



Northern Ireland
Assembly

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

OFFICIAL REPORT (Hansard)

Committee Consideration of Evidence

8 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 Michael Cochrane
Mr Colum Eastwood
Ms Bronwyn McGahan
Lord Morrow
Mr Alastair Ross
Ms Caitríona Ruane
Mr Peter Weir

The Chairperson: Yesterday, we covered most of the main issues raised in the written submissions, and now we have only the final two or three issues to cover. We need to talk about the situation with personal independence payment (PIP) versus disability living allowance (DLA). A range of organisations expressed concern about the transition. We want to know whether these concerns identify any possible breaches of the human rights of disabled people, such as the right to independent living, or any equality implications.

Mr Brady: A contract has been awarded to Capita, I think, to do the assessments for the transfer, which has been suspended here until 2015 for people who have indefinite awards. The difficulty will be if it is carried out in the same manner as the work capability assessment. We heard some indications of how that was going yesterday. It has been proven to be a shambles because the majority of people turned down by the assessors are winning their appeals. That means an expense to the public purse, as well as the time factor involved.

I argue that the primacy of medical evidence in assessments would solve a lot of problems because these should be medically based. Unfortunately, they are tick-box exercises, and the work capability assessments involve no real assessment. If that is replicated in the assessment for transfer from DLA to PIP, that will create even more problems. The medical evidence should have primacy, particularly if the reports are from a specialist GP or psychiatrist.

The decision-maker does not necessarily see the medical evidence until the appeal stage. A lot of the appeals are successful because the appeal tribunals get the relevant medical evidence. The decision-maker, however, who makes the original decision does not have that and relies on the tick-box exercise. Rather than replicating the flaws in the work capability assessment, this is an opportunity to

flag up the fact that the new assessment could be done in a better way that could save a lot of money and prevent a lot of trauma and problems for the people concerned.

The Chairperson: Are most of the appeals successful?

Mr Brady: The majority of them are. The figure given to the Committee for Social Development was something like 66% to 70%, which is high for appeals. One of the issues raised here in the North is why so many people get DLA. It is because, historically, we have a higher rate of disability. However, as someone who worked in the advice sector for many years, I should also point out that we have a very good voluntary infrastructure here, which ensures that people get the benefits to which they are entitled. DLA is not given out on some charitable whim; people have to go through a very rigorous procedure. That has almost been forgotten. Our very good advice infrastructure here ensures that people get their entitlement.

Mr Weir: I do not disagree with a lot of what Mickey said. My issue relates to our specific role. I do not know whether we want to make some reference in our report to the need to take care when implementing the assessment. It strikes me that that is, potentially, where the problem will lie, rather than in the legislation. I am not sure that the simple shift in the legislation to PIP has any equality or human rights implication. However, perhaps we could refer to the need to ensure that care is taken with the implementation of the assessment and to the need to be wary in light of the number of successful appeals against work capability assessments. We could find some words to express that. I am not sure, however, that we can do much about the legislation itself.

Mr Brady: I would just like to reply to that, Chair. One of the issues raised about the transfer is that there will be a 20% cut. We have to assume that a proportion of that 20% will be disallowed for whatever reason, not necessarily because of their condition. It could be because it is felt that they do not qualify, and that may will infringe the human rights of people with certain conditions. The point that I am making is that if someone comes in with medical evidence that is simply not good enough and they do not qualify, then that is not a problem. However, if people have good enough medical evidence and long-term chronic conditions that are well documented with specialist evidence from GPs, psychiatrists, psychologists, community psychiatric nurses or whatever, then it does not seem unreasonable. If that is available — GPs normally have copies of all the reports when somebody has been referred — and it is all on computer, it is simply a matter of them putting in a code and the computer printing out the reports. That is the point that I am making. However, it needs to be flagged up at this stage. It may be a recommendation or a suggestion by the Committee in the report. I do not think that it is an unreasonable request that a benefit that is medically based should not have the best medical evidence available when the decision is being taken.

Mr Eastwood: Is it the case, Mickey, that 20% will be cut? Is it target based?

Mr Brady: It would appear to be; yes. That is what we have been told.

Mr Weir: I understand — others can correct this — that central government in London have talked about 20%, and I think that they are talking about that on the basis of a belief, which I do not necessarily share, that transferring across will shake a certain number of people out of the system who do not deserve to be in it or whatever. I am not necessarily saying that I agree with that, but it is not a question that the budget itself will be cut; it is still, in that sense, demand led, but they believe that, ultimately, fewer people will qualify.

Mr Brady: With respect, Chair, it reinforces the point that if your medical evidence is good enough and you satisfy the criteria as a result of that medical evidence, you get the benefit. If it is not good enough, presumably those people will come within that 20% remit. It is a straightforward enough point. You are talking about shaking people out of the system, and I do not disagree with that if those people do not qualify because their condition does not merit the benefit. However, if the condition merits the benefit as a result of the medical evidence, and the decision-maker is able to make an informed decision rather than a decision that is not informed, the appeal tribunals are making informed decisions because the medical evidence is being made available to them.

Mr Weir: I think that there is not a great deal of a gap. When I talk about shaking people out of the system, the thinking from central government is what they think will be the case. If they are making that estimate, I think that they are grossly overestimating the number of people who would not qualify.

Mr Brady: To finish that point, and I do not want to prolong it, an article was published recently in one of the English newspapers, which dealt with the fact that a lot of disabled people were being accused of getting benefits to which they were not entitled. There have been a number of attacks against people with disabilities. It is almost like a hate crime because, essentially, leading up to welfare reform, people who were unemployed and on benefit were virtually criminalised by the media. It creates the mindset that those people are getting something to which they are not entitled. That is a dangerous precedent to set, and it is something that we need to be aware of.

Mr Eastwood: It is fine if it is the Government making an estimate of what a potential result will be as a result of this. However, if it is target driven, there is a serious equality and human rights issue because, as Mickey said, it should be based on need and not on targets of trying to get rid of 20% of the number of claimants. We need to be very wary of that.

The Chairperson: I would be surprised to see a savings target figure in any Bill. It seems a very odd way to go about business. However, if it is there in that form, I do not see how it is automatically an infringement of somebody's human rights. The infringement would —

Mr Eastwood: If you are disabled, you are disabled. You should be —

The Chairperson: The infringement would surely be if decisions were starting to be made on the basis of the requirement for a 20% cut, and then you would have clear evidence. That would be a different thing. However, with regard to what we are supposed to be doing, which is assessing the Bill as it sits, is the mention of a 20% potential saving discriminating against anybody? I do not see how it is, automatically.

With regard to the other point that you made, Mickey, about the primacy of medical evidence, when we go through previous Hansard reports later, we will come to that on several occasions. The point was very definitely made. However, what do we put in our report about this item? I think that there is general sympathy for Mickey's point about the primacy of medical evidence. I do not really mind too much if we slightly exceed our remit in some of these situations. There is no reason why we should not flag something as having the potential —

Mr Weir: I am talking off the top of my head, but to reflect the point whether there is some sort of line about care needing to be taken on the implementation of the assessment to ensure that there is proper cognisance taken of medical conditions to ensure that those who are entitled to this receive it, or something of that nature. I am drafting off the top of my head, but something of that nature.

Ms McGahan: On the back of Mickey's point about medical evidence having primacy, I have sat on tribunals and people are questioned on how their condition affects them. Depending on how they answer, that could actually win or lose their appeal. Therefore, despite having excellent medical evidence, they are asked how their condition affects them. I have sat on tribunals and witnessed it, so —

Mr Weir: I do not disagree with Bronwyn, but having been on tribunals for many years, as I am sure others have, even the test under the current law on DLA is actually how it affects you. The medical evidence is evidence as to how it affects you, but it is how it affects you rather than purely your medical situation. Therefore, in that pure sense, it may be tightening, but the principle is not changing. Unfortunately, I am sure that we are all aware of constituents who, because they have very difficult medical circumstances but maybe go above and beyond what, in theory, they should be able to do actually maybe do not help themselves in terms of that side of things. However, the test is actually on the basis of how it affects you, rather than directly your medical condition at present.

Mr Brady: Obviously, a number of people who are in receipt of DLA have progressive and degenerative conditions. Sometimes at appeals — certainly at appeals that I have attended over the years — the tribunal tends to look at the person on that day. They could sit comfortably on the day; we have heard all that kind of stuff before. The difficulty is for that person to articulate how they feel tomorrow or the day after. If you have medical evidence that indicates that they have a progressive degenerative condition, as an example, that will show that the condition is getting progressively worse rather than progressively better and it may not be a static condition. That is where the primacy of medical evidence comes into its own, I feel. It is the same particularly with people who have psychological problems. If you have somebody who is bipolar, they could be on top of the world today but in bed for three weeks from the day after. It is that kind of assessment there —

Mr Weir: I understand that, Mickey. I suppose that the only thing on the appeal bit, as you know it is also obviously supposed to be judged on the basis of whenever actually the thing was turned down, which might be three months or six months earlier, rather than on the day itself.

Mr Brady: The general point that I am making is that the person who makes the initial decision is well informed of the medical evidence, rather than it being disallowed, having to go through an appeal, winning your appeal and all that time and money in that sense, because the majority of people who are winning their appeals have their benefits backdated anyhow, so it cuts out the middleman, if you like, in terms of the appeals. It makes it easier for the person to be dealt with in the long term, and even in the shorter term. It is a common-sense argument.

The Chairperson: We will put together suitable wording and have a look at it next Monday or Tuesday.

Mr Swann: On Mickey's point about the contractor being employed, issues were raised about the management of the contractor in regard to compliance with section 75 issues and a number of other matters that we also said that we would get back to.

Mr Brady: On that point, one of the issues raised in Royston House, which is the headquarters for examinations, is that there is no disabled access, which seems peculiar.

Mr Eastwood: You cannot get in to win your appeal.

Mr Copeland: Nor indeed does the Appeals Service, which is located in Cleaver House.

The Chairperson: The Committee Clerk has reminded me of the Human Rights Commission's (HRC) concern that private contractors:

"carrying out functions that properly belong to the state"

— are not necessarily subject to the jurisdiction of the Human Rights Act. Is that the point that you are making?

Mr Swann: Yes.

The Chairperson: I do not know whether I got an answer to the question about the situation with nursing homes, and so on.

Ms Ruane: Where is that? Is it in the HRC submission?

Mr Eastwood: The commission makes a fair point. It proposes:

"private contractors carrying out functions that properly belong to the state"

should be subject to the jurisdiction of the Human Rights Act. The commission says that that should be in an amendment to the Bill.

The Chairperson: I am looking at the Hansard report of the Human Rights Commission's exchange on that. Professor O'Flaherty was very explicit about it. Was he saying that that matter has already gone to judicial review in GB? I will give members a moment to read that exchange. Do any members have any thoughts on that?

Mr Brady: The work capability assessment has prompted a lot of this. The British Medical Association in England and Scotland declared that the assessment was not fit for purpose. I think that, last year, 32 people who declared an illness died a short time after being found capable by one of those assessments. Those are the kinds of issues that have maybe reinforced the argument about the private contractors. The DLA-to-PIP transfer is run by Capita, but, like Atos, it would not have a big background in medical assessment work. In fact, in Scotland, Atos contracted back to the local health authority, having made a profit of about £18 million.

The Chairperson: I am sorry, Mickey, I am trying to do two things at once.

Mr Brady: I was just saying that Atos has been flawed, and I think that in Lanarkshire in Scotland, it got a contract for something like £40 million that it contracted back to the local health authority. So a statutory authority was giving money to a private contractor that then contracted back to a statutory authority, while making a profit of approximately £18 million. That is the kind of thing that maybe prompted this reaction.

Mr Eastwood: I do not know whether we have had any response from the Department for Social Development (DSD) on this. Dr Russell was offering the Department an alternative so that it would ensure:

"Human Rights Act compliance is assured under social clauses in the contracts."

I do not know whether we have had any feedback from DSD on that, but it would be another issue to consider.

The Chairperson: I do not think that we have had any feedback on it, but it seems to be something that we should clearly be mentioning, should we not? If it has already been —

Mr Weir: As Colum has indicated, there seem to be a couple of options. From reading through the evidence, I think that what is being sought is a certain level of clarity. I note, for instance, Dr Russell's response that it is wrong to say that they would not be subject to the Human Rights Act. I think that their view is that it is probably covered, but they want the assurance of it being fully covered in that regard. Whatever route is taken — a couple have been suggested — we may want to say that we need clarity on that, or something of that nature.

Ms Ruane: Further down, whoever was chairing at the time said that it was obvious in the case of nursing homes, but Professor O'Flaherty said that they still had to go through an expensive legal process. They are looking for legal certainty. It seems that there are two options there, are there not? One is the social clauses, and the other is —

Mr Weir: Social clauses or on the face of the Bill, I think.

Ms Ruane: To provide a degree of certainty through specific provision in the Bill; yes.

The Chairperson: It is back to the usual conundrum. We are being guided by UK legislation, some of which is already subject to challenge by Europe or by the UK courts. I think that the view would be that we just have to wait to see what happens with the rulings that come out of those challenges. However, in this case, it has already been subject to a review and found to be unsatisfactory, though I would like to see what the full judgement was. Surely we can make a recommendation that we do not need to go there.

Mr Eastwood: Coming at it later offers us an opportunity to make sure that it is clear in the Bill, in the social clauses or wherever. It needs to be clarified somewhere.

Mr Weir: I think that there is reference to legal clarity or something of that nature.

The Chairperson: Legal certainty.

Mr Weir: There are a couple of routes to providing legal certainty. They have not been prescriptive about the routes that have been suggested, so maybe we should not be prescriptive either.

Mr Eastwood: I am surprised that the Department has not thought about it.

The Chairperson: We are cleverer than the Department.

Mr Brady: Professor O'Flaherty said that, where there is a potential for ambiguity, this is an opportunity to clarify that ambiguity.

The Chairperson: We will be recommending that it should be clarified before it comes to the House. Are members OK with that?

Members indicated assent.

The Chairperson: We will move on to housing benefit and to the underoccupancy penalties and their implications, particularly for the disabled and children, especially in view of Northern Ireland's current housing stock. The Committee should note that the Bill does not detail these regulations. This policy change will be made under the confirmatory resolution procedure. Does the Bill, as it stands, comply with equality and human rights requirements in this respect?

Lord Morrow: Did you say "confirmatory"?

The Chairperson: Yes.

Lord Morrow: Thank you. I just wanted to clear that up.

Mr Brady: As opposed to "affirmatory". I can feel a lecture coming on. I think that we will avoid it today.

The Chairperson: Quite a bit of attention was paid to this item when the presentations were made. What are your thoughts about it? I keep looking at you, Mickey.

Mr Brady: I do not know why. The issue with underoccupancy here is that the Housing Executive, in its presentation to the Social Development Committee, stated very clearly that it could not cope with it; it does not have the housing stock. The other issue, of course, is the nature of housing here in the North. The example given was that, in north Belfast, you may have a number of underoccupied houses in the New Lodge area and there may be smaller dwellings in Tiger's Bay but, realistically, somebody from the New Lodge is not going to want to move to Tiger's Bay. Unfortunately, that is just the nature of housing where we live. Obviously, that may change in the future. Historically as well, housing associations and the Housing Executive have built family-sized houses, so we do not have the stock. All of this underoccupancy is predicated on what happened in the south-east of England, where landlords were getting £2,000, paid by the local authority. You can see the rationale to some degree as to why that needed to be changed there, but it has absolutely no relevance here.

There is also a whole issue around the size of a box room. Should that be used for storage? In most Housing Executive houses, you can barely get a bed into such a room, unless you were to sleep diagonally.

The other issue is that people with disability may need a room for a physio or an occupational therapist to do assessments. They may need storage facilities for wheelchairs. There are all those issues. Take into account, as has already been mentioned, that we have a much higher rate of disability and have more people on disability living allowance. Therefore, all sorts of issues prevail here that are simply not relevant to what happens in England. That needs to be borne in mind when we are dealing with underoccupancy.

Ms Ruane: And the other issue, Chair —

The Chairperson: Hold on a wee minute. We will do this in order.

Ms Ruane: Gabh mo leithscéal.

Mr Eastwood: I agree with Mickey. Part of our job is to see things that are specific to Northern Ireland. This is one issue that, I think, stands out, for all the reasons that Mickey gave about disability and everything else and because of the interface areas. My office is inundated with people. I have a massive list of people waiting on housing. The housing waiting list in Derry is something like 2,000. We just cannot build the houses quickly enough.

The Chairperson: It is the same in Lisburn.

Mr Eastwood: I am sure that it is. There are just not enough houses to deal with this issue, and the Housing Executive has already said so. This is one point on which I think we must be very strong. There are particular issues that affect Northern Ireland that do not apply across the water. It is our job to do this, and this aspect stands out for me.

Mr Copeland: I apologise for my unfortunately, and increasingly characteristic, late arrival and my early departure.

Mr Weir: Do not apologise for your departure, Michael.

Mr Copeland: I saw smiles around the table when I said that. I am a member of the Social Development Committee and have purposely and studiously avoided being a member of this Committee, but Tom asked me to represent him.

I struggle with the Bill in some respects. It is essentially a Northern Ireland Executive Bill, although it may well have its parents — if it has parents — in Westminster. On the issue of housing benefit, as others have said, housing is the biggest single issue that I, and, I presume, anyone around this table, will ever deal with. It is consistent and persistent. We sought some sort of clarity and heard the Housing Executive basically say that it cannot do this because the properties simply do not exist. We investigated and were assured that that was known and that funding would be made available to build properties that would allow houses in multiple occupation, which are almost unheard of in this part of the United Kingdom but are quite common elsewhere in the United Kingdom. Therefore, not only is there an actual physical difference but a social change will have to take place arising from this. That is coupled with the increase in the single-room rate to the age of 35. In my experience, and I do not want to generalise too much, but by the time people get to that age, if they are living by themselves, there is some other underlying reason that dictates why they do. You are basically putting people who may have medical or psychological difficulties into circumstances with other people who have exactly the same difficulties. You will not get a balanced society. You will get pockets that will be affected not only by the changes to housing benefit but by the changes to universal credit and the introduction of PIP. You will get a very small and vulnerable section of the community that feels disproportionately the effects of the proposals.

To encapsulate that, I understand the Wednesbury principles, probably not as well as others do, but we should not be taking any decisions that are patently so laughable that no sensible person could have arrived at them. If we are looking at circumstances in which we need shared accommodation or one-bedroom properties, the first place to look is at planning applications to see whether anything has been done to ensure that a supply of the properties that will be required is available. I wrote to the relevant Minister and am sorry to say that the grand total of planning applications that have been received, which would have begun the process of addressing the consequences of this legislation, is zero.

Therefore, on the one hand, we have a stated policy intent that may, in itself, be robust, but the actuality of the policy outcome may be different from the policy intent. We must examine very carefully the implications for those who, in my view, could be disproportionately affected by legislation that is probably quite satisfactory, given the circumstances, in the other part of the United Kingdom that will be most adversely affected, which is the city of London.

In London, however, housing benefit of £100,000 to £150,000 a year is not unheard of. Housing benefit for most of our people is considerably less — £2,000 a week in some cases. The same solution is being applied to what are essentially two different problems.

Ms Ruane: From listening around the table, there does not seem to be any disagreement on points 25 and 28 of the Human Rights Commission's submission. At point 25:

"The Commission advises that the Committee ensure that where an individual has engaged in best endeavours to find an alternative smaller dwelling and is unable to do so due to the nature of the ... housing stock they should not be penalised."

At point 28:

"The Commission advises that the Committee ensure that the Regulations governing housing benefits will allow for exceptional circumstances, such as an individual having an additional

bedroom where this is required as a consequence of their disability or as a consequence of joint custody of a child."

That deals with that section 75 category of persons with dependants and disability. Disability is also one of our nine grounds.

I agree with everyone else. This is one of the very important areas, and it is important to get it right. I am like the rest of you: in Warrenpoint, you cannot get a house for love or money. People are coming to our office day and daily because the housing stock is totally inadequate. It is the same in Newry.

Mr Brady: One of the issues that has caused this problem has been the sell-off of Housing Executive houses to tenants. Ten or 15 years ago in my constituency, the Housing Executive had a stock of around 12,500 houses, which is now down to fewer than 3,000.

One of things that was discussed at the Committee for Social Development — Paula and Michael will agree — was that were this measure to be introduced, the person would be penalised only if suitable alternative accommodation were available. That was only a suggestion, and, as far as I know, no decisions were made on it.

Bearing in mind what the Housing Executive and the housing associations have said, that will not happen in the near future. It will take a very long time. As you know, a housing strategy review is ongoing that may well indicate that "smaller dwellings" means dwellings with one or two bedrooms.

A lot of older persons' dwellings were built 25 to 30 years ago. They were built that way because the Housing Executive got a subsidy. They are now single persons' dwellings and are few and far between. The housing stock is just not there.

Mr Eastwood: I agree with Mickey's suggestion about suitable alternative accommodation, but I would like to see how "suitable" is defined.

Mr Brady: That is one of the problems. It is about what is suitable. We have specific, prevailing circumstances here, and although a property may be physically suitable, there may be many other reasons why a person cannot move, including because of the nature of housing in this part of the world. That has to be taken into account.

The Chairperson: It may just be geographical.

Mr Copeland: There are also the unforeseen consequences of some of this, where, when families have split up, parental access to children may depend on having somewhere for them to stay. I understand that not everyone is exposed to those circumstances, but where there is a situation in which there is shared custody of children or visitation rights and the children are to be encouraged to maintain relationships with parents, there needs to be some laxity given and humanity of interpretation available to those who make the awards. None of these things, particularly housing, is ever black and white.

There are also instances of properties that have been amended, particularly with the provision of a bedroom for a disabled person, and that actually creates a void bedroom somewhere else in the property. There is an endless series of permutations. Whatever is said, we have to legislate for all the possibilities in some way.

The Chairperson: The peculiarity of this country is the demographic of the particular areas. There is not much point in offering someone a house in west Belfast if the person needs to live in east Belfast.

Mr Copeland: In my experience, it is even more regional than that. There is no point in offering somebody a house on the left-hand side of the Albertbridge Road if the person is from the right-hand side. It goes beyond normal sectarian parameters. It is about local regionality.

The Chairperson: I am a broad-brush man.

Members, as regards our remit, how detailed do we want to be about this? In our opinion, is the Bill as it stands liable to cause a breach of people's human rights or other equality considerations?

Mr Weir: It is about the extent to which it is implemented. The point that Mickey made is a very good one: there should not be penalisation where there is a lack of housing stock. Our definition in a broader sense is suitable. It seems a fairly common-sense point that people should not lose out because they are not moving to somewhere that does not actually exist, or does not exist practically for them. I do not know whether something could be framed around that, but that is the crucial bit.

Although a lot of this may be driven by the London situation, the aim of some of it is to address the argument that our housing stock is not fit for purpose to meet the people's needs. Down the years, one of the complications is that the focus has been so heavily on family accommodation. That was done with the best will in the world, and it is understandable why it was done. To be honest, stuff for individuals has often tended to be stuck at the bottom of the pile. Therefore, people are sometimes in the wrong type of accommodation. That then creates lengthy housing waiting queues in different areas, which we all know about. If there were better matches for people, there could be benefits.

The key is to ensure that people do not lose out because of the lack of suitable alternatives. That is the crunch point.

Mr Eastwood: And those other issues around disability and single parents.

Mr Weir: Yes. Whether it is suitable accommodation should take cognisance of a situation of disability or child custody. Some reference is being made there on that side of things. "Suitable" means a number of different things. For example, if you are being offered somewhere where you cannot accommodate the joint custody of a child, that will not be particularly suitable for some people. If you are being offered a property that is physically big enough but is not disability-friendly or does not have disability access or anything of that nature, that may not be suitable either. It is a question of working on something of that nature.

Mr Brady: This is enabling and primary legislation, which is why it is so important to get it right. What flows from this are the regulations and the guidelines. Things such as suitability and people being sanctioned should be contained in the guidelines. In other words, for the person who is making the judgement or decision on whether it is suitable accommodation, that should be contained in the guidelines. However, that will be relevant only if the proper parameters are put in place for the guidelines to reflect the intention of the Bill.

Mr Eastwood: You can imagine yourself debating with the Housing Executive what "suitable" means in a particular case. You can just see that happening. The definition needs to be very clear.

Mr Weir: I have a slight degree of reticence, in that I do not want to drill too deeply into the "suitable" thing.

Mr Eastwood: I do not think that we need to necessarily, but we can give examples.

Mr Weir: The slight complication is that if we drill too deeply, we may miss various things. The argument then may be that, because we did not mention those things, we regard them as things that should be included.

Mr Brady: We are talking about common sense, which unfortunately is not that common. That is why the guidelines and the outline of the guidelines are so important. However, they have to reflect what is in the Bill, and that is the issue.

The Chairperson: I think that we can put together a form of words that will reflect those views, because I do not hear much disagreement here.

Mr Copeland: I suggest that we look at the current terminology for reasonable accommodation, because we are actually expanding on "reasonable". The Housing Executive has what it calls "three reasonable offers". It can be spoken to on things that would not necessarily fall within the context of what people understand as "reasonable". It can make allowances for a former abusive partner living in the street, so it can be quite flexible. It is important that that degree of flexibility remain in the system to allow, as my colleagues have said, the exercising of common sense.

The Chairperson: OK. We can incorporate the word.

Following our discussion yesterday about confirmatory or affirmative —

Ms P Bradley: Chair, did you wait until Lord Morrow left? And Caitríona.

The Chairperson: Now that Lord Morrow is away, yes. Michael, you were not here yesterday. We did not come to a decision on whether we would accept the advice of some of the presenters to us that all the regulations should be done under affirmative resolution procedure in the Assembly. The regulations that will detail this particular aspect will be done under the confirmatory procedure. You might want to reflect on that, in view of the fact that we could not come to a decision yesterday about it.

Is this not a situation in which there could be an unavoidable delay? The Bill will have been passed and the regulations enforced, and it could be six months before anything can be done about them. Is it as simple as that?

Mr Weir: I appreciate that there is a short space of time, but I wonder whether we could get a wee bit more clarification on exactly how DSD intends to take that aspect through. It all got a bit confusing at one stage yesterday. Whoever drafted the DSD response on the affirmative and confirmatory resolution procedures seemed to get the two mixed up a little bit, if memory serves me right. They seemed to talk about affirmative and confirmatory. It may be useful, before we go back too much, to get a little bit of clarification. Whoever was talking about the confirmatory procedure seemed to think that it was the same thing as affirmative.

The Chairperson: It clearly is not, but I was not intending —

Mr Weir: No, but I do not know whether the same person drafted the responses to all the aspects or whether it was a number of people. We need to be entirely clear about what route the Department intends to take any of the housing benefit stuff down. There is a wee bit of confusion about the way in which it is —

The Chairperson: We can possibly do a wee bit of work between now and Monday on this. We should revisit it and get some proper clarification, because it is important.

Ms Ruane: One thing that concerns me about the DSD response was the kind of feeling that it was potentially wasting the Committee or Assembly's time. The report needs to be absolutely clear that it is the Assembly's job to do that and that we, as a Committee, do not see that as a waste of time.

The Chairperson: Yes. I voted your way yesterday. I do not disagree with that.

Ms Ruane: I just wanted that on the record. It is important.

The Chairperson: Anybody else? We will reflect on that, bring it back on Monday and agree the wording. Are there any other issues?

Mr Eastwood: Chair, there is just one — it might have been brought up yesterday when I stepped out — around the housing benefit and extra room stuff. Foster NI talked about the impact on foster and kinship carers. That is a very specific issue. If people who foster kids then have a couple of months without children in the house, they will lose their housing benefit. That should have been mentioned.

The Chairperson: What did the Department say about it?

Ms Ruane: It has not said anything. Perhaps we need to get something off to it.

Mr Eastwood: It did not want to give blanket exemptions.

The Chairperson: It made a comment on the other side of the page.

Mr Swann: One of the points that it made at that time was whether, if you foster but were 40 weeks between fostering a child, you would still be eligible for the rebate.

Mr Brady: The words used were "ad infinitum". In my experience, fostering is a priority for most trusts. There is a lack of fostering. Therefore, there would be the prospect of somebody not having a child to foster for that length of time. The other thing is that children who are fostered become available very, very quickly. It would seem reasonable that if someone is fostering a child and, for whatever reason, is then no longer fostering that child but is willing to take another child, some reasonable period of grace has to be given to those people. Otherwise, if a child who needed to be fostered came along tomorrow, and we were in that position, it might well put people off. They are being penalised. If you are available for fostering, you need the facility to take that child in at very short notice. If you are being penalised, you are going to think twice, and say, "What's the point?" It is an administrative thing as well, I imagine.

The Chairperson: It is pretty basic stuff, really. If you want people to foster, they have to have the capacity to be able to do so.

Ms Ruane: I had a meeting with some of the trusts about fostering. There is a lack of uptake, and the trusts are trying to encourage more uptake. However, there are also child protection issues around space, where children sleep and everything else. That is something that we should be raising. It is not really good enough for the Department to say that we cannot have a blanket exemption. We need to be encouraging foster carers.

Mr Eastwood: It is a disincentive.

The Chairperson: I do not sense any disagreement over that at all. We will incorporate that.

Does anybody want to draw attention to any of the other key issues on that particular page?

Ms Ruane: Did we deal with the monitoring framework? In its submission, the welfare reform group states that a framework of monitoring needs to be in place for "post-legislative implementation". It also states that there is no infrastructure to impose the clauses. Perhaps we need some more clarity on how the Department views that clauses are going to be implemented. Have we covered all that?

The Chairperson: Where are we? It is page 14, members, if you are following events. Caitríona is referring to the welfare reform group's comment.

Mr Brady: One of the issues raised yesterday concerned the monitoring of people if sanctions were introduced: the level of sanctions; the number of people who had been sanctioned; the reason why they had been sanctioned; and which particular group they came within, whether that be lone parents or people who failed to attend an interview. People do not attend interviews for various reasons. It may seem to people that they are unable to attend, but they may be sanctioned by the Department because it feels that they did not make the effort. There are a lot of individual circumstances.

The other thing is the comment from Niamh, Mencap and Disability Action about the "legal principle of reasonableness" as a basis for approaching welfare reform. Those groups also commented that an "impact appraisal assessment" in line with UK Treasury guidelines should be looked at. There seems to be no reason why that should not happen. We are constantly told that this is supposed to mirror what happens at Westminster. Again, what is coming from those groups does not seem an unreasonable suggestion.

The Chairperson: Yes, but again, what is our remit here? There is nothing we can do.

Mr Brady: I suppose that I am suggesting that that is a reasonable way forward and something the Department should consider doing. One of our remits, apart from the equality and human rights issues, is probably to put forward suggestions on how the Department could actually deal with things in a reasoned manner.

Mr Weir: I have to say that I do not particularly object. The only problem is that I am not even quite sure what an "impact appraisal assessment in line with UK Treasury guidelines" means, to be perfectly honest.

Mr Brady: Perhaps we should get some clarification.

Mr Weir: I think that everybody can accept that we need to monitor the situation.

Mr Brady: Unless it is a bit like that memorandum, Chair, and is a secret. This may be another one. We might get a summary, if we are lucky.

Ms Ruane: The other point, made by NICCY, is that the framework of the UN Convention on the Rights of the Child must be upheld. There is just a blank space after that. What does that mean in practical terms? Given the level of poverty and child poverty here in the North, that is something that we should be looking at.

The Chairperson: Those are just comments that the organisations made along the way; they did not necessarily make specific recommendations.

Ms Ruane: I am aware of that. However, I just think that, given the levels of child poverty here, it might be worth our while looking at what the framework would actually mean and getting a bit more detail on it.

The Chairperson: We will do that between now and Monday.

Ms Ruane: OK. Thank you.

The Chairperson: I am reliably informed that, somewhere in yesterday's pack, there is a definition of the impact appraisal assessment in line with UK Treasury guidelines.

Mr Eastwood: Is that the distributional impact analysis?

Ms Ruane: That is the other one.

The Chairperson: That definition is in the letter from the Department of Finance and Personnel (DFP) that was in yesterday's pack.

Ms Ruane: Is that the same as the distributional impact analysis, which the Human Rights Commission mentioned?

The Chairperson: I do not know.

The Committee Clerk: No, I do not think so. I do not know what that is.

Mr Eastwood: Can we find out about that as well?

Ms Ruane: Yes, can we find that out? The Human Rights Commission mentioned it.

The Committee Clerk: Yes.

The Chairperson: It would be useful if we enquired to find out what all these things are.

Nobody else wishes to raise issues arising from the written submissions. Are members content to have those written submissions published on the website?

Members indicated assent.

The Chairperson: In today's meeting pack, you will find copies of the Official Report of the oral evidence sessions. Having gone through what we have gone through over the past two days, we need to know whether there is anything else in the Hansard transcripts that anybody feels is worthy of comment and that we have not discussed. I know that you will all have spent all night and most of this morning studying the transcripts, but I will give you a moment or two to flick through them.

I spent a wee bit of time on them, which the yellow pen marks can prove. However, just about everything that I highlighted has been covered.

Ms Ruane: Was the response from the Law Centre included in the table?

The Committee Clerk: No. The table covered only the written submissions. The Law Centre did not provide a written submission.

Ms Ruane: OK; right. The Law Centre flagged up treating EU workers differently. That is covered in our papers. We will deal with that on Monday with the Human Rights Commission.

The Chairperson: Dr Russell from the Human Rights Commission referred to the requirements under sections 6, 24, 14 and 26 of the Northern Ireland Act 1998. I think that he was responding to questions from Tom Elliott. He appeared to say that we cannot necessarily escape our obligations by just saying, in simple terms, that it is up to Westminster.

Dr Russell stated:

"it is the devolved competency of the Executive and the Assembly, and it is the responsibility within that competency to ensure compliance with the ECHR and all the ratified UN standards."

He said that the Department of Finance and Personnel may not have replicated the actions that were considered necessary across the water. Perhaps it should have.

Mr Eastwood: We can ask DFP whether it has done that.

Mr Weir: That was yesterday's answer.

Mr Brady: The issue of lodgers was raised in the Law Centre's presentation. The Housing Executive and DSD told us that they were doing a pilot scheme in Craigavon on underoccupancy. It involved going to people who would be affected and encouraging them to take in lodgers. That raises all sorts of other questions. I asked Les Allamby how that might affect a person's benefit, and he said:

"I understand from Lord Freud that if you take in a lodger who brings in income, that should not have an impact."

Can we get clarification on that? I am not sure that we ever got anything back on how it might have an impact. I cannot imagine that any income coming into the house would not affect benefit. Based on what is normally done, that does not make sense.

The Chairperson: What page are you on, Mickey?

Mr Brady: It is in the third and fourth paragraphs on page 14 of the transcript of the Law Centre's evidence. It mentions the pilot scheme in Craigavon, which the Housing Executive mentioned to the Committee for Social Development. The idea was that you would take in a lodger so that you would not be underoccupied and penalised. However, some income would have to be generated from that lodger. What would be the normal rate for a lodger? If the going rate for bed and breakfast were £100, would you be able to keep that £100 and maybe feed them on crackers or something?

Mr Swann: There is also the issue of the tenancy agreement with the Housing Executive.

Mr Brady: Issues about that were not clarified. I raised that because it was in the Law Centre's submission.

Mr Weir: I take on board what Mickey said, and I have no problem seeking an answer to that. However, I am not quite sure whether that is a human rights or an equality issue. The wider issue on the legislation is that it is important that we get a wee bit of clarification on that. I am not sure that that informs a great deal one way or the other.

Mr Brady: I think that the issue is that you are being encouraged to take a stranger into your house when you may not want to, and the only reason that you will have to do it is because you will be penalised otherwise. I would have thought that, apart from anything else, that is an infringement on your individual circumstances. They are actively encouraging people to take strangers into their house. Child protection and all sorts of other issues may be involved.

Mr Weir: We will get the answer.

Mr Brady: That is why I raised it; I am not just being awkward.

Ms Ruane: Peter, when the Law Centre attended the Committee, you said:

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

An interesting answer from Les Allamby might be worth including in the report. He said that it is:

"not primary legislation for the purposes of the Human Rights Act. Therefore, a challenge is more likely to happen here."

I think that that needs to be factored in.

The Chairperson: It was your question, Peter.

Mr Weir: Chair, the more general and simple point is that if something is found to be incompatible against EU law, which applies across the whole of the UK, it will clearly get changed across the whole of the UK. If it is found to be compatible with EU law, there will not be a change.

Ms Ruane: Yes, but Les Allamby's point is that, given the differences between the legislation here and that in England, it is more vulnerable to challenge here. That is what I am reading from what he said.

Mr Weir: I do not necessarily accept that, to be perfectly honest. If it replicates the provisions, it is going to be incompatible across the UK.

Mr Brady: Surely the whole issue is on the memorandum of compatibility with the European Convention on Human Rights, which, apparently, the Committee in England was not allowed to see. We may be lucky to get a snippet of it. Surely that would give us a much better idea of whether it has been taken into account or not. At this point in time, we do not know, because it is a secret — it is a mystery.

The Chairperson: That being the case, we could return to the issue if and when we get the memorandum. The Committee Clerk has contacted the Department again about the timescale for receipt of the summary of the human rights memorandum, but we have not had a response. The Human Rights Commission has confirmed that, if required, it may be available to brief us orally on Monday. It is on standby, and I am sure that it will be pleased to come. We will continue to press the Department for the summary. It seems unreal to promise something and to ignore the timescale that we are working under, so I imagine that we will have it.

Mr Eastwood: Maybe they are very aware of the timescale that we are working to.

The Chairperson: I am sure that that point has been made.

So, we can address that point again when the time comes, Caitríona.

Are there any other issues that members would like to raise?

Ms McGahan: I know that we issued a request to the equality unit for it to come here, and I do not think that we got a response. Can we reissue that request?

The Chairperson: It did not reply.

Ms Ruane: I think that Bronwyn made a very important point; I think that we should reissue that request. It is not good enough that one of our Departments has not even replied.

The Committee Clerk: I sent a reminder last night. It has not replied to that.

The Chairperson: It is probably trying to agree what to say to us.

Mr Brady: I want to make the point that it is an equality unit, and we are dealing with equality. We have it within the context of the Assembly, yet it has not even replied. I presume that the unit is still in the same building. Is it?

The Chairperson: It is in the same country anyway.

Mr Brady: Part of the country. We will agree to disagree on that.

The Chairperson: Is everybody agreed that we should demand a response from the Office of the First Minister and deputy First Minister (OFMDFM) equality unit?

Mr Swann: I first raised the issue because it was crucial to what we were doing, and the Committee stated at that time that it was shocked that it did not even acknowledge a response.

The Chairperson: A majority of the parties around the table have indicated that they are aggrieved about that.

Mr Weir: I think that we can ask, but if it has ignored us so far, I am not overly confident that it will not ignore us for the next year.

Mr Eastwood: Surely part of its responsibility is to respond to us, given that we are an Ad Hoc Committee on equality.

The Chairperson: You would think so. Given that this is a new Committee, we do not know what particular rules apply. I do not know what timescale the unit is bound by, but we are certainly bound by ours. I probably need to push that button.

Mr Swann: If the unit itself is not responding to us, are there any other more direct means of communication for us? Should we be writing —

Mr Eastwood: Does anybody know any of the Ministers?

Mr Swann: — to OFMDFM or to the Chair of the Committee for the Office of the First Minister and deputy First Minister to see whether they can put any —

Mr Eastwood: As a member of the Committee for the Office of the First Minister and deputy First Minister, I would go straight to the Ministers, because we do not always get the quickest response either from the Department.

Ms Ruane: I think that it is important that if a Committee that the Assembly has set up writes to the Department, it gets an answer. If it does not get an answer, questions need to be asked. Did the second request that you sent come from the Chairperson?

The Committee Clerk: We asked it formally originally. We then wrote and expressed our disappointment that it did not come and give us an oral briefing, and we requested a written briefing. We have not had a response to that formal letter. I e-mailed it a wee reminder. I was actually told that the person I had been speaking to before has now moved post and that a new person is dealing with it. However, I still have not had any further response about whether it is going to give us a response.

Ms Ruane: Should there be a letter from the Chair of this Committee to the First Minister and deputy First Minister making that request?

The Chairperson: I think that the issue is certainly important enough to justify that. We still have time but not a whole lot. Monday sounds as though it will be very busy, but if we keep a bit of discipline, it does not need to be that long, and there would be time for a presentation from people in that unit.

The Committee Clerk: You will have to write to the Chair of the Committee for the Office of the First Minister and deputy First Minister for that to be considered by the Committee next Wednesday.

The Chairperson: Do you mean tomorrow?

The Committee Clerk: I do not think that it is meeting tomorrow.

Ms McGahan: It is.

Mr Eastwood: As far as I know it is.

Ms Ruane: It is meeting tomorrow.

The Committee Clerk: OK. Well, then, I can get that off today and ask for it to be tabled.

The Chairperson: We will get that off today. You are on that Committee, Colum, as are you, Bronwyn.

Ms McGahan: Yes.

The Chairperson: You can push the case for it to be considered on the day.

Does anything else spring to mind?

The draft forward work programme in members' packs is still pretty much intact. We will see where we get with the various episodes that we are trying to arrange for Monday. Are members content with the way forward?

Mr Weir: I do not want to press the Committee Clerk too much on this, but given that we are meeting on Monday, is the idea to have some wording with us by close of play on Friday so that we are not coming to it completely fresh on Monday?

The Committee Clerk: I was going to prepare a summary of the Committee's discussions yesterday and today. That may form the basis of some type of agreement about the report, and so forth.

The Chairperson: OK. Is there any other business?

The next meeting will be on Monday in the same room at 2.30 pm. Just keep an eye on whether you have questions. Thank you all very much.