



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Welfare Reform Bill: Briefing by Equality
Commission for Northern Ireland

30 October 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Ms Pam Brown
Mr Michael Copeland
Mr Sammy Douglas
Mr Mark Durkan
Mr Fra McCann

Witnesses:

Ms Evelyn Collins	Equality Commission for Northern Ireland
Mr Darren McKinstry	Equality Commission for Northern Ireland
Mr Tony O'Reilly	Equality Commission for Northern Ireland

The Chairperson: I formally welcome Evelyn Collins, chief executive of the Equality Commission; Darren McKinstry, the director of policy and research; and Tony O'Reilly. You are very welcome, folks.

I remind members that the briefing paper from the Equality Commission is before them. A copy of the commission's response to the equality impact assessment (EQIA) in 2011, and a briefing paper for the Committee from March 2012 may also be found in the folders.

Without any further ado, I invite you, Evelyn, and your colleagues, to brief the Committee. The floor is yours.

Ms Evelyn Collins (Equality Commission for Northern Ireland): Thank you very much, Chair. We are very pleased to be here again as you engage in your important work of scrutinising the Bill that has now been published. We appreciate that you are devoting a great deal of time and energy to it. We think that this is very important.

I am accompanied today by Darren McKinstry, who was with me in March, and by Tony O'Reilly who has not been with us before.

As you said, Chair, we have submitted a briefing paper outlining some of our concerns and queries about the equality implications of some provisions in the Bill. I appreciate that you will want to ask us about those in some detail. Darren will present them in summary terms after I have said a few words. Then, obviously, we will be happy to deal with any questions that you may have.

Our briefing is based upon our statutory remit. You know that we have specific powers and duties under the various anti-discrimination statutes and in respect of the equality and good relations duties of public bodies arising out of the Northern Ireland Act 1998. As we have said to you before, we have also been designated, jointly with the Northern Ireland Human Rights Commission (NIHRC), as an independent mechanism to promote awareness of and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities, with regard to the Government's obligations in Northern Ireland.

We said in our earlier briefing — and I am glad that members have copies of it before them — that, although the commission agreed with the broad policy aim to make the social security system fairer, more affordable and better equipped to deal with poverty and welfare dependency, we saw then that there was a real need to properly understand, consider and respond appropriately to the potential impacts of the proposed reforms. We said to you that we had concerns that some reforms aiming to encourage people into work might not reflect the fact that barriers to employment exist for particular groups of people — people with disabilities, older people, non-working women and so on — which are often social or institutional, not individual, and that, without appropriate support, it is not right to assume that everyone has the ability to improve their own situation. At that stage, we had particular concerns which we shared with you about universal credit, lone-person conditionality, housing benefit cap and disability benefit reforms. Those are some of the issues about which we still have concerns.

We also advised you in March that we advised policymakers in the Department for Social Development (DSD) not only about the requirement but the critical importance of assessing the potential equality implications of the policy proposals. Again, I heard you say that it is in members packs. We had concerns about the Department's draft EQIA, and you have copies of those. Some of those concerns remained when the final EQIA was published in May. Again, we raised those concerns with the Department.

You will know that the Minister indicated on 4 May, when publishing the final EQIA, that he intended that the Department would continue to look at the possible equality impacts as the Bill moves forward, and also that work was ongoing in his Department to analyse the impact of policies across the various section 75 groups.

We have engaged further with officials and have been assured that that will be the case; that the original EQIA was the first part of what they intend to be a lengthy assessment process to determine the impact of the various elements of the Welfare Reform Bill; and that there will be further equality screening and, possibly, further EQIAs carried out on the detail of some of the reforms and indeed, more particularly, as regulations are made. We understand that this is, in their own words, an "enabling" piece of legislation.

We have also been assured that the intention is to update the EQIA, and that it is a living document. The Department intends to update the EQIA following a review of additional data received from HMRC recently, which, the Department says, will improve the information available and its ability to identify potential adverse impacts.

So, we expect that the data that the Department now has will be significant in relation to the detailed proposals that will be contained in regulations. Officials have said that, as each set of regulations is prepared, the proposal will be screened for differential impact to assess the need, or otherwise, for an EQIA. This is an area in which the commission will maintain a close watching brief, continuing to monitor what the Department is doing and advise it of its equality duty obligations and responsibilities.

We know that it will also be of interest and importance to the Committee to monitor this and scrutinise the results of any screening and, indeed, EQIAs and, importantly, to consider any mitigating measures put forward by the Department to address potential adverse impacts, as it is obliged to do under section 75 of the Northern Ireland Act.

We are now seeing the outworking of the policy proposals on welfare reform in the draft Bill. We have looked to see what equality implications there may be across the various groups covered by the section 75 duties. We understood from your request for evidence today that you wished us to focus on the provisions of the draft Bill as it stands, and that is what we have done. We have gone through the Bill and have highlighted a number of those issues. There are probably others and, indeed, looking at some of the evidence that you have already received, there are certainly some others in which we will want to take an interest. However, you have seen in our briefing our first cut through since the publication of the Bill.

I will ask Darren to take you through the summary of the document. We are here to answer any questions.

Mr Darren McKinstry (Equality Commission for Northern Ireland): Good afternoon, all. As Evelyn mentioned, the Bill is an enabling framework, which gives us some difficulty in providing detailed comment on a lot of the detail, which will come in the regulations that will follow. However, we have tried, in the paper that we have made available to you, to comment on a clause-by-clause basis. I will pull together some of the key themes and summarise them.

We noted the flexibility indicated recently by the Minister, and our view is that it is important that ongoing consideration is given to the flexibilities proposed and to other flexibilities that may be available. One of those is the initial proposal that universal credit will be paid to the main earner, who is usually a male. We argued that we thought that that effectively reversed the social security provisions and reforms of the 1970s. In our paper, we propose that consideration is given to making that payment, not to the main earner but to the primary carer or second earner to facilitate more equal access to funds and use of funds in the household but with the option for splitting as necessary.

We have identified a few points for clarification, where we feel it is not easy to tell the intended direction of travel. Existing passported benefits is one key area for us. It is not clear to us how that will go forward or, indeed, exactly how that will link in. In our recent consultation, in a response to the personal independence payment (PIP) regulations, we highlighted that we were concerned that those who are already being assessed for PIP would have to take a further work capability assessment for some income-related benefits that are already passported under disability living allowance (DLA). So, there are extra steps, which may affect efficiency and create onerous requirements. We are concerned that this may lead to a loss of income, which, in itself, could further drive disadvantage.

In the paper, we note the intention to move to a more online system. Some other submissions that you have had over the past week or so have made similar points about lower internet usage in Northern Ireland and particular barriers for equality groups. In a recent UK survey, 47% of those who were Disability Discrimination Act (DDA) disabled said that they had ever used the internet, compared to 80% of non-DDA disabled. Those patterns are very different. Our view is that it is important that safeguards are in place to ensure that information collected or made available is accurate and accessible, that the benefit calculations are appropriate and that any sanctions on timelines for responding or actioning take account of people's access and ability to access.

As far as the claimant commitment is concerned, we recommend that clarification is sought on how clause 14 is intended to operate for couples. We would be concerned if both members of a couple or their families were to be sanctioned when only one party in the couple failed to sign up or comply with that commitment. We want to see general sanctions across the board carefully applied so that their application takes account of the individual circumstances that may impact on people's ability to comply, such as disabilities or access to childcare, and that may affect timelines for actioning things. A range of things could be looked at.

Clause 38 deals with pension credit. As was raised in some submissions last week, we also encourage the Committee to seek clarification on how that will work and its intended effect where one part of the couple has reached the age for pension credit but the other has not. We should also seek clarification on how universal credit sanctions and conditions will be applied in that situation.

We note that clause 42 includes provisions for pilot schemes. We are not aware of any that are intended for Northern Ireland, and we encourage clarification to be sought on what, if anything, might be intended for Northern Ireland. Those pilot schemes could play an important role in considering the equality impacts in Northern Ireland to make sure that whatever is implemented is appropriately tailored to our needs. We note the clauses relating to the end of the existing social fund. It is not clear to us what is intended to replace that, and we certainly encourage that sufficient resources are allocated to whatever is intended to replace it.

I will highlight some of the concerns that we have raised previously and which we are raising again in this paper. We have highlighted concerns about the Atos assessments and the fact that a third of them are being appealed against successfully. It is important that lessons are learned from that and are taken on board as we go forward.

We have previously highlighted our concerns about housing benefit and the caps therein. It is important to take account of the needs of different groups, such as: people with disabilities and fluctuating care requirements, who may have a fluctuating need for live-in care; and separated parents

with various child access arrangements. Also — and I know you are aware of this point, given the available housing stock in Northern Ireland — our ability to move to a system when we do not necessarily have the stock in place to facilitate it. There are similar concerns about lone-person conditionality in the context of available childcare in Northern Ireland.

I will wrap things up, or pull those points together as regards the importance of enabling provisions in Northern Ireland being available. In GB, welfare reform is operating in the context of a number of provisions that are not yet present in Northern Ireland. The Childcare Act 2006 in GB sets out a requirement on local authorities to meet childcare needs. We do not have that requirement here. We are developing a childcare strategy, but it is important that it focuses not just on child poverty but on maximising economic participation. That plays an important role. There are things such as the work programme that is underway in GB. As Mr McCausland said at the start of the year, the introduction of such a work programme is critical for Northern Ireland, so it is important to see that. And again, there is the housing issue, which I have just mentioned.

It is vital that the Bill, as it comes forward, takes account of the specific situation in Northern Ireland, and I have given some examples of that.

We are happy to take any questions.

The Chairperson: Thank you very much. I open the session to members' questions.

Mr Copeland: I have a general question. I am uncomfortable, in some ways, because it requires a degree of speculation.

I am given to understand that the United Nations Convention on the Rights of Persons with Disabilities lays an onus, or some very clear responsibilities, on Governments. In particular, articles 19, 23 and 28, deal with:

"Living independently and being included in the community";

"Respect for home and the family";

and

"Adequate standard of living and social protection".

On the basis of what you have seen so far, do you believe that the Welfare Reform Bill should remain unchanged? Does it breach any of those articles? If you believe that it does, have you reported your concerns to the Office of the First Minister and the deputy First Minister (OFMDFM), as the lead Executive office concerned with protecting and ensuring compliance with anti-discrimination legislation? What are the potential consequences of a UN convention being breached? To the best of your knowledge, has Northern Ireland, or any other constituent member, ever breached such a ruling?

Ms Collins: My word. Thank you for such an important question. I think that it would be fair to say that, in the time available, we have concentrated on looking at the potential equality implications of the clauses of the Bill. I know that the Human Rights Commission will follow us and will have been looking at this from the point of view of international human rights treaties. They may well have brought a somewhat different focus to it than us.

On our reading of the Bill to date, we have not said that there is a very obvious standout breach of the UN convention. However, in our joint monitoring role, we have ongoing discussions with OFMDFM about the importance of ensuring that the obligations contained in the convention are implemented fully in Northern Ireland. That goes with the disability strategy that OFMDFM and others were consulted on. There are concerns around people with disabilities in particular and with the impact that some of the reforms may have. One of the issues we highlighted in our response to you today is that there are some areas in which the devil will be in the detail of further regulations, or where it is not clear on the face of the Bill what precisely the implications might be. We would want to push the Department for clarity on those.

Mr Copeland: On your last point, pretty much everyone around the Table is concerned that we are dealing with enabling legislation, whereas the real bite will come in the regulations. In your view, is it

possible for us to arrive at any sensible conclusions regarding the bit that we see now in the absence of the regulations?

Ms Collins: It is difficult for everyone to see the full implications, but I think that there are certainly questions to be asked of the Department about what is in the Bill. We need further clarification about intention and so on, and it is possible for you to exercise your scrutiny role and for us to raise concerns or ask for clarification about the impacts. As I said in my opening remarks, I think that it is important that we hold the Department to account on its equality obligations when it does its screening and equality impact assessments, where necessary, on the regulations. It has assured us that it will do that. The devil will be in some of that detail, and we will have to be very careful to scrutinise it.

Mr Brady: Thanks very much for your presentation. I just have a few questions.

Some of the groups that have given us submissions have indicated that they would consider a statutory right to independent advice. In other words, they want to make sure that people who claim whatever benefit have the right to independent advice. What are your thoughts on that?

My next question is on the sanctions. If someone has a good reason for losing their job, whether that is through misconduct or whatever, they may not be sanctioned. However, if, for instance, someone has an undiagnosed mental health problem that could be an issue.

We hear so much about parity, and it is always assumed that it is, necessarily, about money, and, I suppose, to a large degree it is. However, while listening to the radio yesterday, I learned that a survey has been done in Britain. It found that if someone is to have a decent standard of living, they need an hourly wage of £7.20, yet the minimum wage here and in Britain is £6.19 — it went up by 11p a couple of weeks ago. That survey indicated that people in the North will be much harder hit, as we live in a minimum wage economy.

I have asked you this question before, and I do not want to put you on the spot too much. It is not just about the regulations; it is about the guidelines. The guidelines will play a very important part in the Department's attitude to sanctions, because there will, hopefully, be discretion involved, and objective rather than subjective decisions will be made on the basis of the guidelines. If the Bill does not comply with equality regulations, what takes primacy? Section 75 considerations are unique to the North and do not apply in Britain, and there all sorts of other issues that you mentioned, such as the lack of childcare and statutory provision for childcare in Britain was introduced in 2006. How does that all tie in? If the Bill is not compliant, how will that interact with section 75 considerations that might have primacy?

Ms Collins: I will deal with the last point first and work backwards. When we were here in March, we discussed what the requirements of equality and good relations are on the Department. It is quite clear that the Department has to implement its equality scheme, and, as part of that, it has to consult on the potential impact of its proposals under its section 75 and schedule 9 obligations. That took place last year, and the reaction was that its treatment of the implications could have been much better. It was not just the Equality Commission that said that to the Department.

In my introductory remarks, I said that we have focused very much with the Department on trying to ensure that it looks at and properly assesses the actual or potential implications of its proposals, and that it takes that into account when bringing forward its policy proposals. That requirement stands on the Department, regardless of what is in play in the rest of Britain, and it has to pay due regard to equality of opportunity in this as in other things within its framework. As we discussed before, you cannot really say that that trumps anything else. The Department has a set of obligations that it has to comply with, one of which is its section 75 duties.

In the context of establishing a decent standard of living and having an appropriate minimum wage, I am not sure whether the Department is responsible for setting the minimum wage here. One of the key things that is important about that — perhaps it goes back to the previous question about whether any of us have a full picture of the potential implications — is that a number of other issues will impact on its outworking. For example, DSD published a housing strategy recently that may have overall implications for housing going forward and that will need to be taken into account. That is difficult. As to whether section 75 obligations trump or take primacy over everything else, section 75 obligations are one of a number of obligations on the Department and need to be effectively applied.

Mr Brady: Obviously, I accept what you said, but, at some stage, a decision may have to be made when the regulations or the guidelines are published. The reason that I raised the minimum wage is that it highlights more inequalities that persist here than necessarily do in Britain. If parity compares like with like, we are at an obvious disadvantage. That was really the point that I was making.

Ms Collins: Yes. We have been quite clear that the specific situation in Northern Ireland is the situation that the Department is working in. The number of adjustments that the Minister announced last week show that adjustments can be made to make the provisions as relevant as possible to the Northern Ireland situation. It is about paying due regard to the specifics of the Northern Ireland situation.

The first question you asked was about the statutory right to independent advice. I am afraid that I am not familiar with the regulations that might impact on that statutory advice.

On the questions of sanctions, I hope that we have been quite clear in our response and more generally that whatever sanctions are used have to take account of the different circumstances people are in. Of course, the fact that people in Northern Ireland may be suffering from mental ill-health may impact on their approach to benefits. That has to be taken into account. There cannot be blanket sanctions that do not take account of individual circumstances, whatever they may be. I think that that is a very important point that the Committee should scrutinise in the context of the Bill.

Mr Brady: Finally, the point has been raised that claiming universal credit is predicated on making an application online. That is the simplification. In my constituency, there is a huge rural hinterland. People simply do not have access to broadband or, in some cases, they do not have the ability to use computers or access to them. There is an almost universal acceptance that people have the internet at their fingertips, but that is simply not the case, and I am sure that it applies to many other constituencies.

In Britain there are huge urban areas, in which it is incumbent on providers to ensure that there is instant internet access. There is also the issue of mobile access being provided through Everything Everywhere (EE). That will happen in 10 cities in Britain, but, of course, it will not happen until Christmas or afterwards. In a sense, that is another inequality.

Part of the difficulty here is that, in many cases, people need face-to-face contact. That is particularly the case for those with mental health problems, yet the Department may not have the resources available. Access might be seen as another equality issue.

Ms Collins: There are two issues, are there not? The first is the access to an online facility and the second is the ability to use that effectively. Like many people, I have to get my children to help me with some of these things on occasions. It is also important that these are the sort of things on which there should be an impact assessment. What impact will having such a facility have on the range of people covered in the section 75 category?

Mr Brady: A lot of the true impact will not be felt until the regulations and guidelines are outlined. Thanks very much.

Mr Douglas: Thank you for your presentation. My point probably follows on from Michael Copeland's about human rights and equality. I got the impression during the Assembly debate on welfare reform that the Minister had got legal advice that assured him that the Bill was human rights and equality compatible. The suggestion here is that you and the Human Rights Commission had little or no contact with the Department, although I think that you refer to it. Are you happy enough with the discussions that you have had with the Department to date?

Ms Collins: We are in contact with the Department. We made our submission on the equality impact assessment and I hope that we made our points clearly and that they were understood by the Department. We have had engagement at permanent secretary level about the importance of these matters. As I said in my introduction, we have had some assurances that more information has become available through HMRC that enables the Department to look more closely at the potential impacts and that they are continuing to do that. The Department understands that that is important and that there is a commitment to screening — taking a preliminary look at — the proposals and regulations and to conducting equality impact assessments as this is rolled out. We have had that assurance at senior level.

Mr Douglas: Is that ongoing?

Ms Collins: I talked to them on Friday about some of these issues, and, as I said, we recognise that we have an important role in advising Departments and ensuring that they are doing what they ought to be to comply with section 75 requirements. That is our ongoing function.

Mr Douglas: I have another two quick questions. You recommend that the Committee considers supporting the payment of universal credit to the primary carer, who is usually the mother. Would doing that discriminate against men?

Mr Tony O'Reilly (Equality Commission for Northern Ireland): The question relates to the primary carer and does not assume that person to be either a woman or a man. In some cases, the primary carer may be a male single parent or a female lone parent. The basic aim in this instance is to protect the child. Non-carers who are given the money have a tendency not to consider the wider implications of how it is spent, whereas the primary carer will always consider household matters and their caring responsibilities.

Mr Douglas: A lot of organisations have told the Committee that it should specify that the mother should be sent the money. Would that cause any equality problems for you?

Mr O'Reilly: We specify the carer and not so much the mother. Yes; the mother is generally assumed to be the primary carer —

Mr Douglas: I think that we agree on that, anyway. I was just checking. What is your view on the possibility of split payments, as indicated by the Minister?

Mr O'Reilly: The Minister indicated that split payments could go to both parties in a household. That goes some way towards addressing the matter, but not quite far enough in the sense that the primary care-giver would have more responsibilities and, therefore, more financial obligations in their role. That would not necessarily always be the case for the other recipient of the split payment.

Mr McKinstry: Our default position would be for payment to go to the primary carer, with the option of allowing people some flexibility for split payments.

Mr F McCann: I want to follow up what Sammy said. He started by asking about meetings with the Department. There is a big difference between having meetings and getting some common ground on equality impact assessments. There are quite a lot of different elements and parts of the Bill that people would say — *[Inaudible.]* Are you happy and content — maybe those words are too strong — that the Department will follow through with that and that that may result in some changes to the Bill?

Ms Collins: I think I have to take that when the Department says squarely — and it has said it to you as well —

Mr F McCann: I thought that you were going to plead the fifth amendment.

Ms Collins: The Department officials have also said to you in evidence that they will continue to scrutinise and undertake screening and equality impact assessments. We have to take that and monitor that they do it and that they do it appropriately with the right levels of information and that, where they identify a potential adverse impact, they look seriously at potential mitigating measures. That is an important role that the Department has to play in terms of its obligations. We have an important role to work with it to ensure that that happens, and the Committee has an important role in scrutinising what it does.

Mr F McCann: I will follow on by talking about pilot schemes. A number of pilot schemes have been rolled out in Britain. Mickey said earlier that there are clear differences between here and Britain. Would it be a breach of equality regulations to try to impose a pilot scheme here that reflects a different region?

Mr McKinstry: The lessons that can be drawn from any pilot scheme will be dependent on who is involved in it. So, if the characteristics of those involved in GB are different from the characteristics here, the lessons may not necessarily map on. There may be generic lessons that map on but maybe

not specific lessons. The key thing is that the Department in Northern Ireland is required to consider the equality impacts in Northern Ireland and should use whatever information is necessary, whether it is some lessons from those pilot studies or further specific data relating to what is likely to happen here.

Mr F McCann: Would you advise the Department that it would be far better if a pilot scheme appropriate for the different considerations here is rolled out here to ensure that there is no breach of equality regulations?

Mr McKinstry: We would be very clear that it needs to consider the impacts in Northern Ireland, and, if that includes the need to run a pilot scheme locally, that is what it includes. It is about the equality impacts in Northern Ireland.

Mr F McCann: I say that because, back in maybe 2007 or 2008 when the local housing allowance was introduced here, one argument was that it was being done based on pilot schemes in the north-east of England. At that time, you were able to argue for and get a pilot scheme running here that dealt with the peculiarities here. The background of that question is that there is already a precedent set for pilot schemes.

The issue is cross-departmental. What happens in the Department for Social Development has a knock-on effect for the Department for Employment and Learning (DEL), and one of the major problems that will exist is the migration of people on employment and support allowance (ESA) across into the work-related groups. I asked a question in the Committee for Employment and Learning the other day: will the people who work for DEL be in a position to cope with the mass migration of thousands of people across into that? After a bit of study, the officials said yes, but I took that as a departmental holding response rather than one that any thought had been given to. Surely thousands of people, many of whom are suffering from mental stress and mental illness, who are put into those groups will need decision-makers and assessors who have the level of experience to accurately assess what people can and cannot do. Would that be seen as going against the equality of a person who might be suffering from that or even against that of the person who has been asked to do it, if they have not been provided with the special training required?

Mr McKinstry: A different system will, by definition, have different requirements, different resource requirements. You asked about the skills of the people at the front line, and we have been clear in our responses that appropriate equality training needs to be provided to individuals to ensure that they are better placed and that appropriately skilled staff are there to ensure that proper assessments are made.

Mr F McCann: There are two things that we are trying to establish. The first is the level of training for decision-makers who look at cases and the second, which I think is also a big issue, is what is "good cause". We have never been provided with an explanation of what is regarded as "good cause". I think that we were provided with a list of what may be deemed to be "good reason", but that was changed to "cause" for some reason. In your dealings with the Department, will you also be asking it what "good cause" is and how it would be implemented, particularly when imposing sanctions?

Ms Collins: A direct answer is that we have not yet, but that is not to say that we will not. Obviously, as the Committee scrutinises the Bill, we will be watching for other evidence and picking up on things that we need to be conscious of. Our briefing to you is our first run through the lengthy Bill. However, you made an important point about the interrelationship between the changes being brought forward by DSD and those that are the responsibility of other Departments with equality obligations. We will need to reflect further on how we ensure that other Departments connected with the reforms comply with their equality obligations. So, thank you.

Mr McKinstry: We also made related points in our response to the work capability assessment. Part of that response concerns ensuring that the right people with the right skills make such assessments, but it is also about ensuring that there is access to an appropriate range of information. The information to be taken into account in the assessment should include that from the individual and from other professionals, for example the individual's GP and other medical professionals. In any assessment, it is important that the right information is taken into account.

Mr F McCann: The follow-on point that arises from that is the primacy of medical evidence, which is one of the things that Mickey and the Chair have argued. That has certainly concerned us, particularly

in relation to assessments carried out by Atos. May I take it that in all these cases you would argue that the best medical evidence should be available for the protection of these people?

Ms Collins: Tony may want to come in on this, but further to that, we also have some concerns, which we did not voice in our briefing but have articulated over many years, about how disabled people are governed by a very medical model of disability that does not take into account the fact that many of the barriers are social. I said at the beginning that although an overall drive to encourage more people into work may be a very good thing, the fact is that there are specific groups of people for whom there are barriers to employment, including the absence of childcare, institutional barriers or more social barriers. We would certainly like to see a more clearly expressed public policy of using the social model of disability. Tony is much better equipped and more articulate than me on that issue.

Mr O'Reilly: In our response to the second review of the work capacity assessment that Professor Harrington undertook, we made it clear that it was not so much a question of who conducts the assessment but more how that evidence is broken down, presented and used.

The Committee is well aware of the criticism that the independent assessor has simply been used, and the assessor has said, "Right, we are under pressure to get such and such, and we will go with that." What evidence have they used? Is the evidence from the Department's doctor? Is it from a person who knows the witness, their experience and their circumstance? And, to what extent is the evidence taken from the witness? In other words, to what extent is, in this case, the disabled person involved in the process?

The difficulty with the Atos assessment is that it is not clear how that evidence has been gathered and put together, and to what extent each part of the evidence has been highlighted or leaned on in making a determination. That concern applies equally to the work capacity assessment for the move from incapacity benefit to employment support allowance and to the work capacity assessment that is associated with the income support supplements related to personal independence payment awards. The same criteria should apply. It is important for the Committee to consider that.

Ms Collins: In the detail of our submission on pages 11 and 12, we mentioned that nobody has yet heard the Department's response to the consultation on personal independence payments that it issued earlier this year. So we will have to see what the Department does in that area. Again, going back to its obligations, the Department is obliged to consult on and consider the equality implications and to take account of the consultation. That is not to say that the Department has to satisfy every single person it consults, because that simply would not be possible. However, it has to demonstrate that it has taken into account the consultation responses it has received.

Mr F McCann: I think that I asked a similar question the last time you were here. If, at the end of this process, you see that there are a number of issues that clearly impact on the equality of groups or individuals, then in the Assembly and the Department, will the section 75 implications that the Bill throws up supersede what comes from Westminster, or is it the other way round?

Ms Collins: As I said before, the Department is under an obligation to conduct its duties in line with the Section 75 obligations. In the Assembly now, there is scrutiny of the Bill and political discussion about what clauses will end up surviving the legislative process. The Department has to give you information on the equality implications. The Bill is in your hands, and you as the legislature have to look at implications, seek clarification, make amendments, and so on. As I understand it, once the Bill is in the House, it is a matter for you what you do with it. Clearly there are arguments about parity and so on that we have heard, but you are scrutinising it, and it is in the hands of the legislature.

Mr F McCann: If, at the end of this, you see that there are clearly equality implications, would you come back to us and say, "Look, we have identified a number of elements in the Bill that clearly have implications for people's equality"? Would you come back to us or would you go to the Department or the Executive? Under those circumstances, where does your power to ensure and protect people's equality come into being?

Ms Collins: Our role is to provide advice to authorities about the conduct of their duties. Where the commission believes that an equality scheme has been breached, it can undertake an investigation into that breach. It can also assist individuals who believe that an equality scheme may have been breached. The conclusion or outworking of such an investigation would not necessarily lead to the striking out of any particular provisions of legislation or a particular policy, but it may lead to our asking

the Department to undertake, for example, another equality impact assessment and to look more closely at mitigating measures that it might bring to bear.

The outworking of the duty does not necessarily dictate one particular conclusion. The Department has to satisfy us that it is engaged in the conduct of its duties properly and effectively. If it has gone through a process of an equality impact assessment, whereby it has identified potential adverse impacts and initiated mitigating measures, then even if we do not like the result and are not satisfied it has breached its equality scheme, it may not be possible to challenge that through the investigation process.

Mr Durkan: Fra beat me to the punch there. I was going to ask you what teeth the commission has in this instance. In my opinion and, I am sure, in that of other Committee members, there are clearly equality issues right throughout the legislation. We take that very seriously. Indeed, just last week, there was an attempt, through the Chair, to invoke Standing Order 35 in order to establish an ad hoc Committee of the Assembly to look at equality issues in the Bill and the equality implications thereof. I was going to ask about the investigation procedure. I believe that it is covered in paragraphs 10 and 11 of schedule 9 to the Northern Ireland Act. As outlined there, Evelyn, that involves the commission looking into individual aspects and reporting back. Does that put the ball firmly back in our court?

Ms Collins: No. If we thought that any public authority had potentially breached its equality scheme, we could initiate an investigation under paragraph 11. The paragraph 10 provisions that you mention relate to our role in assisting individuals who believe that a scheme may have been breached. However, under paragraph 11, we can initiate an investigation, seek information and bring forward a series of recommendations. If a public authority does not comply with those recommendations and findings, we have access to the Secretary of State to direct that the relevant public authority —

Mr Durkan: Have you ever done so before?

Ms Collins: We have for one council that we found had breached its scheme. We made a recommendation to it that it had not complied within a reasonable period of time. We asked the Secretary of State to direct that it should. He did, and the council did.

Mr Durkan: Can you envisage the commission doing that again?

Ms Collins: We have thought about it for a number of significant policies. Let me rehearse hypothetically. If we had decided to initiate a paragraph 11 investigation given our concerns about the equality impact assessment, which we are on record as saying that we felt was not good, the recommendation may have been that the Department does its equality impact assessment properly. We now have an assurance that the Department is looking at the adverse impacts of its proposals based on better information and intends to update its equality impact assessment and screen any regulations coming forward. We want the Department to undertake its obligations properly. Hypothetically speaking, that is probably where we would have got to if we had undertaken a paragraph 11 investigation.

Mr Durkan: I want to raise one other wee issue around the pension credit entitlement for couples. You say that we, as a Committee, should seek assurances that clause 32 will not result in the loss of income for couples in which one partner has not yet reached the qualifying age for pension credit. Earlier, we had a witness from Age NI who outlined quite starkly that there will be quite a significant loss of income for couples in that situation. I think that it is potentially £104 or £114 a week. Are there equality issues there?

Ms Collins: The section 75 obligations cover people of different ages, so the answer is yes, if there is an adverse impact. Our response recommends that you seek clarification from the Department about that. It is not clear to us exactly how that might work. There is obviously a concern that couples might be prevented from claiming their pension entitlements if one partner has not reached that age. That raises age issues.

Mr O'Reilly: Another concern about that clause is the conditionality and entitlement framework associated with universal credit. Would that apply to somebody who had reached the qualifying age for pension credit and would not be subject to requirements and provisions such as the underoccupancy rule in relation to housing? Are they now subject to that? That also needs to be clarified.

Mr Durkan: I had asked about this, but it became clear only in the previous session.

Ms Collins: When pounds, shillings and pence are added to it, it is very stark.

Mr Brady: You answered one of my questions, which was about equality proofing the enabling Bill and the regulations as they come out.

One of the big issues with conditionality is the claimant commitment. If one member of a couple does not sign it, the couple will not get universal credit. If one person does not sign it, it may be that he or she has mental health problems or has taken umbrage with the Department for whatever reason. It has been suggested that the person who does sign it should get universal credit for themselves and for any dependent children. Surely that would impact on the person who does not sign it for whatever reason.

It has not been made clear how much investigation goes into the reasons why that person has not signed it. Mark also asked the question about age. You articulated very well how someone may qualify for one aspect but be discounted from another. That will raise its head more and more, and it has to be addressed. The age aspect may be a human rights issue, but I am just thinking about the conditionality.

Another issue is the work search. Under universal credit, a person who comes into the work activity aspect will have to look for work for 35 hours a week. You would not even have time to work, because you would be spending so much time looking for a job. I do not mean to be too facetious, but you get the point.

All those issues are linked to conditionality. It seems that it will put a huge burden on people that is not there at this point. There are certain conditions, and nobody is disagreeing that there should be conditions. However, it seems that some of them will have an inordinately harsh impact on people, particularly at a time when we have about 60,000 people looking for 5,000 jobs.

Mr McKinstry: Two things spring to mind in respect of your point about claimant commitment. First, a couple or family as a whole should not necessarily be impacted by the actions of an individual. Secondly, any consideration of a sanction on an individual should be appropriately considered to take into account his or her personal circumstances. A disability or anything that affects a person's decision-making ability at any given time must be taken into account appropriately. We are very clear that sanctions across the board should take into account —

Mr Brady: I am sorry to interrupt. I go back to a point that I made earlier about misconduct. Say it is someone who has an undiagnosed mental health condition. What you are saying is that the individual circumstances must be looked at very closely.

Mr O'Reilly: It must be done on a case-by-case basis. You may determine after an investigation that something, whether a disability or another external factor, has impacted on a person's behaviour and proceed on that basis. Our submission states that things must be considered on a case-by-case basis, particularly when the behaviour is unusual or different and against a claimant's interest. Surely that would encourage somebody to come forward and say, "It is not in the claimant's interest to do this, so why are they doing it?" Reason and logic should be used in the application.

Mr Brady: Sometimes reason and logic do not exist.

Mr Copeland: My point has been partially covered, but I want to talk about the obligations of legislation. We are in the process of reflecting on legislation that was drafted in the rest of the United Kingdom and has come here. We have other laws and requirements that go above and beyond that. Does responsibility lie with us to amend this legislation to conform to our laws? If cost implications arise from that, are those costs due from us or from the people who sent us the legislation in the first place?

Ms Collins: In this instance, it is the Department that has an equality scheme and is responsible for bringing the legislative proposals to you. You have a decision-making and scrutiny role, but it is the Department that has an equality scheme that should not be breached.

Mr Copeland: So we could endorse legislation — lovely — and someone could take legal action and derive compensation on the basis of that decision.

Ms Collins: Although the provisions of the Northern Ireland Act relating to equality and good relations duties give individuals some right to complain that equality schemes have been breached, they are not the same as the anti-discrimination legislation, which gives individuals the right to claim race, age or sex discrimination and may go to a tribunal. If successful, that could trigger an award of compensation. It is two different types of legislation: one is the mainstream equality duty, the parameters of which are set out in section 75 and schedule 9 to the Northern Ireland Act; and the other is about the individual right of action in employment tribunals, which may lead to *[Inaudible.]* a finding of discrimination contrary to the anti-discrimination statutes.

The Chairperson: You are right to remind us that we have a statutory obligation to deal with the Bill as we determine. This ongoing evidence-gathering process is important in our deliberations. Clearly, as we move on in our deliberations, we will discuss with the Department the raft of issues that has been raised with us, including by your organisation, and we will address those issues with the Department directly. The Department is also looking at the evidence, and I take it for granted that it will be prepared to have that discussion with us. You, like many organisations, have made the point that it is enabling legalisation, so it is difficult in some ways to go further in scrutinising it because, even though we basically know what is in most of the regulations, we do not have them in front of us.

Nevertheless, we have to deal with what is in the Bill, and I am conscious of that. You have been engaged, to some extent, with the Department over a period of months, and you said that you have been given assurances from it. I do not want to put a pointed question unfairly to you, but, apart from assurances from the Department that it will give further consideration to equality issues, have you got one specific example of it saying, "We have looked at a, b or c, and here is our response"? That is important because when I am making my mind up on the Bill's provisions, I have to determine on the basis of what is in front of me, not on what somebody might do. I am not impugning the integrity of anybody in the Department or anybody else for that matter who tells me that they will do something, but what you might do after I have signed on for a Bill is no good to me, to be quite frank.

Ms Collins: It is an absolutely fair question, Chair. Some additional information was considered in the final EQIA that was published on 4 May and dated April. In response to concerns raised, we sought some additional information but, as I said earlier, we were still not satisfied that that was sufficient. We have seen no further analysis since then, but I understand that departmental officials are working to analyse the data that they have received recently from Her Majesty's Revenue and Customs (HMRC). That will make it easier for them, but we will continue to raise the issue with them. There was some additional information in the final EQIA, and we have assurances, but we have not seen anything concrete. I understand that they are still working on it, and we welcome your asking the Department about the issue.

The Chairperson: Thanks very much, Evelyn, Darren and Tony for your contributions this morning. For the record, we are due to make our report by 27 November. We have taken in the region of 40 written submissions and 20 oral presentations, some of which are by way of coalition. That is an important stakeholder engagement. I thank you for helping us in our consideration of the Welfare Reform Bill, and, no doubt, we will be in discussion with you again.

Ms Collins: Thank you for that and for inviting us today. We remain at your disposal. If we can get clarification or any further information, it goes without saying that we will be very keen to engage with you. The commission has considerable interest in this area and has concerns about the potential equality impacts. We will continue to monitor developments closely. We wish you very well with your deliberations, which are detailed and complex. I know that, as a Committee, you are well able for it.