

policy bulletin

No.16 January 2014

Introduction

Welcome to the first policy bulletin of 2014. The bulletin gives an update on policy issues that we have been working on over the latter half of 2013 and looks forward to the key policy issues ahead this year.

Copies of policy responses and submissions referred to in this bulletin are available on our website at www.lawcentreni.org.

There have been a number of changes to the policy team – Policy Officer Liz Griffith is working on immigration, employment and social security, Michael Bower, Policy Officer, is working on mental health and community care, and Colin Harper is new Assistant Director (Mental Health and Community Care).

We are always glad to get feedback from our members so please get in touch with any of the policy team if you would like more information about any of our policy priorities.

Ursula O'Hare

Assistant Director (Policy and Publications)

Welfare reform

Welfare reform continued to grab the headlines throughout 2013. The Chancellor's new year announcement that he will slash £12 billion pounds from the welfare budget after the next election makes it a certainty that it will continue to do so.

Following its Committee Stage, the Welfare Reform Bill now has to come back to the Executive and then on to the Assembly for Consideration Stage. Speaking at our AGM

last month, members of the Social Development Committee were unable to shine any light on the timetable for the reintroduction of the Bill to the floor of the Assembly. There has been some agreement on further flexibilities than those already announced, but no final agreement between the two main parties in the Assembly.

Meanwhile, the Department for Work and Pensions has warned of a financial penalty of £5 million per month to the Northern Ireland Executive from the end of January if the Bill is delayed. In Britain, the IT costs of implementing Universal Credit have continued to spiral with an estimated £161 million written off (www.nao.org.uk/report/universal-credit-early-progress). The timetable for roll out of Universal Credit has slowed amid rifts between government departments about the IT system, with Northern Ireland being relatively later in the timetable for introduction. Earlier this month, MPs in Westminster called for a commission of inquiry to investigate the impact of welfare reform on poverty (www.parliament.uk/business/committees/committees-a-z/commons-select/backbench-business-committee/news/mps-debate-welfare-reforms-and-poverty).

The economic impact of welfare reform

October's conference on the economic impact of welfare reform on Northern Ireland, co-hosted with NIVCA and Consortium partners, heard that £750 million will be taken out of the local economy as a result of the changes to social security. The research for NICVA by Sheffield Hallam University found that of 50 local authority areas most affected by welfare reform across the UK, eleven are in Northern Ireland. Derry is the second worst hit council area in the UK, with a loss per working age adult of £910 per year, followed by Strabane (£870 per year) and Belfast (£840 per year).

Read the research report here: www.shu.ac.uk/research/cresr/sites/shu.ac.uk/files/impact-welfare-reform-ni.pdf.

Housing impact

While a form of a deal seems to have been done on the bedroom tax in Northern Ireland, the Scottish Affairs Committee has called for it to be abolished and its objectives pursued by other means (www.parliament.uk/business/committees/committees-a-z/commons-select/scottish-affairs-committee/news/report-repeal-bedroom-tax).

New year headlines in Britain are that 27,000 households have had their housing benefit capped in 2013. As predicted, the majority of these are in London and other metropolitan areas.

Fourth independent review of the Work Capability Assessment (WCA)

Last month saw the publication of the fourth independent review of the WCA by Dr Paul Litchfield. The WCA determines eligibility for Employment and Support Allowance.

The Report finds that some of the earlier recommendations by Professor Harrington, including for a comprehensive review of the mental, intellectual and cognitive descriptors, have not yet been completed. The Report also finds that decision-making is not working as well as it should; that the process takes too long and that there is a need for improved training in mental health for decision-makers.

In relation to Northern Ireland specifically, Dr Litchfield commented on the benefits of the Health Assessment Adviser role and its scope to contribute more to quality assurance. He also highlighted the need for a better feedback loop from appeals to decision-makers and the Health Assessment Provider (Atos). The Law Centre facilitated a meeting between Dr Litchfield and local advisers.

He further recommended that the Department maintains the arrangement of Mental Function Champions being available to decision-makers.

You can read the report here: www.gov.uk/government/uploads/system/uploads/attachment_data/file/265351/work-capability-assessment-year-4-paul-litchfield.pdf.

In an important ruling in December, the English Court of Appeal upheld a High Court decision that the WCA discriminates against claimants with mental health difficulties by failing to make reasonable adjustments (eg through obtaining further medical evidence) as required under GB equality law. The court found that the system does not sufficiently facilitate claimants with mental health problems to report the impact of their disability on fitness for work and so they are placed at a 'substantial disadvantage'.

NI Welfare Reform Group

The Northern Ireland Welfare Reform Group criticised the proposed changes to the mobility component of Personal Independence Payment, which will replace DLA. In its submission to the Department for Social Development (DSD), the group criticised plans to replace the long-established 50 metre test for the distance that an individual should be

required to walk independently with a new 20 metre test. The Social Security Advisory Committee was also critical of the proposal. The government has indicated it intends to retain the test at 20 metres. You can read a copy of the Welfare Reform Group's response at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/252587/pip-moving-around-consultation-response-northern-ireland-welfare-reform-group.docx.

If your organisation is interested in the Welfare Reform Group, please contact Liz Griffith at the Law Centre: elizabeth.griffith@lawcentreni.org.

Northern Ireland Advice Services Consortium

The Northern Ireland Advice Services Consortium (Law Centre (NI), CAB and Advice NI) is currently working on a new policy paper on the value of advice. This is in follow up to the Consortium's first report on Why Advice Matters, launched at Stormont in July 2013. You can read Why Advice Matters at: www.lawcentreni.org/Publications/Why-advice-matters.pdf.

Migrants and benefits: new rules

New rules introduced from 1 January 2014 restrict migrants from claiming benefit until they have satisfied a three months residence test. In addition, EEA nationals who claim on or after 1 January 2014 will only receive Jobseeker's Allowance for a period of six months unless they can prove that they have a genuine prospect of finding work after that period. The new rules will also impact on British and Irish citizens returning to live in Northern Ireland and non-EEA family members. Find out more about the new rules on pages 24 and 25 of Frontline 90: www.lawcentreni.org/publications/frontline-magazine.html.

Employment law review

Employment law review

The autumn saw considerable debate amongst employer groups, trade unions and the advice sector about the Department for Employment and Learning's (DEL) proposals for reform of employment law in Northern Ireland. The proposals cover both procedural and substantive matters.

Procedurally, a new 'routing' scheme within the LRA is proposed which would require parties to at least consider conciliation before being able to lodge an application with the Tribunal. Further, a new system of 'neutral assessment' is proposed which would allow parties to get a non-binding assessment of their case by an Agency arbitrator, pre arbitration or litigation.

On the substantive employment rights front, the issues on the table include increasing the unfair dismissal qualification period from one to two years and reducing the consultation period for collective redundancies.

Northern Ireland is not following suit with some of the changes in Britain that are reducing access to justice. The introduction of fees for bringing a case to tribunal, for example, is likely to bring about a sharp decrease in the number of applications. The fees scheme came into effect in July 2013, along with a remissions system for those unable to pay. A report by the TUC highlights the impact on low paid workers (www.tuc.org.uk/sites/default/files/tucfiles/pricedoutmojfeesconsultation.pdf). Legal challenges to the fees system are underway.

The Department is expected to publish its response to the consultation exercise in spring 2014.

Immigration law and policy

Anti-trafficking policy

Members of the NGO Engagement Group on Human Trafficking, of which the Law Centre is a member, attended the first Cross Border Human Trafficking Forum in October. The forum was organised by the Department of Justice (Northern Ireland) and the Department of Justice and Law Reform (Republic of Ireland). The focus for the day was on identifying victims of trafficking and on steps to tackle demand. The Public Prosecution Service published guidelines on prosecuting cases of human trafficking, taking on board a number of the Law Centre's comments on an earlier draft.

In the autumn, Lord Morrow's Private Members Bill on human trafficking moved to Committee stage. We responded to the Committee's call for evidence. The Committee began to take oral evidence before Christmas and this is likely to

continue well into the new year. The Law Centre will be giving evidence to the Committee. The Morrow Bill provides for a statutory underpinning for support and assistance for victims of trafficking as well as special measures for children. It makes provision for a guardian to be appointed to support child victims of trafficking and further proposes the creation of a Northern Ireland rapporteur on trafficking. The Bill would also make it an offence to pay for sexual services and would introduce minimum sentencing for those convicted of a trafficking offence.

Just before Christmas, the Home Office published its Modern Slavery Bill and the report on the Bill. The Report of the Modern Slavery Bill Evidence Review, chaired by Frank Field, emphasised the importance of the Bill in both protecting victims and being 'prosecution friendly'. The Bill would consolidate existing slavery and trafficking offences, increase the maximum sentences, introduce a new 'slavery and trafficking prevention order' and create a new anti-slavery commissioner. The Bill would also create a new legal duty to report potential victims to the National Crime Agency.

The impact of the Home Office initiative on the Morrow Bill is unclear. A legislative consent motion of the Assembly – effectively giving permission to Westminster to legislate on this matter for Northern Ireland – would be required to extend the bill to Northern Ireland.

Meanwhile, a Scottish private members bill is under consideration and a similar consent motion from the Scottish Parliament would be required to extend the Home Office bill there.

In December, we participated in the second meeting of the EU Civic Society Platform on Trafficking in Human Beings. We will host our North/South Immigration Forum on anti-trafficking later this year.

Asylum seekers and refugees

In December 2013, the Health Committee considered regulations on access to free healthcare for overseas visitors.

The Department's draft regulations excluded provision for access to secondary health care to a small group of asylum seekers who are not receiving government support because their asylum claim has failed. We asked the Department to close this gap for this small group of people while they remain resident in Northern Ireland. We also suggested that access to health care should be extended to primary health

care so that health care could be provided at a GP surgery rather than through hospital services such as Accident & Emergency units.

Following consideration at the Health Committee, the Committee accepted our recommendations and asked the Department to look again at this issue. The Department is re-examining the regulations and these will return to the Health Committee in early 2014.

Immigration Bill

The Immigration Bill, currently before Westminster, has generated a number of concerns.

In a report from the Joint Committee on Human Rights published in December, the Committee found that the provisions in the Bill which create restrictions on access to residential tenancies according to immigration status could create a risk of homelessness. The Committee was also concerned about the limitation on appeal rights against immigration and asylum decisions and called on the government to clarify its proposed approach to entitlement to free health care.

North Antrim MP Ian Paisley Jnr is the only Northern Ireland MP on the scrutiny committee for the Bill. The Bill is currently at Report Stage in the House of Commons. To read more about it, go to: www.migrantsrights.org.uk/files/publications/MRN-Immigration-Bill-briefing-Oct-2013.pdf.

Community care & mental health

In Britain, the Care Bill is currently making its way through the Westminster legislative process. The Bill aims to consolidate adult social care law and deal with the Dilnot proposals for funding of long term care.

Locally, the office of the Commissioner for Older People has commissioned work to map out law and policy guidelines relating to community care in Northern Ireland. The Law Centre is participating as a member of the research advisory group, led by academics at Queen's University.

Meanwhile, next steps are anticipated from the DHSSPS on taking forward its review of adult social care, including funding arrangements. The Department's response to its consultation on the future of adult care and support was

published in the autumn. The Department has indicated that it now intends to move to stage two which is to outline proposals for reform. The Department's response to the consultation is available at: www.dhsspsni.gov.uk/index/publications.

Rights in community care

In December, the Rights in Community Care (RICC) Group held the first of its series of seminars looking at how the care system is working. The Law Centre will be hosting a seminar on transitions in care this spring. Details will be circulated to members.

In January, we met HSBC officials to raise issues around the review of closure of residential care homes and raised a number of legal and procedural issues.

Mental capacity

Reviews in England about the operation of the Mental Capacity Act 2005 and the Mental Health Act 2007 are of interest in the context of the forthcoming Mental Capacity Bill.

The House of Lords Select Committee on the Mental Capacity Act has been taking evidence about how well the Act has achieved its aims and whether amendments are now required. The Committee is due to report by 28 February: www.parliament.uk/business/committees/committees-a-z/lords-select/mental-capacity-act-2005.

The House of Commons Health Committee review of the operation of the Mental Health Act 2007 completed in August 2013 found that a number of safeguards are not working effectively. In particular, the Committee criticised the operation of the Deprivation of Liberty Safeguards as difficult to operate and examined the regional variations in their application. The Committee also scrutinised the operation of community treatment orders and the role of independent mental health advocates. The review is available at: www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/news/13-08-14-mha2007cs.

Policy Submissions / briefing papers / evidence sessions

August – December 2013

- August** Personal Independence Payment - Moving Around - policy submission
- August** DEL: Extension to Parental Leave Entitlement - policy submission
- August** Home Office: Tackling Illegal Immigration in privately rented accommodation - joint response by Law Centre (NI) and Housing Rights Service
- August** Response to the consultation document for Reform of Financial Eligibility for Civil and Criminal Legal Aid
- September** DHSSPS: Cross Border Healthcare - policy submission
- October** Department of Finance & Personnel - rate rebate arrangement - policy submission
- November** Northern Ireland Assembly Justice Committee Morrow Trafficking Bill Nov 2013 - evidence
- November** DEL: Employment Law Review - evidence
- November** NI Health Committee Healthcare for refused asylum seekers - briefing paper

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