

**The Chairperson:** I am glad you asked.

**Mr Eastwood:** Does that mean that it will apply if the Minister decides to make a policy change from GB? Is that what you mean?

**Mr Weir:** No. I think DSD is saying that the first raft of the regulations that come from the primary legislation will need to be subject to affirmative resolution because they will represent a degree of policy shift, not from GB, but from what is, if you like, current policy. However, if they do not involve any policy shift subsequent to that, they would not be subject to affirmative resolution. It is only where the regulations change policy that that would apply, which, I think, is the normal way of doing things. If there is a policy shift, affirmative resolution will apply. Sometimes there have been policy shifts, and maybe a Department has ignored that practice, but in a broader sense, DSD has indicated that, where there is any degree of policy shift, affirmative resolution will apply. However, if it is simply a more technical change, it would not be subject to affirmative resolution. I think that would be the norm.

**Mr Brady:** It is my understanding, from what we were told, that affirmative means that the regulations are debated in the Chamber before they are laid, while confirmatory means that they are laid, and, basically, it is too late, and, within six months, you debate them. If they are wrong, you are debating something that you necessarily disagree with. The Department is saying that the difficulty is that it will take up Committee and Assembly time. We are dealing with a huge issue here.

**Mr Weir:** If you read the last bit, you will see that what the Department is actually saying is that, where there is any policy change, it will be subject to affirmative, rather than confirmatory, resolution.

**Mr Brady:** What it is saying, in my opinion — again, it is down to interpretation — is that if it is confirmatory, they are laid, the regulations are put in place and they are then debated in the Chamber within six months. Affirmative means that, before it is laid, it —

**Mr Weir:** Yes, but what the Department has said is that, where there is any policy shift, it will be subject to affirmative, rather than confirmatory, resolution.

**Mr Brady:** With respect, I thought that the whole point of welfare reform, from the British Government's point of view, is that it is a huge policy change. We are talking about the dismantling of the welfare state here, with respect. It is the biggest change since 1948, and is that not important? I would have thought that it was. That is only an opinion.

**Mr Weir:** The point that I am making is that the Department has said that, where there is any policy shift, it would be subject to affirmative resolution.

**Mr Brady:** It is a huge policy shift. If you go through the Welfare Reform Bill, you will see all sorts of policy shifts.

**Mr Weir:** Without us realising it, there might be a danger of us violently agreeing on something.

**Ms Ruane:** This is something that we can deal with when we have the Human Rights Commission here. We can scrutinise this further.

**Mr Eastwood:** Peter, the Department is clearly saying that it does not want to take up any more Assembly or Committee time.

**Mr Weir:** If you read the full thing, you will see that, ordinarily, the process — it is the same for any Bill — is that, when there is a major policy shift, the first raft of regulations that come from the primary legislation are subject to affirmative resolution. Where there is recognition that there is a major policy change, it should be, and ordinarily is, debated in the Assembly. So, what this says is that if there is a major policy change, it will be subject to affirmative resolution. If it is something that falls below that — maybe something of a technical nature — it will be subject to confirmatory resolution. Apologies, I think that I got something wrong earlier in relation to the wording in that regard. However, that is basically the gist of it. The Department has acknowledged that if there is any major policy shift on anything, it will be subject to affirmative resolution.

**Mr Brady:** Chair, can I just make the point —

**The Chairperson:** Hold on a minute, Mickey. I do not think that we are miles apart on this. I do not like this affirmative, confirmatory and negative resolution nonsense, frankly. As an Assembly, we are here to debate stuff. I see no reason why something as important as this — just to give my own opinion for once — should not be subject to affirmative resolution and just leave it at that.

**Mr Brady:** The point that I was going to make is that we talked about any Bill, but this is not just any Bill. The Department has also said that, normally, the process mirrors what happens at Westminster. The whole point of having social security and welfare reform as devolved matters is to give the Assembly the chance to do it right and, possibly, to be innovative. You will note that I have not mentioned parity. You can be innovative without going into the dialectic argument about parity. I just wanted to make that point.

I agree with your point, Chair. It is an opportunity for the Assembly to debate the issues before they are put in place as opposed to after, when debate would not make that much difference.

**The Chairperson:** This confirmatory, six months, suck-it-and-see approach frankly does not impress me.

**Mr Swann:** I know that it is hard to talk about the confidential paper that we received, but it lays out, in appendix 2, regulations and which sections are to be debated and when. So there is an indication there about what we will have a go at, but, again —

**Mr Brady:** I think, with respect, that is assuming that it is confirmatory. Let us be honest, had the Department had its way, there would have been accelerated passage, and we would not be sitting here in the first place. That is a personal observation.

**Ms McGahan:** I find this language a wee bit confusing. Peter flagged up the last paragraph, which is clear, but, towards the top, the paper talks about:

*"the process by way of confirmatory resolution — or affirmative resolution, as it is called there — would be that the regulations would be made, laid and then debated within a six-month time frame."*

Is the process the same for affirmative and confirmatory resolution?

**The Chairperson:** No, it is not the same. That is what worries me a little. I have experience of these things. Something could be put in place to be debated within six months, and then we could find out that it is not suitable or is incorrect or not compliant in some way. It does not seem like a way to do business. I do not see the necessity for it, but I am only one here.

**Mr Eastwood:** They do not want to waste our time.

**Ms Ruane:** That language worries me; the wasting of our time. Whoever in DSD decided that it might take up our time —

**The Chairperson:** The wasting of our time would be a matter for the Assembly and how much time it wanted to waste on it.

**Ms Ruane:** Exactly, and a Business Committee, and —

**The Chairperson:** If it is something straightforward that we just have to vote on by affirmative resolution, we do not need to spend half a day discussing it. However, if we discover six months down the line that it is wrong —

**Mr Brady:** This is probably the most major piece of legislation that has come through the Assembly. The mental health Bill, which will come through eventually, will be another one, but this is one of the biggest pieces, if not the biggest piece, of legislation, certainly in the previous mandate and this one. It is not unreasonable to suggest that it should be given the proper time and scope for debate. Ultimately, if it is not done properly, six months down the road, it is not going to make huge changes if we do not get it right the first time round. This is our opportunity to get it right.

**The Chairperson:** The question is pretty simple: should our recommendation be that the level of Assembly resolution be strengthened from confirmatory to affirmative? Do we need to vote?

**Mr Weir:** The point is that it should certainly be affirmative where there is any policy change. There will be regulations that, for example, will simply adjust a level of payment or whatever. Those are not normally things that would be subject in any way to affirmative resolution.

**The Chairperson:** The Assembly would then nod them through. Why not have them put before us?

**Mr Weir:** As far as I am aware, there are certain legal restrictions in respect of a timescale on affirmative resolution; you cannot simply pass something with affirmative resolution within a day or whatever. I think that that is the nature of that. That could mean that you may find a situation in which a claimant misses out because it cannot be put in place in time. There are certain legal restrictions around the timescale of affirmative resolution. I would certainly be happy to accept that there should be affirmative resolution where there is any degree of policy change.

**Ms Ruane:** I think that we should be saying that it should be done through the affirmative resolution procedure. Departments have ways of dealing with the anomalies that Peter is talking about. We can have a major discussion on it. I propose that we deal with the affirmative resolution procedure.

**The Chairperson:** That is the proposal. Is it being seconded by Mickey?

**Mr Brady:** Yes.

**Mr Weir:** Could I propose an amendment to that?

**Lord Morrow:** You could just vote against it.

**The Chairperson:** By all means. What is your amendment?

**Mr Weir:** The amendment would be that it is dealt with by affirmative resolution where there is a major policy shift.

**Mr Eastwood:** This is the difficulty: how do you term what a major policy shift is?

**Mr Weir:** OK. Major policy changes are where it actually changes what is being put in place. There will be certain things that, broadly speaking, are clerical changes or of a technical nature. It would not be sensible for all of those to be dealt with by way of affirmative resolution because there would be a timescale delay, with the best will in the world. There is a distinction between where it is a policy change and where it is something of a technical nature. I do not know, Chair, whether you want to take that as an alternative proposal or an amendment or whatever. We are maybe back to dancing on the head of a pin.

**The Chairperson:** Tell me, in layman's language, what your proposal is.

**Mr Weir:** Caitríona has proposed that regulations should follow the affirmative procedure; I do not want to put words in her mouth. Add to that "where there is a major policy change". Clearly, there is not going to be a consensus on this.

**Ms Ruane:** Maybe the report should state that there was a difference of opinion and that members felt that it should be the affirmative resolution procedure.

**The Chairperson:** What about if you left out the word "major" and just said "where there is a policy change"?

**Mr Weir:** I could live with that. That is probably going a little bit further than what the Department —

**The Chairperson:** What about "where there is any policy change"?

**Mr Brady:** Who decides on the policy? The whole purpose of welfare reform is to change social security policy per se. A huge raft of policy changes is contained within that legislation. I would like somebody to tell me what is not a policy change in the Welfare Reform Bill.

**Mr Weir:** Do not forget that we are talking about subordinate legislation. For instance, you may take it that, in each year, arising out of it you will have a potential upgrading in the amount that would be paid. So, for instance, in a particular piece of it, you may get that the amount has changed. That would be by way of subordinate regulations from a particular bit that may add, say, an extra £2 to that in a particular year. That is not a policy change, but it would be a regulation arising out of welfare reform. That is just one example.

**Mr Brady:** That is clerical, but if you consider that the Tories have frozen social security for three years at 1%, that is not really a big issue because it is already in place.

**Mr Weir:** With respect, the point is that there would be a range of regulations coming out of this. Some will be policy changes and some will be technical in nature. That is the point I am making.

**Mr Brady:** I understand what you are saying, but my point is that, holistically, the Welfare Reform Bill is a major policy change. That is why it has been introduced.

**Mr Weir:** With respect, we are actually talking about the regulations that will emerge from that and whether there is a policy change in each of the individual regulations. I am not sure though. Put it this way, there may not be an enormous gap between the two sides, but I suspect that it may be one that is not going to be bridged.

**Mr Brady:** With respect, let me make the point that although the regulations have been talked about a lot, we do not know what they are. So, we are making a decision based on a premise that we know nothing about. You could decide to go with the affirmative procedure. I do not think that you can be that selective with the regulations because, at this point, even the Department does not appear to know — I am sure that it does know, but it does not appear to — what the regulations are going to be because they will flow from the enabling legislation. For us to make a decision based on that, which is something that we do not have a crystal ball to look into and find out about, is, I think —

**Mr Weir:** With respect, and I can live with this on it, the other logic of that would be to say that we should be doing nothing at all on the regulations.

**Mr Brady:** Sorry?

**Mr Weir:** That is the logic of that position: if we do not have a clue what is going to come in the regulations, as a Committee, we should be saying nothing on it. We could say that it is actually outside our remit. Live with that as a position.

**Mr Brady:** It is not. The point that I have been making, and will consistently make, is that this is enabling legislation. The Welfare Reform Bill is enabling and primary legislation. The regulations flow from that. When I have asked a lot of the people who have given submissions, to the Social Development Committee and this Committee about that, they have been very clear that the regulations will flow from the enabling legislation. So, if you get that right, presumably what you put in place then enables the regulations to relate to the enabling legislation. Presumably, that is why you have enabling legislation. We are talking about a raft of regulations arising from this. Those regulations are going to be intrinsically linked to the enabling legislation, but can be different, in that sense. That is the point I am making.

**Mr Weir:** I understand that.

**Lord Morrow:** Can we move on, Chair?

**The Chairperson:** We can move on without having made a decision.

**Ms Ruane:** There are two ways we could move on. One is that we take a vote and the other is that we note that —

**The Chairperson:** I think we could reflect in the report the slight difference of opinion between those in favour of affirmative and confirmatory without —

**Mr Brady:** With respect, there was a hint of agreement there.

**Ms Ruane:** No, it needs to be more than that. I am of the strong view that it should be the affirmative resolution procedure. I share that view with the Human Rights Commission, NICCY, and so on. Others do not seem to. I think it does need to be reflected that members of the Committee are of the view that the affirmative resolution procedure should be applied and the rationale as to why, which Mickey outlined very coherently, and that others feel it is enough to have affirmative resolution on major policy —

**Mr Weir:** With respect, and with the best will in the world, Caitríona, that makes the assumption that a majority of the Committee — I do not know whether that will be the case — is in favour of affirmative resolution in all cases.

**Ms Ruane:** No, no.

**Mr Weir:** Well, you said that the Committee supports affirmative resolution and that others think it should only be by way —

**Ms Ruane:** Peter, you did not listen to what I was saying. The Hansard report will show —

**Mr Weir:** With respect, Caitríona, I was listening very carefully.

**Ms Ruane:** What I said, clearly, was some of the Committee believe that it should be the affirmative resolution procedure and others feel that it should be affirmative resolution on major policy changes. We could also say that there was discussion about when a policy is a policy. I think that we need to reflect everyone's opinion.

**The Chairperson:** OK. I think that we are going to have to take a vote. Mr Weir, can you give me your amended proposal again?

**Mr Weir:** That —

**Ms Ruane:** With respect, I put my one first.

**Lord Morrow:** The amendment —

**Mr Weir:** We have to put the amendment first.

**Ms Ruane:** Sorry. I thought that yours was a proposal.

**The Chairperson:** Do not forget that I am here. *[Laughter.]* The amendment comes first.

**Mr Weir:** I appreciate that, Chair. Our amendment would add the words:

*"where there is a policy change".*

It will read:

*"regulation should follow affirmative procedure where there is a policy change" .*

**The Chairperson:** OK. Is that seconded?

**Mr Ross:** Yes.

**The Chairperson:** OK. Can we vote on that, please?

*Ayes 5; Noes 5.*

#### **AYES**

*Lord Morrow, Mr Ross, Mr Swann, Mr Weir, Ms P Bradley.*

#### **NOES**

*Mr Brady, Mr Eastwood, Mr Lunn, Ms McGahan, Ms Ruane.*

**The Chairperson:** Is this a casting vote situation? Is it?

**Lord Morrow:** Yes. That is what the Chair is for.

**Ms P Bradley:** There is no casting vote in Committee.

**The Chairperson:** That is what I thought. Is there a casting vote in Committee?

**Mr Ross:** No. There is no casting vote in the Assembly.

**The Chairperson:** That is negatived.

**Mr Eastwood:** It falls anyway.

**Mr Weir:** I suppose, to be fair, we should check what the procedures are as to whether you have a vote and a casting vote or just a casting vote.

**Mr Eastwood:** We might need that for the next one.

**Ms P Bradley:** There has not been a casting vote in any other Committee that I have been on when there is an even vote for and against.

**Mr Ross:** There was a tied vote in the Standards and Privileges Committee recently and there was no casting vote.

**Mr Brady:** I agree with what Paula said about Standing or normal Committees, but this is an Ad Hoc Committee. There is no precedent, so we do not know.

**Ms P Bradley:** It may be different.

**Mr Brady:** As far as I am aware, it has never happened before.

**Ms Ruane:** We probably need to take advice.

**Mr Brady:** Yes, we need to take advice.

**The Chairperson:** Are we bound by the normal —

**Mr Brady:** Not necessarily.

**The Chairperson:** I will short-circuit this by saying that I am not going to use the casting vote even if there is one. That means that the amendment falls. We will now vote on the motion on the use of affirmative resolution.

*Ayes 5; Noes 5.*

#### **AYES**

*Mr Brady, Mr Eastwood, Mr Lunn, Ms McGahan, Ms Ruane.*

#### **NOES**

*Lord Morrow, Mr Ross, Mr Swann, Mr Weir, Ms P Bradley.*

**The Chairperson:** That falls as well. We are back to the start.

**Lord Morrow:** Let us move on, Chair. We are wasting our time.

**A Member:** Why don't we just write that up?

**The Chairperson:** I think that we should reflect that in the report. It may not be the biggest thing that we have to discuss.

The next one is sanctions. Concerns have been expressed, particularly by the Human Rights Commission, that sanctions imposed for the failure to meet benefit requirements may result in extreme hardship or even destitution for certain vulnerable groups. That has obvious human rights implications. Should the Committee accept the Department's assurances that the most vulnerable will be supported by hardship payments? The Department has stated:

*"Hardship payments will continue to be available...But they must not diminish the incentivising effects of the sanction regime."*



**Mr Brady:** We have been told that even if you do get a hardship payment, it will be repayable. That is unlike the hardship payments at the moment. If someone is on benefits and gets a hardship payment — this may apply to other members of a family where the person who is claiming is sanctioned — it will, at some stage, put them below the subsistence level, which, by the Government's own admission, is what benefit is. There is an issue there. Hardship payments will not necessarily solve the problem of destitution, and, in the long term, they may put people into further destitution.

It has to be pointed out that the Welfare Reform Bill is sanction-led. There is an underlying principle of getting people back to work, which everyone agrees with. However, if you do not satisfy certain criteria, you will be sanctioned. For some people, that could be for up to three years. If someone is done for social security fraud and gets two years' jail, they will still be sanctioned for a further year when they come out. If they had committed another crime and did their jail time or whatever, they would be immediately entitled to claim benefits. So, again, that is disproportionate, because we now have a sanction regime that can be for three months, six months, nine months and then up to three years. So, it is punitive. It is not there to be an incentive to people to get into work and comply. It is punitive, pure and simple. It is sanction-led, and the sanctions are disproportionate to the whole benefit regime, if you like. That point has been made on a number of occasions, and most of the people who have made submissions to us have indicated that the sanctions are not proportionate to whatever might happen.

The statistics that we have been given by DSD show that fraud, particularly social security fraud, is going down and has been going down constantly since at least 2007-08. Customer error and departmental error are now more than social security fraud, so perhaps there should be an equality of sanction. Perhaps the Department should be sanctioned if it is not doing its job right. That is only a personal observation. Punitive sanctions are being put into place to deal with social security fraud, which is actually a diminishing issue. That needs to be pointed out.

**Ms McGahan:** On the issue of people who fail to meet their requirements by attending work-focused interviews, recently I dealt with a woman who is housebound. She cannot leave the house, so I asked her to contact her doctor to get a letter to say that she cannot attend and for them to come out. He refused to do that. Doctors are now starting to feel a burden from all of this as well. They have to provide medical evidence, and if their patients get turned down at a tribunal or a work-focused interview, the doctors have to provide additional evidence. It just goes on and on and on. I have serious concerns about that because doctors are starting to feel this very badly.

**Mr Brady:** I have a further point on conditionality. Both partners have to make a claim. If one partner, for whatever reason, decides not to sign the agreement, you do not get money for at least four weeks. There is what is called a cooling-off period when you are given four weeks to decide whether your partner will sign. If they do not sign, you will be sanctioned, but there will be at least a four-week sanction. That partner, for whatever reason, may decide not to sign. It might be because they do not like the face of the person who interviewed them or it could be for all sorts of nebulous reasons, but the point is that a sanction will be in place. Again, that is disproportionate.

**The Chairperson:** Do you think that there should not be sanctions?

**Mr Brady:** Of course there should be sanctions because sanctions have to incentivise people. However, they should not be disproportionate. That is the point that I am making. Someone who gets three years' sanctions and is punished through the judicial system will still have a double whammy put on them, which is what it is about. If you have sanctions that are introduced, that gives the Department the power to sanction someone for three months, six months, nine months or whatever. It is disproportionate. We are told that lone parents will not be sanctioned if they do not have childcare and all the rest of it. My experience from 2008 is that we were told by the then Minister for Social Development that that would not happen. It did not happen initially, but, eventually, it did start to happen. I have experience of such cases.

**The Chairperson:** There is a right of appeal.

**Mr Brady:** Of course there is a right of appeal, but the point is that if you are sanctioned, you can lose benefits or have your benefits suspended or reduced. We are talking about appeals taking, on average, three to six months. Again, that is disproportionate.

**Mr Weir:** I understand that there has been a certain amount of discussion of this issue at the Committee for Social Development, so some of us are at a bit of a disadvantage to Mickey and Paula. I understand that there is likely to be a certain amount of change in that area. Is there some form of words to say that, while accepting that there may be some need for sanctions, the sanctions should not be disproportionate or overly punitive and should not result in any form of destitution? We should accept that there has to be some form of sanction. I use the word "overly", because, once you have a sanction, it is, by definition, punitive. We may have to qualify that there are concerns about the current proposals and that we must ensure that the sanctions are not disproportionate or overly punitive and do not result in any form of destitution.

**Mr Brady:** I just want to make the point that I am not saying that nobody should ever be sanctioned by social security. There are people in my experience who might be termed serial offenders, in the sense that they simply will not comply, for whatever reason. However, if, for instance, somebody has mental health problems, that has to be addressed. There are people who simply cannot be bothered, and I am not saying that people should not be sanctioned. What I am saying is that the regime of sanctions that is being introduced is totally disproportionate in terms of punishment, because not only is it going to affect the person who has failed to comply but it will have an adverse impact on their dependants and their partner, etc. I think there is a difficulty.

**The Chairperson:** You might not say "totally disproportionate". You might say "potentially disproportionate".

**Mr Brady:** It depends on the individual case, of course.

**Ms P Bradley:** I just want to pick up on what Mickey was saying. This was debated thoroughly in the Social Development Committee, and there was no one around the table who did not agree that we needed to put forward recommendations to change the wording. We all agreed with that, and I think the Minister was open to those changes, especially the bits relating to the issue that, if one parent did not sign, a child would be left less well off, which is something that none of us wants to see, and also the bit about childcare. I know, Mickey, you said that they said before that that was a good enough reason for you not to be sanctioned if there was not affordable or accessible childcare. We have to believe that that is written into this and, therefore, that has to stand, because it is written into the rules around this. Another thing that Mickey said was about the mental health issues, but, again, those were issues that we had written down in the Social Development Committee and we wanted to make recommendations for change. The Minister was open to those recommendations. They have been debated fully.

**Mr Weir:** Can I just check; were recommendations agreed by the Committee on that?

**Ms P Bradley:** We had just about got to that stage when this Committee started.

**Mr Brady:** Some sort of Ad Hoc Committee kind of —

**Ms P Bradley:** Took over. It was the feeling of the complete Committee, and the Minister, so this is not going against that. They are recommendations that we would probably be able to change anyway when we get through to that.

**Ms Ruane:** I agree with what Paula said. We should not settle for generic wording. We should be very specific. Childcare, mental health: we should name some of the issues that need to be dealt with, as well as the point that Mickey is making about the sanctions being disproportionate. The other thing I think we should definitely be doing is protecting children in all of this. We should be insisting or recommending that children be protected, because if parents are not doing the job they are supposed to be doing, or one parent is not, children should not be disadvantaged.

**The Chairperson:** I do not hear much disagreement. Can we condense that into our report?

**Ms P Bradley:** I just want to put forward that all that has been said here by everybody has all been recognised by the Social Development Committee. Had this Committee not taken place, that would have been followed through on, because it was strongly felt in Committee that we needed to address those issues.

**Mr Brady:** Following on from what Paula was saying about childcare, one of the things that highlighted the major differences between here in the North and Britain was that, in Britain, legislation was introduced in April 2006 that makes it incumbent on a local authority to provide available and affordable childcare. If someone can identify a gap in that then, again, it is incumbent on the local authority to provide that. We do not have that because our local authorities are not geared up for it. That is why, for instance, the social fund in Britain is going to the local authorities, whereas here we simply do not have the infrastructure. That is one of the issues that I will highlight. Following what Paula said, that was one of the big issues raised at the Social Development Committee. That is just one example of how disproportionate a lot of it is.

**Mr Swann:** We need the childcare strategy out of the Office of the First Minister and deputy First Minister (OFMDFM) as soon as possible.

**Mr Brady:** Absolutely. It is a big issue.

**The Chairperson:** Are we of a mind here? Do we need to discuss it any further?

**Lord Morrow:** My confusion is that I do not know why we are discussing it, because it says quite clearly here, "equality human rights issues raised". We are not a policy committee here. If the Social Development Committee has not even got to the stage where it can make decisions, what are we doing? Are we making the decisions for it?

**Ms Ruane:** It is not often that we agree, but I think maybe we should say that the following issues were raised in relation to sanctions, suggest groups that may be affected, and recommend that, when it goes back to DSD, it brings forward mitigating wording or whatever. There will be people who will be better.

**The Chairperson:** That is the recommendation in the report that we will put to the Assembly, and then we will go from there. Happy enough?

*Members indicated assent.*

**The Chairperson:** The next one is nominated claimants. The nomination of a single claimant has been perceived as adversely impacting women. However, the Department has the power to divide the payment or to make the payment to the female partner if that is considered appropriate. Are we content that any adverse impact on women, if identified, may be addressed?

**Mr Eastwood:** The issue, though, is that a lot of women in abusive relationships do not tell anybody. The Department may not be in a position to realise that a women is an abusive relationship, and the situation may continue without anybody realising. So, I do not know whether this quite cuts it.

**Mr Weir:** From that point of view, the idea imported from across the water for the single nominated claimant was one of the areas where, again, there was broad consensus that this was not something that was particularly appropriate as an operational issue. As I understand it, it is one of the areas where the Department has pressed for and got that difference for Northern Ireland. It is essentially operational. I think we should welcome the fact that that has been effectively agreed with, I think, the Department for Work and Pensions or whatever the opposite number is in London. I think we all agree that a single nomination may not be appropriate in all circumstances. We should welcome the fact that that flexibility has been agreed by the Department. I do not think that there is too much of a gap.

**The Chairperson:** The Department appears to agree.

**Ms P Bradley:** Again, we debated this at length in the Committee for Social Development. The Minister came forward with the split payment, but it maybe needs to go a little bit further. That is the only difference here, especially for the likes of someone in an abusive relationship or something like that. When we talked about it at the time, we looked at the parent with care rather than one person or the other. You cannot say whether the female or the male is the abuser or the person being abused, so maybe we should look at the parent with care. Again, the Committee for Social Development looked at this, and it was going to put that forward as a recommendation to the Minister saying that we need to take this just one step further. I think that everything written down there would alleviate the concerns that are there.

**Mr Brady:** I just want to follow on from what Paula said about the main carer, who is usually the woman. The point about abusive relationships — Colum is absolutely right. There are many abusive relationships that simply are not made public because the person being abused has nowhere else to go or feels that they have nowhere else to go. That was one of the issues with split payments. That has always been policy. I worked in a social security office 30-odd years ago, and if there was an abusive relationship or a problem with gambling or drink, a split payment could be made. The perpetrator got a single amount of benefit, and the partner, who was usually the woman, got an amount for herself and her children. That was always the policy. There has been a lot of debate about that. Obviously, we need to see. We talked about the default position, as well, I think, for the split payment and the main carer. What the Social Development Committee may or may not do in that respect needs to be firmed up. I think that the general principle has been outlined.

On the whole issue of the cap and the amount of smaller families benefiting and larger families not necessarily, depending on the number of children you have, there is almost a social engineering aspect to that. Iain Duncan Smith is almost telling people how many kids they can have, which is peculiar to say the least.

**The Chairperson:** If an abusive relationship is not revealed, how on earth can the Department —

**Ms P Bradley:** There is a way round that, in that the parent with care receives the benefit. Generally, the parent with care is female. We are generalising here, as that is not always the case. There are many, many men out there who suffer at the hands of abusive women. We know that; that happens. However, on the whole, women are the main carers at home. Rather than saying that the benefit goes to one parent or the other, we look at the parent with care.

That is how we are trying to bring that about, where they do not then have to disclose — no one has to disclose what is going on in their relationship if they do not want to, but the parent with care receives the benefit. At the moment, you can tick on a form with your tax credits whether it is for a joint couple to receive or who receives it. We want that to be the same on the universal credit: you would tick who receives it. Again, that could come into a problem where someone is in an abusive relationship, so then we want to look at the parent with care.

**The Chairperson:** You say the parent with care. I am learning here —

**Ms P Bradley:** That is primarily to receive the child benefit and the children's elements of any benefits.

**The Chairperson:** If neither parent is working, who is the parent with care?

**Mr Brady:** Just a technical point on that: normally, the woman gets child benefit, while child benefit still exists. Child benefit is a qualifying benefit. You will only get benefit for a child if you are getting child benefit for that child, because that is an indication that they are a dependent child. That is usually the woman, and that is the logic or the rationale that was used.

**Ms P Bradley:** Maybe I did not explain it properly.

**Mr Brady:** No, I think you did, but —

**Ms Ruane:** Paula, you said that you can take the tax credit, yet here it says in DSD's response:

*"Couples are treated as a single unit in most of the existing benefits and tax credits."*

**Ms P Bradley:** Yes, they are. They are treated —

**Ms Ruane:** So, you have to opt out.

**Ms P Bradley:** You have to opt out.

**Mr Brady:** Yes.

**Ms Ruane:** OK.

**The Chairperson:** What are we putting in the report?

**Ms P Bradley:** I have now confused myself totally.

**Mr Swann:** "Parent with care", I think.

**Ms P Bradley:** It just needs to be tightened up a little bit.

**Ms Ruane:** Should we signal that we have had a discussion around this for the report and that the Social Development Committee is recommending "parent with care", and that is something that needs to be looked at further?

**Ms P Bradley:** I think that is —

**Mr Swann:** Has the Social Development Committee formally recommended that, before we recommend that it —

**Ms P Bradley:** We have not got to our formal recommendations, Chair. With the Social Development Committee, we have got to drafting the recommendations, but we have not got to formalising them.

**Mr Brady:** As Isaac Butt once said, the poor are often talked about in this house, but never entertained. You are still talking about them. Hopefully we will entertain them when the Social Development Committee goes back into session.

**The Chairperson:** OK. How are we doing? Folks, how are we generally for time here?

**Lord Morrow:** Looks like it is endless, Chair.

**The Chairperson:** Well, it is 4.20 pm. We are meeting again tomorrow. Has anybody —

**Ms Ruane:** Is this the biggest part? I mean, tomorrow's does not seem as —

**The Chairperson:** I would prefer —

**Ms Ruane:** I could be wrong.

**Lord Morrow:** Wait until tomorrow.

**The Chairperson:** I suggest that we keep going until 5.00 pm if we need to. Does that meet most people's timescales?

*Members indicated assent.*

**The Chairperson:** OK, the next one is universal credit. You have got it there on page 6, the various submissions. The main focus of the Bill, obviously, is on the promotion of individual responsibility and the encouragement of people into work. The Human Rights Commission does not appear to disagree with that fundamental premise, but it does raise concerns that the lack of employment and corresponding ineffectiveness of employment programmes renders this unattainable. We have had previous discussions about ethnic minorities, where the Northern Ireland Council for Ethnic Minorities (NICEM) has made its input as well. Any thoughts, folks?

**Lord Morrow:** The Human Rights Commission says that it believes:

*"proposals in the Bill may not fulfil its stated aim of supporting people back into work."*

I suspect that it has put forward its recommendation as to how that can be corrected and a more effective and efficient policy put in place. Do we have a copy of its recommendation?

**The Chairperson:** It is at tab 10 of the submission, Maurice. It is not a recommendation. The commission is pointing out its misgivings about the —

**Lord Morrow:** Yes, but it is easy to say that you do not agree. The next test is to tell us how to do it. If you are saying that this is not the way to do it, there is an obligation on you to say, "Here is a better way. Here is the way to do it."

**The Chairperson:** Paragraph 14 of the submission states:

*"The Commission advises that the Committee ensure that the Welfare Reform proposals are verifiably calibrated to support people into work."*

Can somebody explain what "verifiably calibrated" means?

**Mr Weir:** Presumably it relates to the old idea of the benefits trap. If you shift towards that, you do not actually find yourself worse off, potentially, by —

**Mr Brady:** We are talking about the working poor. There is a huge number of people working here who are equally badly off as unemployed people. That is why tax credit, family credit and the family income supplement were introduced. Interestingly, in incentivising people to get into work, we have been told that under universal credit, if you get a part-time job of two or three hours a week, you will lose your entitlement to help with your mortgage interest. I am not sure that I know anybody who will work for three hours a week and lose their help with mortgage interest. As far as I can see, that is disincentivisation.

The other thing is that under universal credit, if you are in a part-time job, you are encouraged to get a better-paid job. You have to spend 35 hours a week looking for a job and, therefore, will not really have a lot of time to work in your part-time job. There are big issues around that.

I find this quite interesting, if not bizarre. We have been told that the whole idea of universal credit is to simplify the benefit system. However, as yet, nobody, including the Department, has been able to sit down and explain to me how universal credit would actually work. The idea is that you go in at one end on benefits and come out at the other end working. You have all these tapers. However, I am not sure that anybody has explained adequately how all this will work. It is also all very much dependent on the IT system being up and running to deal with it properly.

The only thing is that we have been given six months' grace. It will be April 2014 before it is introduced here rather than October next year. It was suggested by a member of Peter's party on a panel that I was also on that if you are going to introduce this, you should let it run in Britain for three or four years to see how it works out there. That was the suggestion of a member of your party who shall remain nameless, but I am sure that you know who it is. That would seem a sensible way of doing things if we are introducing a whole new system like this.

Universal credit is a very complex concept. It has inherent difficulties. There are parts of it that, instead of incentivising people to get into work, will disincentivise people from going to look for work. Those parts include losing your mortgage interest and having to look for another part-time job, with the idea that you move up the earnings scale.

**Mr Weir:** I take on board the point about some of the practical outworkings. There is obviously the separate issue of migrant workers. Leaving that aside, there are issues about the practicalities and whether all this stuff was particularly well thought through. However, I am not sure that there are particular human rights or equality implications.

The point was raised about the mortgage interest side of things, which, on the face of it at least, seems a little perverse. Did we get any response on the specific point about the mortgage side? Is there a particular reason for that? If doing a very small amount of work actually means that the person is worse off, that seems to run against the theory behind a lot of this stuff. Did we get a response on that? Is there an opportunity to get a specific answer on that point?

**The Chairperson:** I do not recall getting anything. I do not think that we needed clarification. The way that it works is fairly clear. The question is why it is in there in that format, which seems to be a clear disincentivisation, as Mickey called it.

**Mr Weir:** Chair, I am saying that, at least on the face of it, in some of the practicalities and outworkings, there is a reasonable argument that there may be explanations that do not appear to be particularly sensible. Having said that, I am not sure that they fall purely within human-rights-type issues or equality, as opposed to being something that may not be particularly well thought through, but maybe the information in relation to this has been well thought through.

**The Chairperson:** Something that is an incentive or a disincentive does not necessarily need to be an infringement of human rights.

**Mr Weir:** I understand that. The point is that there should not be anything in legislation that acts as a disincentive to work: that would be perverse. Maybe there is information that we did not get from the Department. It may be interesting to see the thinking behind it.

**The Chairperson:** Can we investigate this a little bit further with the Department? In whose presentation did it crop up?

**Mr Weir:** It may have been in a meeting that you missed, Chair. I could be wrong about that, but I remember it being mentioned.

**Mr Eastwood:** It was on the back of evidence that we had previously from the Law Centre.

**The Chairperson:** I am sorry, just bear with me for a second. Mr Pollock from the Department appears to have confirmed that that is exactly the case as you interpreted it. He said that a zero-earnings rule applies to the support for mortgage interest schemes.

**Ms Ruane:** The other thing that we need to take seriously is NICEM's comment in relation to schedule 1, paragraph 7. It refers to EEA nationals with a right to reside, as jobseeker's allowance discriminates against EU citizens on grounds of nationality. There are proceedings under way, and I think that we need to note that and flag it up. A couple of groups have said that, including the welfare reform group.

**Mr Eastwood:** The Law Centre also said it.

**The Chairperson:** When Robin and I were over with the Committee Chair in London, we raised the various points that the AIRE Centre had made. Although it appeared to be just around the corner from where he sits, he had not heard of it, although others have commented that they feel that it is a very worthwhile and effective organisation. Its point about the issue is very clear. It is just a question of whether we wait.

**Mr Weir:** Along the lines of what Caitríona said, we should note the concerns being raised about this particular provision and that there are legal proceedings under way that may challenge its validity on the basis of EU law. If proceedings have already started, the issue will be decided one way or the other by the courts. I appreciate the earlier point about things that may be a couple of years down the line, but we need to acknowledge that there have been concerns raised and that legal proceedings have started.

**Ms Ruane:** Yes, but where it is different here is that we have section 75, but they do not have that in England, Scotland and Wales. This would tick the race box in relation to section 75, so we will probably need to name that as well.

**Mr Weir:** I do not think so, but if there are proceedings saying that it is incompatible under EU law, it will either be found to be compatible, in which case, it is legally OK, or it will be found to be incompatible, in which case, it will be incompatible across not just the whole of the UK, but any similar type of provision that will be there through the EU. In this regard, I understand the point that you are making, but I do not think that section 75 is overly relevant.

**Ms Ruane:** I still think that it needs to be named just to note the differences that we have here.

**The Chairperson:** OK. In our report, it would be perverse for us to recommend a different approach in advance of the outcome of the European proceedings. We can note that we share the concerns expressed —

**Ms Ruane:** We want to make sure that everyone's rights are protected.

**The Chairperson:** — and highlight the particular peculiarity of Northern Ireland in terms of section 75. Is that OK?

**Ms Ruane:** NICCY seemed to present the best option for payment options. Did you discuss at the Committee for Social Development whether claimants should decide on their payment options?

**Ms P Bradley:** I am sorry, Chair. I had to nip out, so I have probably missed most of this. We discussed that issue at the Committee for Social Development after the Minister mentioned the option of biweekly payments. The default position is monthly payments, and you have to opt out of that. We discussed that.

**Ms Ruane:** Would it not be better to give the option of bimonthly or monthly payments at the very start?

**Mr Weir:** There is one complication with that. I would have thought that, from an administrative point of view, it is probably a lot easier to administer payment once a month. However, giving people the option to opt out and ask for bimonthly payments seems to cover it. I am a little bit concerned that this may end up, for the sake of argument, costing an extra few million pounds in administration. I think that it is covered if people have the option of opting for bimonthly payments rather than giving them complete carte blanche.

**Mr Brady:** The option is already there in the system. However, Iain Duncan Smith's rationale in the Houses of Parliament for monthly payments was not about administration. He said that it was to get people used to getting a monthly salary when these mythical jobs appear. Dead on. That is the kind of rationale that is being used. It is not some cold, calculated —

**Mr Weir:** I appreciate that, but we have negotiated an option for payment to be bimonthly for anybody who wants it. That covers it.

**Ms P Bradley:** The option is there. Therefore, there are no inequalities.

**Ms Ruane:** There may still be inequality because it is designed as an opt-out. You often find that people are not made aware that they can opt out. Why not make it that people can choose?

**Lord Morrow:** They can.

**Ms Ruane:** They should be presented with the choices at the start.

**Mr Brady:** It is my understanding, from what the Department said, that it, not necessarily the claimant, will make the decision on who gets the split payment. The option should be open to the person. We are back to what we discussed before about abusive relationships, and so on. It has to be the choice of the claimant rather than an arbitrary choice by the Department. Therein lies the difficulty. I take your point, Lord Morrow, that it is an option, but the difference is that it should be the choice of the person who is getting the payment as opposed to the choice of the person who is paying it, who may well make the decision for administrative rather than human reasons.

**Lord Morrow:** If it is an option, it is an option. Therefore, if the person opts for a fortnightly payment, they will get it. Is that not right?

**Mr Brady:** My point is that the option has to be the person's; it is not for the Department to decide whether you should get it fortnightly or monthly. The individual circumstances of each case have to be taken into account, and, therefore, the person should have the option. I agree that the option is there, but it depends who makes the decision.

**Mr Eastwood:** What is the latest proposal — Sorry, Chair.



**The Chairperson:** I will come to you in a second.

**Ms P Bradley:** I agree with what has been said. The default position at the moment is that people will be paid monthly unless they request to be paid fortnightly. As Mickey said, the Department will then decide whether they meet the criteria, whatever those might be, to get the fortnightly payment. I am worried that some people will be left in the position where they cannot manage or cannot budget. I know from witnesses who came to the Social Development Committee and from my experience as a single parent for many years how difficult it is to budget over a monthly period. So, the default position is grand as it stands, but everybody should be given the choice based on them, not on their merits and how they fit into a, b or c categories. We discussed in the Committee for Social Development whether to make that recommendation.

**Ms Ruane:** I agree with everything that Paula said. For the wording, I suggest that we look at the first line of NICCY's position:

*"Payment options should be given to claimants."*

Claimants should have the right to choose.

**The Chairperson:** The first line of the DSD's response to EQIA issues states that there is provision "to enable couples to nominate" which partner should receive the benefit. Is this a different issue?

**Mr Brady:** That relates to who receives the payment; it does not state whether the payment is to be made monthly or fortnightly.

**Ms Ruane:** Yes, the issue is whether the payment is to be made monthly or fortnightly.

**The Chairperson:** Is there not an option of monthly or fortnightly payments?

**Ms P Bradley:** The default is monthly. It is a different issue.

**Mr Eastwood:** Paula explained it quite well, Chair.

**The Chairperson:** You have a go now.

**Mr Eastwood:** I was trying to find out myself. Is it basically that people can opt out of monthly payments but will not necessarily get that opt-out because the Department can say no. Is that right?

**Mr Brady:** That is exactly right.

**Mr Eastwood:** The ideal scenario is that people can decide.

**Ms Ruane:** Yes, people should be asked whether they want to be paid fortnightly or monthly, and they could just tick the relevant box, rather than the Department saying that it does not think that they should get their payment fortnightly.

**Mr Eastwood:** It is bound to save the Department a bit of time and effort as well.

**Ms Ruane:** There are enough pressures to be put through. If we are looking at the good management of money for people on a low income, weekly payments would be better. However, that is another issue.

**Ms P Bradley:** Let us not confuse the issue any further.

**The Chairperson:** Are we agreed? Maurice, I think that I heard a murmur of disagreement.

**Lord Morrow:** I do not agree with that theory. I suspect that I deal with as many of this type of case as any other MLA at this table because I have specially trained staff. I do not agree with that conclusion at all. I am one of those who wants, to the best of my ability, to look after people deemed

to be at the margins of society, as maybe we all were at one time. I hear members reflecting their personal positions. Maybe we can have a day in here when we can all come in and tell our stories: what our backgrounds are; where we come from; and all the rest. I am happy enough with that. Sometimes, however, we get to the stage of wanting this nanny state to do everything for us. I want people who are sitting at the margins to have a chance in life, but I do not agree with what is being advocated by members around the table.

**Ms P Bradley:** I will try to add some clarity. The Minister has already agreed to the fortnightly payment option. We debated that, which is grand. In an ideal world, in which people could manage their money monthly, we would not need to have this conversation. However, it is not an ideal world, and I know that there are people who struggle to try to manage their money on a two-weekly basis. We need to look at their predicament. I know that DSD said that it would put in a task force to help people manage their money. For some people, that will not help at all. If we can agree that the default position remains monthly but that everyone should have the option, regardless of reasons, to be paid fortnightly, I think that that would probably be acceptable.

**Mr Brady:** Most people find budgeting difficult, whether they are employed or not. Obviously, it depends on the amount of money coming into a household. However, Lord Morrow mentioned people who are marginalised. We are talking about people who are most vulnerable; those on long-term benefit who live from day to day. A question struck me during a recent debate in the Chamber on food banks: what is the difference between a soup kitchen in the 1930s and a food bank now? As far as I can see, the only difference is a tin opener. It is interesting when we consider the areas in which food banks are prevalent and which are relatively affluent; towns in north Down such as Newtownards, Bangor, and so on. Most food banks are run by voluntary/church organisations. We are not talking about the normal circumstances that may have prevailed a few years ago, when there was higher employment; we are talking about people who, in most circumstances, find it difficult to budget anyway. People who have been used to receiving benefit weekly or fortnightly would struggle. It is the same as people who are paid weekly or fortnightly moving to a salary that is paid monthly. They find it difficult. It is a fact of life.

**Ms P Bradley:** We also cannot forget the working poor, who are a big part of welfare reform. Many people are working and getting benefits. At the moment, they may be getting their pay monthly and their tax credits every two weeks, which helps them to pay for childcare, oil, or whatever it may be, during the month. We are not just talking about people who are on benefits non-stop; we are talking about the working poor.

**Mr Brady:** To follow up on that: a report came out about six weeks ago in England and it stated that to have a reasonable standard of living, you have to earn at least £7·20 an hour. The minimum wage is £6·19, so, proportionately here, people get the minimum wage and are paid below what people say that you need. These are people who are working: they are not people who are on benefit. I just wanted to make that important point.

**Lord Morrow:** Mr Chairman, I do not know whether that lecture was designed for me to try to educate me about poverty need. I do not need it, thank you very much. I am dealing with it on a daily basis, six days of the week. I had them in my office when I left it this morning. I know about it at first hand: I do not need any lectures, thank you.

**Mr Brady:** With respect, it was not intended to be a lecture.

**Lord Morrow:** I accept that.

**The Chairperson:** It is expressions of opinion. We seem to be arguing over something that the Minister has already agreed.

**Lord Morrow:** We are arguing about a whole lot of things that are not relevant here today, so we might as well argue about that, too, Mr Chairman.

**The Chairperson:** I think that we can move on from this one.

We come to lone parent conditionality, which is around the lack of childcare provision and the disproportionate impact that that has on female jobseekers. The Department has assured us that

claimants will not be sanctioned for lack of childcare. Is the Committee content to accept that assurance?

**Ms P Bradley:** I think that we have to. We have to take it on its merit and how it is written. Should that change, we will have cause for concern to bring it back. However, we have to take the written word.

**Mr Brady:** On that point and to follow on from what Paula said, the Social Development Committee discussed the fact that a monitoring exercise should be put in place, not just in relation to people who have been sanctioned because of childcare issues or whatever, but in general terms. There should be statistics showing the number of people sanctioned and why they have been sanctioned. It is a monitoring exercise to see whether some sanctions are disproportionate to the alleged offences or whatever. It seems reasonable. I think that the Department should be doing it as a matter of course.

**Ms Ruane:** In relation to our report, I think that we should note the number of organisations that raised the issue of the lack of childcare provision in the North, and we should say that we need a plan to deal with childcare. A report was done recently on the cost of childcare here, and it is significantly higher. There is definitely an adverse impact on working people for all the reasons that Mickey outlined earlier about the local councils in England. Therefore, that needs to go in as well.

**Mr Swann:** I referred earlier to the OFMDFM childcare strategy. The £12 million sitting there is crucial.

**Ms Ruane:** Yes, but let us be clear, £12 million is not going to sort out childcare.

**Mr Swann:** It is a start —

**Ms Ruane:** We certainly need to get the childcare strategy, but we also need to understand that the childcare issue is much bigger than £12 million, and every Department needs to be looking at the provision of childcare. DSD's part in this is to recognise that lack of childcare is a huge barrier to any single parent — man or women — going into the workforce.

**Mr Swann:** We should have had that strategy in place prior to now, and been delivering through all the other Departments — the likes of the Department of Agriculture and Rural Development, DSD and the Department for Regional Development. That is the failure: we have to get that moving.

**Ms Ruane:** We need the strategy, and we need all Departments playing their role in that.

**The Chairperson:** As regards our role, can we accept the Department's assurance that claimants will not be sanctioned for lack of childcare? We will put in a proviso that, should there be any change to that — to me, that is a policy change —

**Ms Ruane:** The monitoring that Mickey is talking about —

**The Chairperson:** The monitoring issue as well.

**Ms Ruane:** And the preamble in relation to the disparity in the provision of childcare here and in England, Scotland and Wales.

**Ms P Bradley:** It states there that no one has ever:

*"been sanctioned for lack of affordable childcare."*

**The Chairperson:** I did not get that at all, Paula, sorry.

**Ms P Bradley:** The issues paper states that the Department said that no one has ever been sanctioned for lack of affordable childcare. We need to believe what is written.

**Lord Morrow:** We are in danger of reinventing the wheel, Chair.

**The Chairperson:** The next issue is the benefit cap, which is based on the premise that families should not be better off on benefit than in work. Some respondents identified a possible disproportionate adverse impact of a benefit cap on children in large families, single women, including lone parents, and ethnic minorities. Is that in conformity with the equality requirements?

**Mr Weir:** With respect, if we are talking about a cap that is the equivalent of £35,000 a year before tax possibly impinging on people's human rights, there is a danger that we might look slightly ridiculous, to be perfectly honest.

**Mr Brady:** That is the way it was put, and Lord Freud mentioned the £35,000 gross — £26,000 net — very specifically in the House of Lords. I feel that there is an equality issue for larger families, because children at one end of the scale will be discriminated against financially. I do not know anybody who would sit here and tell me that the benefits system is good, in the sense of the amount of money that it gives people.

The Committee for Social Development asked how many families here would be getting the equivalent of that in benefits. What we are talking about is something that relates to the south-east of England, where you have people being put up in hotels and landlords being paid £2,000 a week for a three-bedroom terraced house. That has no relevance whatsoever here. We need to put things into context when talking about the benefit cap. It really is not relevant here, I have to say. However, that does not mean that it is right. It is not, because it will affect larger families. Historically, we have larger families here in the North. Whatever side of the community we are on, there are larger families.

**Lord Morrow:** Is the member agreeing with this £35,000 cap or not?

**Mr Brady:** I am not agreeing with the cap, no.

**Lord Morrow:** Do you think that it should be higher or that there should be no cap?

**Mr Brady:** I do not think that there should be any cap. Each family should be taken as an individual family, depending on its circumstances, as is done now.

**Lord Morrow:** If you apply that to benefits, should you not apply it in the workplace, too?

**Ms Ruane:** We do: working family tax credit.

**Lord Morrow:** We do? You are not paid in here according to how many of a family you have.

**Mr Brady:** Surely the minimum wage already does that. The hourly rate that you are paid already does that.

**Ms Ruane:** And for childcare, you are paid per child.

**Mr Brady:** That is why tax credits, family income support —

**Lord Morrow:** There are people on the poverty line who are in full-time employment.

**Mr Brady:** With respect, it is not to do with the amount of benefit being good but the amount in wages being bad. That is the problem. That is why —

**Lord Morrow:** Wages are not high enough, you are saying.

**Mr Brady:** That is why we have working tax credit and the family income supplement, and why family credit was introduced in the 1970s. In fact, the Government had to set up a special Department then to deal with civil servants' claims for family income supplement, because their own staff were not being paid proportionately. Those have all been issues historically — minimum wage, and so on.

**The Chairperson:** There is obviously going to be a benefit cap. The notion that we would propose that there should not be one is just not realistic. I do not think that it would pass this Committee.

**Lord Morrow:** That is not what the member is saying. You did not say that, did you?

**Mr Brady:** I did not say that there should not be a benefit cap. I do not agree with the benefit cap. I think that each family should be taken on its individual circumstances.

**The Chairperson:** That is the same thing.

**Ms Ruane:** No, it is not.

**Mr Brady:** No, it is not, because if you have a large family and there is a benefit cap, the amount of benefit that your family can get is to be restricted. What I am saying is that the number of families here that that kind of cap will affect will be minimal.

**The Chairperson:** Are you saying that there should be a benefit cap that could —

**Mr Brady:** I do not really see the need for it here.

**Mr Weir:** I think that he said that there should not be a cap, because from a practical point of view, it probably would not make a difference. You said that there should not be a cap.

**Mr Brady:** There should not be a cap.

**Ms P Bradley:** Again, this is an issue on which the Committee for Social Development did not find agreement, I have to say, out of a lot of issues on which we probably did not find great agreement. We have actually benefited out of this greatly because the cap was set on south of England rates, where rent and whatnot are much higher than we pay. I know that when we asked about the number of people who might be affected, it worked out to be around 200 or 100-and-something. That is because the benefit cap does not apply to anybody who is in receipt of DLA; it is null and void against certain benefits. So, that means that the number who could be affected is quite low. From my point of view — and I know this from my discussions in the Committee — I agree that there should be some sort of cap. However, I certainly understand Mickey's comment. It will affect a small number of people.

**Mr Brady:** We will agree to disagree.

**Ms P Bradley:** As clear as mud.

**The Chairperson:** I am not even sure what we have agreed to disagree on.

**Lord Morrow:** I am very interested in seeing the final report.

**Ms Ruane:** So are we.

**Lord Morrow:** I would like some steer on what is likely to be in the report. I want to make it clear that I am not going to vote in one House for a cap of £35,000 and then come here and vote for no cap. I am in favour of the cap at £35,000.

**The Chairperson:** That appears to be a movable feast in itself anyway. When the time comes to introduce the cap, the actual levels will be based on more up-to-date estimates.

**Lord Morrow:** That is fair enough. However, I am not sure what this Committee is saying, and I want to make what I am saying quite clear. If it takes me to propose that in a motion, I am quite prepared to do that, but I do not want any ambiguity in this. As I said, a lot of things are going to be couped into this report, so it could be very interesting to see how the mixture comes out the other end.

**Mr Eastwood:** I do not think that there is any ambiguity at all.

**Lord Morrow:** Mickey and I do not agree.

**Mr Eastwood:** There is nobody arguing with what you think; it is quite clear.

**Mr Brady:** That will probably be about the time, and so forth. Surely the report will come to the Committee so that it can be discussed before it is finalised.

The other point that I would make is that, with respect, members of your party who voted against the Welfare Reform Bill in the Parliament in Britain have told us that they are likely to vote for the Bill in the Assembly.

**Mr Weir:** That is one of the joys of being part of the United Kingdom.

**Mr Brady:** With respect, people have made an issue of voting against welfare reform in the Houses of Parliament, but given what we are hearing from some quarters, it seems that they are likely to vote for it here.

**Mr Weir:** I appreciate that there is going to be a majority and minority position on some of these things, just as we might have on other issues. Could I propose that the Committee believes that there is not an infringement on human rights or equality on the basis of having a benefits cap?

**Ms Ruane:** The whole Committee cannot agree to that.

**Mr Weir:** Sorry; that is actually what a majority vote would be.

**Ms Ruane:** Sorry; gabh mo leithscéal.

**Mr Weir:** The minutes will reflect who voted what way on the proposal, so people's positions can be protected.

**The Chairperson:** We can either vote on something like this or record that there is a disagreement.

**Ms Ruane:** That happens on the Assembly and Executive Review Committee.

**The Chairperson:** I would be inclined not to push it to a vote every time.

**Mr Brady:** I have a quick point to make on that. Paula mentioned that probably 200 families or fewer will be affected, so is it OK for them to not have their human rights respected and for the majority to have their human rights respected? I did not think that it worked like that. I thought that you were putting in place legislation that would affect everybody across the board and that would not be selective about the numbers of families that would or would not be affected. I thought that you put in place legislation that meant that everybody had the same right, if you like, for benefit. The benefit cap is denying individuals, albeit a small number, who, as was mentioned, are on the margins of society.

**The Chairperson:** If we vote on it, the Committee will clearly be in favour of a benefits cap. We could vote on it, record that vote and add a rider that a substantial minority of the Committee indicated its concern about the small number of larger families that might be affected. We could actually do that without a vote. Are you happy enough?

**Lord Morrow:** The decision of the Committee would be what?

**Mr Weir:** That the majority of the Committee is happy to support a benefits cap but that a substantive minority is not.

**Ms Ruane:** You are making a presumption there.

**Mr Weir:** We can test it with a vote, then. That is easily enough done.

**Ms Ruane:** Why do you need to say "a majority of the Committee"? Why could you not just say "some members of the Committee believed y and others felt x"?

**Mr Weir:** With respect, we previously had a vote, the outcome of which was five all and clearly divided down the middle. In that case, it was fair to say "some members" and "others". If the majority holds a

particular opinion, the wording should reflect that. Otherwise, people will not have a clue about whether it is the majority or minority of members. Quite frankly, we could dance around this, so the easiest thing may be to have a vote on it.

**The Chairperson:** Are members in favour of a benefits cap at the level suggested?

*Ayes 7; Noes 4.*

**AYES**

*Lord Morrow, Mr Elliott, Mr Lunn, Mr Ross, Mr Swann, Mr Weir, Ms P Bradley.*

**NOES**

*Mr Brady, Mr Eastwood, Ms McGahan, Ms Ruane.*

**The Chairperson:** Are the victors in that vote content that there should be reference to the minority opinion —

**Mr Weir:** I am more than happy.

**The Chairperson:** — in respect of the small number of larger families that may be affected? Is that OK?

**Mr Eastwood:** The pointlessness of it.

**The Chairperson:** Sorry?

**Mr Eastwood:** I am not going to open the debate again. Keep going.

**Lord Morrow:** I do not know why we do this, but anyway. The vote reflects, I think, six to five —

**Mr Weir:** Seven to four.

**Lord Morrow:** Seven to four — whatever it is. That gives a fair indication of what was happening. If that has to be written in some sort of gold ink, let us get on with it.

**The Chairperson:** I am trying to keep it balanced. There is a substantial minority opinion that reflects a concern. I am sorry to prolong this, but even those of us who voted for the benefit cap could have a reservation. It is only 200 families, but there may be some requirement in the future to provide for them differently. We are not going to put it to another vote, believe me.

**Mr Eastwood:** Chair, is it the intention to go through the whole paper today?

**The Chairperson:** No; we are nearly done.

**Mr Weir:** I thought that 5.00 pm was the cut-off point.

**Mr Eastwood:** That would do me because I have other things to do.

**The Chairperson:** We can leave it there and come back to it tomorrow.

**Ms Ruane:** There are three areas left to come back to tomorrow.

**The Chairperson:** OK. I thank you kindly.