

policy bulletin

No.15 July 2013

Introduction

This policy bulletin gives an update on the Law Centre's policy work between April and June 2013. Copies of our policy responses are available on our website at www.lawcentreni.org.

As always, we are glad to hear from our members on any of the policy issues outlined here so please get in touch if you would like to know more about any of our policy priorities.

Ursula O'Hare

Assistant Director (Policy and Publications)

Social security

The Welfare Reform Bill in the Assembly

With the summer recess, the Welfare Reform Bill will not be back in the Assembly until the autumn. Following extensive criticism of the Department's equality impact assessment on the Bill, a new EQIA was published in April.

The Northern Ireland Advice Services Consortium (Advice NI, CAB and Law Centre (NI)) launched a report at Stormont on 2 July to highlight the importance of independent advice to support people to navigate changes to the social security system. The report outlines the role of frontline and specialist advisers and calls for

advice services to be supported to meet the anticipated demand arising from welfare reform. You can download a copy of the report at <http://www.lawcentreni.org/Publications/Why-advice-matters.pdf>

In anticipation of the passage of the Welfare Reform Bill in the autumn, members of the Consortium and NICVA will hold a half-day welfare reform conference on 3 October as a follow-up to the joint Law Centre/NICVA conference on welfare reform in 2012. Details to follow.

The Welfare Reform Group continues its lobbying work on the Bill. To find out more about this group, contact Georgina Ryan-White, policy officer: georgina.ryan-white@lawcentreni.org

In April, we submitted our response to the Department of Finance and Personnel on its proposals for the rates rebate scheme and gave evidence to Committee along with Citizens Advice, Advice NI, Disability Action and NICVA. We argued that a progressive tailored rate support scheme for Northern Ireland should be achieved by off-setting savings from existing schemes eg by lifting the cap on properties worth more than £400,000.

We also responded to the Department for Social Development's consultation on the discretionary fund to replace the Social Fund. As part of the reform package, we called for resources to be put in place to ensure that people have access to financial advice and support to improve their financial capability.

Employment

Employment law review

As we go to press, the Department for Employment and Learning (DEL) has announced a consultation over the summer on a review of employment law in Northern Ireland. It is now available on the Department's website: www.delni.gov.uk/employmentlaw.

Amongst the most controversial proposals in the consultation will be increasing the qualification period for unfair dismissal from one to two years, mirroring the changes introduced in Britain in 2012. Other issues include the introduction of 'protected conversations' between employer and employee; early neutral evalu-

ation and conciliation as well as changes to the law on collective redundancies.

We are opposed to an increase in the qualifying period for unfair dismissal. We have been calling for a system of 'early neutral evaluation' within the tribunal system since the first DEL consultation on dispute resolution back in 2009. We outlined our thinking about reform of the system at an LRA roundtable in May and in meeting with the Employment Committee of the CBI in June. Over the summer, we will be hosting a series of discussions with members and others on the future of employment law in Northern Ireland, focusing on the Department's proposals.

In April, we made a submission to DEL about the law relating to the transfer of undertakings. We argued that the Service Provision Regulations provide essential legal clarity and should not be repealed. We also argued against any amendment that could effectively dilute the current prohibition of varying terms and conditions post transfer.

Immigration

Highlighting the inadequacies of asylum support

We continue to seek better arrangements for payments of Child Benefit and Child Tax Credit to refugees during the transition period following the granting of refugee status. Although a 'fast track' system for dealing with these claims is in place, many refugees continue to experience destitution after being granted refugee status due to delays in receiving benefits. In the last bulletin we reported that we had written to SSA and are continuing to work on this issue.

If you have any cases of this type, please contact our advice line.

Children subject to immigration control

Members will have followed our work on better protections for children subject to immigration control. In

the last policy bulletin, we reported that we had submitted evidence to the Westminster Joint Committee on Human Rights inquiry into the human rights of unaccompanied children. The Committee's final report was published in May and draws upon our submission in highlighting the problems caused by delay in decision-making; the lack of data about this group of children, accommodation needs and the need for a regional lead. Given our work on a 'guardian' or 'navigator' to support separated children in Northern Ireland, we were also pleased the Committee reported that it is:

'...persuaded that providing children with a guardian could support children more effectively in navigating the asylum, immigration and support structure and to help them have their voices heard.'

You can read the Committee's report here www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/9/902.htm

Refugee families, children and education

In June we held a roundtable with HAPANI (representing refugees from the Horn of Africa) to examine the difficulties experienced by the children of refugees who come to Northern Ireland without any experience of schooling and with little or no English language skills. Many parents struggle to understand the school system and, without adequate support, children struggle to cope in the new school environment. We have now mapped out some key actions to address these problems. This is an area of work that will require the involvement of a range of voluntary and statutory agencies.

Marking Refugee Week

Our contribution to Refugee Week 2013 was an event at the Law Centre focusing on the role played by judges in interpreting the law to enhance protections for asylum seekers. Chaired by His Honour Justice Weir, the panellists, Professor Colin Harvey from Queen's University Belfast, Virginia McVea, Director of the Northern Ireland Human Rights Commission, Stephen

McQuitty from the Bar Library and Buster Cox, immigration adviser at the Law Centre, selected their case that ‘changed the world of refugee law.’

The well attended event was a reminder of the value of using the law as a tool for social change.

Immigration sub-group and NI Strategic Migration Partnership

At the Immigration Sub-Group in April, OFMDFM confirmed that Ministers have agreed in principle to extending the Emergency Fund to assist destitute migrants who currently fall through gaps in welfare provision. This is very welcome, as migrant support organisations report that they are struggling to meet demands. We hope that arrangements can be finalised promptly to make monies available. We are lobbying for an interim arrangement pending the full roll out of the fund.

Anti-trafficking work

In April, the Law Centre presented a legal analysis of trafficking issues in Northern Ireland to the All Party Group on Human Trafficking. In May, we participated in the inaugural meeting of the European Union’s Civil Society Platform Against Trafficking in Human Beings to examine trends and strategies at a pan-European level. In June we presented an overview of trafficking in Northern Ireland at a NIACRO event in Stormont and participated in a UK-wide research forum on forced labour to inform a research agenda on this issue.

The Committee Against Torture (which monitors compliance of the Torture Convention) published its Concluding Observations on the UK in May. We had fed into the Northern Ireland Human Rights Commission our concerns about the identification of victims of trafficking in Larne House (immigration detention centre) as well as concerns about the oversight and monitoring arrangements in place for the detention centre. Both issues were highlighted in the Committee’s Concluding Observations: www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.GBR.CO.R.5-%20AUV_en.doc

Community care & mental health

Access to health care for overseas visitors

We responded to proposals by the DHSSPS to change how it provides access to health care for overseas visitors and published a briefing paper setting out the background and our key recommendations (www.lawcentreni.org/Publications/Policy-Briefings/Policy-Briefing-Migrants-and-health-care-Law-Centre-NI-2013.pdf).

As reported in the last bulletin, current arrangements are that access to both primary and secondary healthcare is effectively restricted to those who can satisfy the ‘ordinarily resident’ test. The application of this test is complex. We called on the Department to:

- remove the ‘ordinarily resident’ test for access to primary care;
- expand the categories of those entitled to free healthcare to all EEA nationals living in Northern Ireland as well as those with protection needs, including all asylum seekers and victims of trafficking;
- provide access to healthcare without charge to women requiring maternity services and children of irregular migrants.

Since the DHSSPS consulted on its policy proposals, the Home Office has published proposals which set it on a path to further restrict access to healthcare for migrants (www.gov.uk/government/consultations/migrants-and-overseas-visitors-use-of-the-nhs). A Bill will be presented to the Westminster Parliament in October. It is too early to tell what this will mean for the direction of policy travel in Northern Ireland.

Following engagement with Business Services Organisation (BSO) about bringing its guidance for GP registration into line with European law requirements, BSO agreed to amend its internal guidance in a number of positive and helpful ways. This will provide clarity and will also widen access for some migrant groups includ-

ing some EEA nationals and their family members, victims of trafficking and asylum seekers with an outstanding claim or who are exercising their appeal rights.

One of the challenges faced by our caseworkers is dealing with clients who have been deregistered from a GP while they are waiting for a decision about their immigration status by UKBA. The practice has been that patients were registered for six months and GP practices were required to seek evidence from their patient at the end of that time about their immigration status. In the event of a non-response, the patient was removed from the list. This caused considerable difficulties for patients as, in many instances, the UKBA did not provide the necessary information that would allow the patient to demonstrate his or her entitlement to healthcare. BSO has now amended its guidance to provide that patients are registered for two years.

Rights in Community Care seminar series

Rights in Community Care (RICC) has launched its seminar series to explore critical issues affecting the provision of care against the backdrop of *Transforming Your Care*. The first seminar will take place in September on *'Translating Equality and Human Rights into Care and Service Delivery.'* Details of how to register will follow.

Expert seminars on capacity legislation

In May, the Mental Health and Learning Disability Alliance (MHLDA) hosted a Seminar with Professor George Szmukler, Professor of Psychiatry and Society at the Institute of Psychiatry, King's College London.

Dr Szmukler is a psychiatrist who has a related interest in mental health law, particularly the possibility of generic legislation that centres on impaired decision-making capacity which would apply to all persons, regardless of the cause of the underlying disturbance of mental functioning. Dr Szmukler's major research now concerns methods of reducing compulsion and 'coer-

cion' in psychiatric care, for example, through the use of 'advance statements'.

Entitled 'The Rationale and Evidence to Support a Single Bill Approach to Mental Capacity', the seminar was attended by representatives of mental health and learning disability organisations, academics and Departmental officials. The seminar was followed by a discussion on 'The Northern Ireland Legislation – emerging issues'.

In June, the MHLDA hosted a seminar, presented by the Children's Law Centre, to examine the implications for children and young people with mental health and/or learning disability needs of the proposed Mental Capacity (Health, Welfare and Finance) Bill. The seminar explored issues arising from the proposal to exclude children and young people who are under sixteen from the remit of the legislation. Copies of the presentations are available on request.

Please note that the timeframe for consultation on the bill has shifted since our last bulletin and is now expected in 2014.

The MHLDA is convened by the Law Centre. For more information please contact Michele Smyth, Development Officer: michele.smyth@lawcentreni.org

Access to justice

The Department of Justice has proposed changes to the civil legal aid scheme as part of its Access to Justice policy. In June, we provided written evidence to the Justice Committee on the changes, supporting the decision to keep areas of law largely in scope. This is in contrast to the position in England and Wales. We also supported the review of fees on a case by case basis and called for progress on developing a mixed model for delivery of legal services.

We have also responded to the Department's consultation documents on tribunal reform and proposed changes to financial eligibility for legal aid.

Policy submissions / briefings / evidence sessions

April - June 2013

- April** BIS/DEL, Transfer of Undertakings (Protection of Employment) Regulations 2006
- April** DHSSPS, Access to Healthcare for Overseas Visitors
- April** DoJ, Future Administration and Structure of Tribunals in Northern Ireland
- April** DFP, Rate Rebate Replacement Arrangements
- April** DSD, Provision of Discretionary Support
- April** DSD, Northern Ireland Welfare Reform Group response to Provision of Discretionary Support
- June** Written evidence to Justice Committee on proposed changes to legal aid

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