



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to Northern Ireland Affairs and
Work and Pensions Committees' Joint
Inquiry into Northern Ireland's Social
Security Policy**

May 2019

Table of Contents

Summary of Recommendations	3
1.0 Introduction.....	7
2.0 Human Rights Standards	8
3.0 Devolution	15
4.0 Impact of Mitigation Package	17
Expenditure and reasons for underspend	17
Impact of mitigation package	20
Expanding the mitigation package.....	23
5.0 Higher levels of social security entitlement in NI.....	25
6.0 Two-Child Tax Credit Limit.....	27
7.0 Universal Credit	28
Accessibility	29
Separate payments	31
8.0 Rent Arrears	32

Summary of Recommendations

The NIHRC recommends that:

- 2.21(a) social security benefits, as a minimum, guarantee an adequate standard of living for all recipients, including access to health care, adequate housing and food. This includes establishing and ensuring that all maximum available resources are effectively utilised and ensuring adherence to the principle of non-retrogression.**
- 2.21(b) the UK Government conducts its own comprehensive cumulative impact assessment of tax and social security reforms across the UK.**
- 3.6(a) the UK Government adopts Scotland’s approach, wherein it recognises and takes a legislatively grounded rights based approach to social security reform.**
- 3.6(b) in the interim, the NI Affairs Committee and the Work and Pensions Committee confirm that the NI Permanent Secretaries have the power to extend the mitigation package, should the devolved institutions remain suspended.**
- 3.6(c) in the event that the Permanent Secretaries do not adopt measures to extend the mitigation package, the UK Government takes the necessary steps for NI.**
- 4.9(a) any underspend in future mitigation schemes is earmarked for specific anti-poverty initiatives that should be worked out in advance by the NI Executive, for example, year round meals for children receiving free school meals or expanding the Independent Living Fund.**
- 4.9(b) that measures are implemented by the Department of Health to ensure that the closure of the Independent Living Fund to new applications will not result in a gap in the provision of health and social care services to**

persons with disabilities who were previously eligible, but are not longer able to apply.

4.25(a) a new mitigation package is introduced that reflects the best use of maximum available resources and the principle of non-retrogression. The package should be effectively monitored.

4.25(b) the mitigation package spend should be guided by the cumulative impact assessment of the social security reforms, including the assessment commissioned by the NIHRC.

4.25(c) in the interim, the new mitigation package should as a minimum include mitigations for the Benefit Cap and the Social Sector Size Criteria, provision for independent advice and a supplementary payment for children with disabilities who have lost the disability premium.

4.25(d) the mitigation package includes effective financial support for the cost of childcare. This includes considering Scotland's practice of providing additional support for carers, pregnant women and early years provision.

4.25(e) the Benefit Cap Supplementary Payment is not time-bound, thus enabling otherwise eligible post-31 May 2016 claimants access to this benefit.

4.25(f) the Social Sector Size Criteria mitigation continues to be available to tenants who move to similar size property, where there is no suitable smaller property available.

5.6(a) a review of the budgets available and effectiveness of spend is required to establish whether it is feasible for NI to have differing levels of social security entitlement in the long term. This review requires a human rights based approach to analysis and future planning, particularly establishing and ensuring that all maximum

available resources are effectively utilised and ensuring adherence to the principle of non-retrogression.

- 5.6(b) a comprehensive cumulative impact assessment of the impact of any existing and proposed changes is also required to ensure any future changes are evidence-based and do more good than harm.**
- 5.6(c) the UK High Court decision of 2015 is implemented and an anti-poverty strategy based on objective need is developed and implemented in NI without further delay.**
- 6.6 the UK Government repeal the two-child tax credit limit.**
- 7.9(a) the prevalence of accessibility issues are taken into account at all stages in policy design, including the requirement to consider reasonable accommodation that may be required, particularly for persons with disabilities and migrants.**
- 7.9(b) effective education and training programmes are developed, implemented and adequately funded to improve accessibility and digital literacy.**
- 7.9(c) steps are taken to ensure everyone has access to effective and affordable accessibility and digital services. This may include offering free, accessible public internet services.**
- 7.9(d) disaggregated data is collected, monitored and evaluated on instances where and reasons why social security claimants have not been able to make or maintain a social security claim.**
- 7.9(e) effective steps are taken to raise awareness of and ensure non-digital channels and support for Universal Credit claimants are fully available and accessible. The exceptionality threshold necessary to access digital support should be removed.**

7.9(f) sanctions are not imposed for non-compliance with government requirements due to lack of digital skills.

7.9(g) separate social security payments are made the primary option for Universal Credit.

8.3(a) prompt, proactive, independent financial advice is provided to social security claimants on avoiding and dealing with rent arrears. The providers of this advice should be sufficiently resourced and funded.

8.3(b) social security benefits aimed at assisting with housing payments are accessible and adequate, for the purposes of ensuring an individual's right to adequate housing.

1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (the NIHRC), pursuant to Section 69(1) of the Northern Ireland Act 1998, reviews the adequacy and effectiveness of law and practice relating to the protection of human rights. In accordance with this function, the following statutory advice is submitted to the Northern Ireland (NI) Affairs Committee and the Work and Pensions Committee (the Committees), as part of their inquiry into social security policy in NI.
- 1.2 The NIHRC bases its position on the full range of internationally accepted human rights standards, including the European Convention on Human Rights as incorporated by the Human Rights Act 1998 and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. The relevant international treaties in this context include:
- European Convention on Human Rights 1950 (ECHR);¹
 - European Social Charter 1961;²
 - UN International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR);³
 - UN Convention on the Elimination of Discrimination Against Women 1979 (UN CEDAW);⁴
 - UN Convention on the Rights of the Child 1989 (UN CRC);⁵
 - Charter of Fundamental Rights of the European Union 2000 (EU Charter);⁶ and
 - UN Convention on the Rights of Disabled Persons 2006 (UN CRPD).⁷
- 1.3 The following sections provide an overview of the human rights obligations, impact of social security reforms and the mitigation package in NI. Each section contains recommendations that are proposed for the Committee to adopt in its Inquiry conclusions.

¹ Ratified by the UK in 1951.

² Ratified by the UK in 1962.

³ Ratified by the UK in 1976.

⁴ Ratified by the UK in 1986.

⁵ Ratified by the UK in 1991.

⁶ Ratified by UK in 2000.

⁷ Ratified by the UK in 2009.

2.0 Human Rights Standards

- 2.1 The right to social security is protected by the ECHR and the international human rights system.
- 2.2 ICESCR, Article 9, provides that “the States Parties to the present Covenant recognise the right of everyone to social security, including social insurance”. This right is also provided for within UN CEDAW,⁸ UN CRC,⁹ UN CRPD,¹⁰ European Social Charter,¹¹ and EU Charter.¹² By ratifying these human rights treaties, the UK is bound by the obligations set out therein.¹³
- 2.3 The UN Committee on Economic, Social and Cultural Rights (UN ICESCR Committee) confirms that this right requires a social security system to be in place that is available, adequate and accessible.¹⁴ Social security must be accessible in terms of coverage, eligibility, affordability, participation and information, and physical access.¹⁵ Such a system should provide coverage for social risks and contingencies, including healthcare, sickness, old age, unemployment, employment injury, family and child support, maternity, disability, and survivors and orphans.¹⁶ The UN ICESCR Committee confirmed that “whereas everyone has the right to social security”, the UK Government:

should give special attention to those individuals and groups who traditionally face difficulties in exercising this right, in particular women, the unemployed, workers inadequately protected by social security, persons working in the informal economy, sick or injured workers, people with disabilities, older persons, children and adult dependents, domestic workers, homeworkers, minority groups, refugees, asylum-seekers, internally displaced

⁸ Article 13, UN Convention on the Elimination of Discrimination against Women 1979.

⁹ Article 26, UN Convention on the Rights of the Child 1989.

¹⁰ Article 28(2), UN Convention on the Rights of Persons with Disabilities 2006.

¹¹ Article 12, European Social Charter 1961.

¹² Article 34, Charter of Fundamental Rights of the EU 2000.

¹³ Articles 11 and 14, Vienna Convention on the Law of Treaties 1969; Section 26, NI Act 1998.

¹⁴ E/C.12/GC/19, ‘UN Committee on Economic, Social and Cultural Rights General Comment No 19: The Right to Social Security’, 4 February 2008, at paras 11, 22 and 23-27.

¹⁵ *Ibid*, at paras 23-27.

¹⁶ *Ibid*, at paras 12-21.

persons, returnees, non-nationals, prisoners and detainees.¹⁷

- 2.4 These obligations should be “enjoyed without discrimination and equally between men and women”.¹⁸ Any discrimination should be prohibited:

whether in law or in fact, whether direct or indirect, on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to social security.¹⁹

- 2.5 This requirement extends to “de facto discrimination on prohibited grounds, where individuals are unable to access adequate social security”.²⁰ The UK Government should ensure that:

legislation, policies, programmes and the allocation of resources facilitate access to social security for all members of society... Restrictions on access to social security schemes should also be reviewed to ensure that they do not discriminate in law or in fact.²¹

- 2.6 ICESCR, Article 2(1), requires the UK Government to take steps “to the maximum of its available resources, with a view to achieving progressively the full realisation” of the right to social security. This “imposes an obligation to move as expeditiously and effectively as possible towards that goal”.²² Thus “any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the ICESCR and in the

¹⁷ Ibid, at para 31.

¹⁸ Ibid, at para 29. See also Articles 2(2) and 3, UN International Covenant on Economic, Social and Cultural Rights 1966; Article 14, European Convention on Human Rights 1950.

¹⁹ Ibid, at para 29. See also Articles 2(2) and 3, UN International Covenant on Economic, Social and Cultural Rights 1966; Article 14, European Convention on Human Rights 1950.

²⁰ Ibid, at para 30.

²¹ Ibid, at para 30.

²² E/1991/23, ‘UN Committee on Economic, Social and Cultural Rights General Comment No 3: The Nature of States Parties’ Obligations’, 14 December 1990, at para 9.

context of the full use of the maximum available resources".²³ This requires considering whether:

- a) There was reasonable justification for the action;
- b) Alternatives were comprehensively examined;
- c) There was genuine participation of affected groups in examining the proposed measures and alternatives;
- d) The measures were directly or indirectly discriminatory;
- e) The measures will have a sustained impact on the realisation of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and
- f) Whether there was an independent review of the measures at the national level.²⁴

2.7 The right to social security may also be engaged by the ECHR. Where limiting this right has an extreme effect on those affected, ECHR, Articles 3 and/or 8, may be engaged.

2.8 ECHR, Article 3 provides for freedom from torture, inhuman or degrading treatment or punishment.²⁵ This is an absolute and non-derogable right (i.e. cannot be interfered with in any circumstances) and is guaranteed "irrespective of the victims' conduct".²⁶ Article 3 could be engaged where extreme poverty, amounting to destitution, has arisen due to a State's actions or inactions.²⁷

2.9 ECHR, Article 8, protects the right to respect for private and family life. Article 8 is qualified and can be limited in certain circumstances.²⁸ This right contains a positive obligation to "take reasonable and appropriate measures to secure and protect individuals' rights to respect their private life, which includes the

²³ Ibid, at para 9.

²⁴ Ibid, at para 42.

²⁵ This right is also protected within Article 7, UN International Covenant on Civil and Political Rights 1966; Article 37(a), UN Convention on the Rights of the Child; UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987; Article 15, UN Convention on the Rights of Persons with Disabilities; Article 4, Charter of Fundamental Rights of the European Union 2000.

²⁶ Articles 3 and 15(2), European Convention on Human Rights 1950; *Chahal v UK* (1996) 23 EHRR 413, at para 79.

²⁷ *O'Rourke v UK*, Application No 39022/97, Admissibility Decision, 26 June 2001; *Moldovan and Others v Romania (No 2)* (2007) 44 EHRR 16; *Regina v Secretary of State for the Home Department, ex parte Limbuela* [2005] UKHL 66.

²⁸ Article 8(2), European Convention on Human Rights 1950.

right to physical and psychological integrity”.²⁹ An interference with this right may be justified if the State’s acts or inaction were lawful, served a legitimate aim and were proportionate.³⁰ Article 8(2) provides guidance on what may constitute a legitimate aim:

there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

2.10 In this context, the England and Wales High Court case, *R (Bernard) v Enfield London Borough* [2002] provides some guidance. The High Court stated there must be “a singular lack of respect for the claimant’s private and family life”, such as condemning the claimant to “living conditions which made it virtually impossible for them to have any meaningful private or family life for the purposes of Article 8”.³¹

2.11 The NIHR notes that legal challenges under ECHR, Articles 8 and 14, have received a mixed response. For example, in 2016, the UK Supreme Court considered a number of Social Sector Size Criteria cases. The Supreme Court did not rule the policy to be unlawful in all cases, but found a breach of Articles 8 and 14 in cases involving children and adults with disabilities.³² In 2017, the England and Wales High Court ruled that changes to the Personal Independence Payment mobility descriptors unlawfully discriminated against claimants with poor mental health, thus violating Articles 8 and 14.³³ Yet, in 2019, the UK Supreme Court found that, while “undoubtedly harsh”, the benefit cap did not unlawfully discriminate against lone parents with young children.³⁴

²⁹ *Storck v Germany* (2006) 43 EHRR 6, at para 149; *Tysiac v Poland* (2007) 45 EHRR 42, at para 100-113; *B v Romania (No 2)*, Application No 1285/03, 19 February 2013, at para 85.

³⁰ *Dudgeon v United Kingdom* (1981) ECHR 5, at para 53.

³¹ *R (Bernard) v Enfield London Borough* [2002] EWHC 2282, at paras 33-34.

³² *R (on the Application of Rutherford and Another) v Secretary of State for Work and Pensions* [2016] UKSC 58.

³³ *RF v SSWP and Others* [2017] EWHC 3375. A violation was also found on Article 1 of the First Protocol to the European Convention on Human Rights.

³⁴ *R (on the Application of DA and Others) v Secretary of State for Work and Pensions* [2019] UKSC 21, at para 120.

2.12 In a UK context, the UN ICESCR Committee highlighted particular concerns about:

the adverse impact of... [social security] changes and cuts on the enjoyment of the rights to social security and to an adequate standard of living by disadvantaged and marginalised individuals and groups, including women, children, persons with disabilities, low-income families and families with two or more children.³⁵

2.13 The UN ICESCR Committee made a number of targeted recommendations on social security reform in the UK including:

- a reversal of cuts in social security benefits;
- a restoration of the link between the rates of State benefits and costs of living;
- a guarantee that all social security benefits provide a level of benefit sufficient to ensure an adequate standard of living, including access to healthcare, adequate housing and food;
- a review of sanctions; and
- the provision of disaggregated data on the impact of social security reforms on specific groups.³⁶

2.14 The UN Committee on the Rights of the Child (UN CRC Committee) highlighted concerns about the high rate of child poverty. It emphasised that children in NI and Wales are “most affected.”³⁷ It recommended the UK Government, “where necessary, revise [social security reforms] in order to fully respect the right of the child to have his or her best interests taken as a primary consideration, taking into account the different impact of the reform on different groups of children, particularly those in vulnerable situations”.³⁸

2.15 An Inquiry by the UN Committee on the Rights of Persons with Disabilities (UN CRPD Committee) found “grave and systematic violations of disabled people’s rights”, including regarding the right

³⁵ E/C.12/GBR/CO/6, ‘UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 40.

³⁶ Ibid.

³⁷ CRC/C/GBR/CO/5, ‘UN Committee on Rights of the Child Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland’, 3 June 2016, at para 69(a).

³⁸ Ibid, at para 70(c).

to an adequate standard of living and social protection within the UK.³⁹

2.16 The UN CRPD Committee has also expressed concerns about austerity measures and anti-poverty measures resulting in “severe economic constraints” among persons with disabilities and their families.⁴⁰ It noted that social security reform changes were having a negative impact on the standard of living of persons with disabilities and their families⁴¹ and recommended that support packages were extended “to mitigate the negative impacts of social security reform in NI”.⁴²

2.17 The Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, acknowledged “NI has taken steps to mitigate some of the worst effects of austerity measures, and is taking a different and seemingly more humane approach to certain aspects of Universal Credit”.⁴³ However, he noted “a £500 million mitigation package is set to run out in 2020, and its expiration could have dire consequences for people living in poverty”.⁴⁴ He further noted:

mitigation comes at a price and is not sustainable... NI’s mitigation package runs out in 2020, leaving vulnerable people facing a ‘cliff edge scenario’. But more broadly, it is outrageous that devolved administrations need to spend resources to shield people from government policies.⁴⁵

2.18 The UN CEDAW Committee found that Universal Credit “risks depriving women in abusive relationships access to necessary funds and trapping them in situations of poverty and violence”.⁴⁶ It also

39 CRPD/C/15/R.2/Rev.1, ‘Inquiry concerning the UK of Great Britain and NI carried out by the Committee under article 6 of the Optional Protocol to the Convention: Report of the Committee’, 6 October 2016, at para 113.

40 CRPD/C/GBR/CO/1, ‘UN Committee on Rights of Persons with Disabilities Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland’, 3 October 2017, at para 58.

41 Ibid.

42 Ibid, at para 59d.

43 A/HRC/41/39/Add.1, ‘Visit to the United Kingdom of Great Britain and Northern Ireland, Report of the United Nations Special Rapporteur on extreme poverty and human rights’, 23 April 2019, at VIII. A. See also Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights London, 16 November 2018.

44 Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights London, 16 November 2018.

45 Ibid.

46 CEDAW/C/GBR/CO/8. ‘UN Committee on the Elimination of Discrimination against Women Concluding Observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland’ 8 March 2019, at para 50.

expressed “deep concern” at the introduction of a two-child tax credit limit, which it describes as having “a perverse and disproportionate impact on women.”⁴⁷

2.19 The UN ICESCR Committee, UN CRC Committee, UN CRPD Committee and UN CEDAW Committee have all urged the UK to assess the cumulative impact of social security reforms.⁴⁸ To provide an example of how such an assessment could be conducted, the Equality and Human Rights Commission recently published the findings of its cumulative impact assessments of tax and social security reforms implemented between 2010 and 2018 in England and Wales⁴⁹ and Scotland.⁵⁰

2.20 The NIHRC has commissioned a similar assessment with specific reference to NI, which is due to be published in summer 2019. The assessment will use the tax-transfer model,⁵¹ which uses data from two UK datasets - the Family Resources Survey and the Living Costs and Food Survey. The model will show the distributional effects of tax and welfare changes by household income decile and by protected characteristics including ethnicity, disability and demographic type. In addition, based on the outcomes, the researchers have been asked to recommend where specific mitigation measures should be targeted, for example, beyond existing arrangements for the Social Sector Size Criteria and Benefit Cap for families. The NIHRC will share the outcomes of this assessment with the two Committees once it becomes available.

2.21 The NIHRC recommends that:

a) social security benefits, as a minimum, guarantee an adequate standard of living for all recipients, including access to health care, adequate housing and food. This

⁴⁷ Ibid.

⁴⁸ E/C.12/GBR/CO/6, ‘UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the Sixth Periodic Report of the UK of Great Britain and NI’, 14 July 2016, at para 19; CRC/C/GBR/CO/5, ‘UN Committee on the Rights of the Child, Concluding Observations on the Fifth Periodic Report of the UK of Great Britain and NI’, 3 June 2016, at para 12; CRPD/C/GBR/CO/1, ‘UN Committee on Rights of Persons with Disabilities Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland’, 3 October 2017, at para 59(b); CEDAW/C/GBR/CO/8. ‘UN Committee on the Elimination of Discrimination against Women Concluding Observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland’ 8 March 2019, at para 17.

⁴⁹ Equality and Human Rights Commission, ‘The Cumulative Impact of Tax and Welfare Reforms’ (EHRC, 2018).

⁵⁰ Equality and Human Rights Commission, ‘The Cumulative Impact of Tax, Social Security and Public Spending Decisions in Scotland’ (EHRC, 2019).

⁵¹ The tax-transfer model is a microsimulation model developed by the Institute for Public Policy Research, Landman Economics and the Resolution Foundation.

includes establishing and ensuring that all maximum available resources are effectively utilised and ensuring adherence to the principle of non-retrogression.

b) the UK Government conducts its own comprehensive cumulative impact assessment of tax and social security reforms across the UK.

3.0 Devolution

3.1 The Department for Communities is considering extending both the social sector size criteria and benefit cap mitigation.⁵² The Department notes that the NI Executive gave a clear commitment to protecting NI benefit claimants from the Social Sector Size Criteria whereas it is less clear if the Executive had a similar intention towards the benefit cap.⁵³ Regardless, the Department's view is that "any decision to continue with welfare mitigations would not only require the allocation of further substantial funding, but would also require new legislation in an uncertain political environment".⁵⁴

3.2 The Executive Formation and Exercise of Functions Act 2018, section 3(1) provides:

the absence of NI Ministers does not prevent a senior officer of a NI department from exercising a function of the department during the period for forming an Executive if the officer is satisfied that it is in the public interest to exercise the function during that period.⁵⁵

3.3 The Department for Communities confirmed "the [NI] Executive intended to decide on the future delivery of the full mitigation package".⁵⁶ The existence of the initial mitigation package is a clear indication of a commitment from the NI Executive, when it was functioning, to alleviate the negative impact of social security

⁵² Department for Communities, 'Review of Welfare Mitigation Schemes' (DfC, 2019), at Chapter 13.

⁵³ Ibid, at paras 13.3 and 13.6.

⁵⁴ Ibid, at 51.

⁵⁵ The Act has recently been extended from 26 March to 25 August 2019.

⁵⁶ Department for Communities, 'Review of Welfare Mitigation Schemes' (DfC, 2019), at para 13.2.

reforms. There is also precedent for the 2018 Act, section 3(1), to be used to provide emergency financial assistance, such as for victims of flooding.⁵⁷

- 3.4 In the event that Permanent Secretaries consider that the extension of the mitigation package is not within their discretion, as per the 2018 Act, the NIHRC stresses that the UK Government is responsible for ensuring compliance with human rights obligations in the UK, including NI, and should act accordingly. This is confirmed within the NI Act 1998, Schedule 2, Section 3(c), where “observing and implementing international obligations, obligations under the Human Rights Convention [ECHR] and obligations under EU law” are listed as excepted matters. The 1998 Act, Section 26(2), further provides:

if the Secretary of State considers that any action capable of being taken by a Minister or NI department is required for the purpose of giving effect to any international obligations, of safeguarding the interests of defence or national security or of protecting public safety or public order, he may by order direct that the action shall be taken”.

- 3.5 There is precedent within the UK for adopting a long-term human rights based approach to mitigating social security reforms. The Special Rapporteur on Extreme Poverty and Human Rights found Scotland has “used newly devolved powers to establish a promising social security system guided by the principles of dignity and social security as a human right and co-designed on the basis of evidence”.⁵⁸

3.6 The NIHRC recommends that:

⁵⁷ The Executive Office, ‘A Report on Decisions Taken during November 2018 by Northern Ireland Departments in accordance with the Guidance issued by the Secretary of State for Northern Ireland under the provisions of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018) (TEO, 2018).

⁵⁸ A/HRC/41/39/Add.1, ‘Visit to the United Kingdom of Great Britain and Northern Ireland, Report of the United Nations Special Rapporteur on Extreme Poverty and Human Rights’, 23 April 2019, at VIII. B. See also Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights London, 16 November 2018.

- a) the UK Government adopts Scotland’s approach, wherein it recognises and takes a legislatively grounded rights based approach to social security reform.**
- b) in the interim, the NI Affairs Committee and the Work and Pensions Committee confirm that the NI Permanent Secretaries have the power to extend the mitigation package, should the devolved institutions remain suspended.**
- c) in the event that the Permanent Secretaries do not adopt such measures, the UK Government takes the necessary steps to extend the mitigation package in NI.**

4.0 Impact of Mitigation Package

Expenditure and reasons for underspend

- 4.1 Over a four-year period from April 2016 until March 2020, £585 million was allocated by the NI Executive to ‘top-up’ UK social security arrangements in NI.⁵⁹ With an estimation that the mitigation scheme payments during this period would cost £501 million, the remaining £84 million was returned to the Executive.⁶⁰ By 31 March 2018, with a budget of £214 million for April 2016 to March 2018, only £78 million was spent, with an under-spend of £136 million.⁶¹
- 4.2 The existence of the mitigation package underspend is not indicative of an absence of need. The Department’s review of the social security mitigation schemes outlines various factors that contributed to the underspend. For example, a change in government policy removed the need for a mitigation,⁶² reforms were not rolled out to the timetable expected when the initial financial estimates were

⁵⁹ Department for Communities, ‘Review of Welfare Mitigation Schemes’ (DfC, 2019), at para 2.1.

⁶⁰ Ibid, at para 2.4.

⁶¹ NI Audit Office, ‘Welfare Reforms in NI’ (NIAO, 2019), at para 6.4.

⁶² For example, the UK Government committed to exempt full-time carers from the Benefit Cap, which meant that the carers mitigation was not required. See Department for Communities, ‘Review of Welfare Mitigation Schemes’ (DfC, 2019), at para 4.4.

made,⁶³ and the absence of the NI Assembly prevented full implementation of the mitigation package.⁶⁴

- 4.3 The NI Audit Office reiterates that “various factors have led to these underpayments including delays in passing legislation”.⁶⁵ The NI Audit Office has recommended that “a short review exploring the reasons behind the lower than expected uptake of mitigation payments” is undertaken as “this may provide an evidence base to indicate how... [to] make better use of the mitigation funding for the remaining two years”.⁶⁶ The NI Audit Office also recommended that the Department for Communities evaluates and reports on the value for money of the additional independent advisory services supported by mitigations funding”, including “carefully consider[ing] how to make the best use of both external and internal advisory services post March 2020”.⁶⁷
- 4.4 Monies committed to the Cost of Work Allowance have not been spent as the scheme could not be implemented without the approval of the NI Assembly.⁶⁸ This scheme was intended to provide additional income to assist those in working poverty⁶⁹ by offering assistance with additional costs incurred by workers such as childcare.⁷⁰
- 4.5 In 2018, the average cost of a full-time childcare place in NI was £166 per week.⁷¹ There is no childcare strategy in NI and no statutory duty akin to that on local and public authorities in England, Scotland and Wales to provide adequate childcare provision.⁷² Further, the scheme implemented in England whereby all working parents of 3 and 4 year olds have access to up to 570

⁶³ For example, the Benefit Cap was not introduced in Northern Ireland as expected: the £26,000 Cap was implemented in June 2016 rather than in April 2016. See Department for Communities, ‘Review of Welfare Mitigation Schemes’ (DfC, 2019), at para 5.4.

⁶⁴ For example, the Cost of Work Allowance mitigation required secondary legislation, which needed an Assembly. See Department for Communities, ‘Review of Welfare Mitigation Schemes’ (DfC, 2019), at para 4.15.

⁶⁵ NI Audit Office, ‘Welfare Reforms in NI’ (NIAO, 2019), at Key Facts.

⁶⁶ Ibid, at Recommendation 5.

⁶⁷ Ibid, at Recommendation 4.

⁶⁸ In 2017/2018, a budget of £37 million per year was introduced as part of the mitigation package in NI to facilitate the introduction of the Cost of Work Allowance. See Department for Communities, ‘Review of Welfare Mitigation Schemes’ (DfC, 2019), at para 12.31–12.34.

⁶⁹ Department for Communities, ‘Review of Welfare Mitigation Schemes’ (DfC, 2019), at para 9.10.

⁷⁰ Eileen Evason, ‘Welfare Reform Mitigations Working Group Report’ (TEO, 2016), at 14.

⁷¹ Employers for Childcare, ‘NI Childcare Cost Survey 2018’ (EfC, 2018), at 2.

⁷² NI Human Rights Commission, ‘The 2018 Annual Statement: Human Rights in Northern Ireland’ (NIHRC, 2018), at 124.

hours free childcare per year has not been implemented in NI.⁷³ ⁷⁴ A separate scheme providing up to 30 hours free childcare for 3 to 4 year olds per week is available in England for working parents that earn a certain amount.⁷⁵ This scheme is not available in NI.

4.6 The Department for Communities has confirmed that:

the funding not utilised was returned to the Department of Finance for reallocation to other public services in NI. As other Government Departments may also have returned money they had not utilised during this period, specific details of which public services received funding from the unspent mitigation budget are not available.⁷⁶

4.7 Representatives of the independent advice sector in NI have called for a re-profiling of the “the substantial underspend in the mitigations budget to provide protections for evolving welfare reforms”.⁷⁷

4.8 Additional to the existing mitigation package, the UK Independent Living Fund was closed on 30 June 2015,⁷⁸ attracting concern by the UN CRPD Committee.⁷⁹ Responsibility was transferred to local authorities in England and the devolved administrations.⁸⁰ In NI and Scotland, the Independent Living Fund for existing applicants has been retained and is administered by the Independent Living Fund Scotland. As this is restricted to existing users, it will lead to its eventual de facto run down and eventual closure.⁸¹

4.9 The NIHRC recommends that:

⁷³ Gov.UK, ‘15 hours Free Childcare for 3 and 4-Year-Olds’. Available at: <https://www.gov.uk/help-with-childcare-costs/free-childcare-and-education-for-2-to-4-year-olds>

⁷⁴ Employers for Childcare, ‘Press Release: What is the 30 hours free childcare and will it be available in Northern Ireland’, 22 March 2017.

⁷⁵ Gov.UK, ‘30 Hours Free Childcare’. Available at: <https://www.gov.uk/30-hours-free-childcare>

⁷⁶ Department for Communities, ‘Review of Welfare Mitigation Schemes’ (DfC, 2019), at para 8.8.

⁷⁷ Advice NI, Housing Rights and Law Centre NI, ‘Welfare Reform: Mitigations on a Cliff Edge’ (Advice NI, Housing Rights and Law Centre NI, 2018), at 3.

⁷⁸ The Independent Living Fund provided financial support to persons with disabilities to live independently in their homes and participate in education, training and employment. It was available to those receiving the higher rate of Disability Living Allowance and enabled them to access a package of joint Independent Living Fund/local authority care to enable persons with disabilities to live in the local community, rather than in residential care.

⁷⁹ CRPD/C/GBR/CO/1, ‘UN Committee on Rights of Persons with Disabilities Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland’, 3 October 2017, at para 44(c).

⁸⁰ Independent Living Fund, ‘Press Release: Decision on the Future of the ILF’, 6 March 2014.

⁸¹ Steven Preece, ‘NI Independent Living Fund to be Administered in Scotland’, *Welfare Weekly*, 28 January 2018.

- a) any underspend in future mitigation schemes is earmarked for specific anti-poverty initiatives that should be worked out in advance by the NI Executive, for example, year round meals for children receiving free school meals or expanding the Independent Living Fund.**
- b) that measures are implemented by the Department of Health to ensure that the closure of the Independent Living Fund to new applications will not result in a gap in the provision of health and social care services to persons with disabilities who were previously eligible, but are not longer able to apply.**

Impact of mitigation package

- 4.10 Research into the impact of the mitigation schemes on poverty levels in NI is lacking. In 2013, the NI Council for Voluntary Action found that “the financial loss to NI [by social security reforms], per adult of working age, is substantially larger than in any other part of the UK”⁸² and, consequently, “by lowering incomes more than elsewhere, a key effect of the welfare reforms will be to widen the gap in prosperity between NI and the rest of the UK”.⁸³ In 2018, the Joseph Rowntree Foundation reported “the mitigation of some benefits and tax credit changes may explain some of the lower child poverty in NI”⁸⁴ and “may have contributed to the lower poverty rate among disabled people in NI than in the UK as a whole”.⁸⁵
- 4.11 The Department for Communities reported “that the planned end of the welfare mitigation funding on 31 March 2020 is likely to present significant issues to people who may have benefitted from this financial support”.⁸⁶ The NI Audit Office stressed that “claimants in

⁸² According to this research, “the average financial loss per head in NI (£650 per year) is well ahead of the comparable figures of Scotland (£480) or Wales (£550), and also well ahead of the two hardest-hit English regions, the North West and North East (both at £560). See Christina Beatty and Steve Fothergill, ‘The Impact of Welfare Reform on NI’ (NICVA, 2013), at 17.

⁸³ Christina Beatty and Steve Fothergill, ‘The Impact of Welfare Reform on NI’ (NICVA, 2013), at 5.

⁸⁴ Joseph Rowntree Foundation, ‘Poverty in NI 2018’ (JRF, 2018) at 15.

⁸⁵ Ibid.

⁸⁶ Department for Communities, ‘Review of Welfare Mitigation Schemes’ (DfC, 2019), at 4.

NI have not yet faced the full impact of welfare reforms because of the mitigation measures currently in place”.⁸⁷ It stated that:

the difficulties and problems encountered by disabled and low-paid households across NI are likely to increase in April 2020 after the current mitigation measures end. Current social housing stock remains unsuitable, with many thousands of social tenants under-occupying, and will therefore, be subject to reductions in benefits post 2020.⁸⁸

4.12 A mitigation package is pertinent in NI due to the high levels of poverty within the region, particularly when compared to the rest of the UK,⁸⁹ and the “clear mismatch between the size and type of social housing stock required to avoid Social Sector Size Criteria deductions and the profile of the existing stock”.⁹⁰

4.13 The NI Housing Executive states:

even if an ample supply of suitably-sized dwellings were available, the time would be required to facilitate tenants moving to new properties is too lengthy to be completed before mitigation ends in March 2020.⁹¹

4.14 The Department for Communities acknowledges “the unavailability of smaller dwellings in the social rented sector will mean that many claimants affected by the Social Sector Size Criteria policy will be unable to move property to avoid any reduction in their benefit entitlement”.⁹²

4.15 The Department for Communities is of the view that:

there was a clear rationale for using March 2020 as an end date for specific mitigation schemes and analysis indicates that most claimants affected by the introduction of the relevant welfare reforms will have received the intended mitigation payment by this date.⁹³

⁸⁷ Northern Ireland Audit Office, ‘Welfare Reforms in Northern Ireland’ (NIAO, 2019), at para 30.

⁸⁸ Ibid, at para 6.37.

⁸⁹ Joseph Rowntree Foundation, ‘Poverty in NI 2018’ (JRF, 2018).

⁹⁰ NI Housing Executive, ‘Welfare Reform in NI: A Scoping Report’ (NIHE, 2018), at 45.

⁹¹ Ibid, at 43.

⁹² Department for Communities, ‘Review of Welfare Mitigation Schemes’ (DfC, 2019), at 39.

⁹³ Ibid, at para 13.2.

4.16 However, the Department for Communities stated that:

the Executive clearly intended that claimants would not be affected by the introduction of the Social Sector Size Criteria. Furthermore, the evidence clearly shows that the impact of this policy has not abated and is unlikely to change over the next few years with the number of affected claimants remaining largely constant. It is therefore considered that there is strong evidence to consider the continuation of this policy.⁹⁴

4.17 The Department for Communities also acknowledges the significance of the Benefit Cap mitigation, which is available for families with children:

alongside the Social Sector Size Criteria it has been estimated that the mitigation scheme that would benefit the greatest number of claimants, were it to continue, is for the Benefit Cap... to continue with this mitigation is an estimated £3.33 million per year.⁹⁵

4.18 The Department for Communities noted that “unlike the disability-related mitigation schemes there is no restriction on the duration of the Social Sector Size Criteria and the Benefit Cap”.⁹⁶ The Department stated “it is not clear if the Executive intended for this mitigation to continue post March 2020”.⁹⁷

4.19 The continuation of the fund for independent advice is crucial in delivering clear, transparent and impartial information on social security entitlements. NI claimants prefer to receive advice from independent sources, which is exemplified by 67 per cent of the NI Housing Executive’s respondent tenants stating they seek advice from independent providers.⁹⁸

⁹⁴ Ibid, at para 13.3.

⁹⁵ Ibid, at para 3.6.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ NI Housing Executive, ‘Welfare Reform NI: A Scoping Report’ (NIHE, 2018), at 36.

Expanding the mitigation package

- 4.20 The Benefit Cap Supplementary Payment is available to households with children that were in receipt of a relevant benefit when the benefit cap was introduced on 31 May 2016.⁹⁹ The supplementary payment is not available for subsequent claimants, regardless of their circumstances or needs.
- 4.21 Tenants who move within the social sector lose the supplementary payment if they move to a property which they continue to under-occupy by the same or greater extent, unless they do so under 'Management Transfer Status'. The likelihood of such a scenario arising is increased by the mismatch between the type of housing stock available and the mitigation rules.¹⁰⁰ In 2017/2018, 121 tenants in NI lost this mitigation payment.¹⁰¹
- 4.22 The current mitigation package makes provision for adults with disabilities who have transferred to Universal Credit and who can no longer receive disability, severe disability or enhanced disability premiums. There is no similar supplementary payment to mitigate the impact of the removal of disabled child element of child tax credit for Universal Credit claimants.¹⁰²
- 4.23 Representatives of the independent advice sector in NI have called for the Department to take action to mitigating the hardship associated with "emerging issues" not envisaged by the original mitigation package. NI advice sector representatives have called for new mitigations under four priorities – Universal Credit, housing, children and families and advice support.¹⁰³
- 4.24 It is notable that Scotland has introduced additional financial support, including – Carer's Allowance Supplement,¹⁰⁴ Best Start

⁹⁹ 1,320 households were subject to the benefit cap as of January 2019, with an average loss of £47 per week. All the capped households contain children. At January 2019, 21 per cent (280) of capped households had 5 or more children while 79 per cent (1,050) had between 2 and 4 children. There were no capped households with 1 or no children at January 2019. See NI Statistics and Research Agency, 'Benefit Cap: NI Data to January 2019' (NISRA, 2019).

¹⁰⁰ NI Housing Executive, 'Welfare Reform in NI: A Scoping Report' (NIHE, 2018), at 45.

¹⁰¹ Department for Communities, 'Social Sector Size Criteria Cessation Welfare Supplementary Payments: April-September 2017' (DfC, 2018); Department for Communities, 'Social Sector Size Criteria Cessation Welfare Supplementary Payments: October 2017-March 2018' (DfC, 2018).

¹⁰² Advice NI, Housing Rights and Law Centre NI, 'Welfare Reform: Mitigations on a cliff edge' (Advice NI, Housing Rights and Law Centre NI, 2018), at 20.

¹⁰³ Ibid, at 3.

¹⁰⁴ This is paid to carers in receipt of Carers Allowance. Claimants receive two payments of approximately £226 each year.

Grant Pregnancy and Baby Payment, Best Start Grant Early Learning and School Payments and Young Carer Grant and Funeral Expense Assistance.¹⁰⁵ The Scottish approach goes some way to alleviate the cuts introduced across the UK in 2011 that removed some and reduced other support available for pregnant women and young babies.¹⁰⁶

4.25 The NIHRC recommends that:

- a) a new mitigation package is introduced that reflects the best use of maximum available resources and the principle of non-retrogression. This package should also be effectively monitored.**
- b) the mitigation package spend should be guided by the cumulative impact assessment of the social security reforms, including that commissioned by the NIHRC.**
- c) in the interim, the new mitigation package should as a minimum include mitigations for the Benefit Cap and the Social Sector Size Criteria, provision for independent advice and a supplementary payment for children with disabilities who have lost the disability premium.**
- d) the mitigation package includes effective financial support for the cost of childcare. This includes considering Scotland's practice of providing additional support for carers, pregnant women and early years provision.**
- e) the Benefit Cap Supplementary Payment is not time-bound, thus enabling otherwise eligible post-31 May 2016 claimants access to this benefit.**
- f) the Social Sector Size Criteria mitigation continues to be available to tenants who move to similar size property, where there is no suitable smaller property available.**

¹⁰⁵ Scottish Government, 'Equality Statement: Scottish Budget 2019-20' (Scottish Government, 2018), at 2.

¹⁰⁶ For example, in 2011, the Sure Start Maternity Grant was restricted to the first child in a family; the Health in Pregnancy grant was abolished; and the baby element of Child Tax Credit was abolished. See House of Commons, 'Restriction of the Sure Start Maternity Grant: SN/SP/5860' (HoC, 2011).

5.0 Higher levels of social security entitlement in NI

- 5.1 NI has some of the highest levels of poverty and economic inactivity rates in the UK. Therefore, higher levels of social security entitlement in NI are required to mitigate these issues and to protect the most vulnerable. This is pertinent in a context where NI does not have an anti-poverty strategy, despite the NI High Court ruling of 2015 that held that the NI Executive acted unlawfully by failing to adopt one. Consequently, there is “no roadmap” in place to tackle poverty, social exclusion and patterns of deprivation, which it is under a duty to have within NI Act 1998, section 28E.¹⁰⁷
- 5.2 In May 2019, 26.5 per cent of people aged 16 to 64 years old in NI were economically inactive, compared to 20.8 per cent in the whole of the UK.¹⁰⁸ Of that same age group, 28.7 per cent were unemployed in NI, compared to 23.9 per cent in the whole of the UK.¹⁰⁹ In 2017/2018, households in NI had the second highest percentage of income from State support at 21 per cent. In 2016/2017, less households in NI hold a savings account than in the rest of the UK.¹¹⁰ Lone parents are particularly affected, with 79 per cent of such households with no savings or 13 per cent with savings less than £1,500.¹¹¹
- 5.3 NI “has a greater proportion of home-owners in poverty than the rest of the UK. Twice as many of NI’s mortgaged households are behind with their mortgage repayments (14 per cent) compared to the whole of the UK (7 per cent)”.¹¹²
- 5.4 The Housing Selection Scheme rules for allocating social housing do not align the number of bedrooms a household is assessed to need with the size criteria for eligible Housing Benefit or Universal Credit claimants. Further, the NI Housing Executive does not have the

¹⁰⁷ *Committee on the Administration of Justice and Brian Gormally’s Application* [2015] NIQB 59, at paras 46 and 52.

¹⁰⁸ NI Statistics and Research Agency, ‘NI Labour Market Report – May 2019’ (NISRA, 2019), at 1.

¹⁰⁹ *Ibid.*

¹¹⁰ Of NI households, 92 per cent had a current savings account, 19 per cent had an ISA account and 25 per cent had savings in a bank or building society. The respective average in the UK is 94 per cent, 38 per cent and 43 per cent. NI does have a higher rate of premium or national savings bonds (12 per cent), but this is due to the higher membership of Credit Unions, compared to the rest of the UK (1 per cent). See NI Statistics and Research Agency, ‘Family Resource Survey: NI 2016/17’ (DfC, 2018), at Table 4.1.

¹¹¹ NI Statistics and Research Agency, ‘Family Resource Survey: NI 2016/17’ (DfC, 2018), at Table 4.8.

¹¹² Alison Wallace, David Rhodes and Firona Roth, ‘Home-owners in Poverty in Northern Ireland’ (JRF, 2018), at 4.

necessary stock available to enable it to place tenants in homes without creating spare rooms (i.e. without subjecting the tenant to the Social Sector Size Criteria).¹¹³ However, when faced with a housing stock that is not meeting demand, this does not offer much choice.¹¹⁴ In 2017, the Department for Communities consulted on how to improve the situation, but this cannot progress without functioning devolved institutions.¹¹⁵

5.5 The UK Government and NI Executive “agree on the importance of support for mental health, particularly recognising the historical impact of NI’s past on its communities”.¹¹⁶ NI has the highest rate of suicide in the UK,¹¹⁷ which is particularly prevalent in the deprived areas of NI.¹¹⁸ Between 1970 and 2017, suicide rates rose from 73 to 305 per year.¹¹⁹ In November 2018, 47 per cent of Employment and Support Allowance claimants¹²⁰ and 40 per cent of Personal Independent Payment claimants¹²¹ had a psychiatric disorder.

5.6 The NIHRC recommends that:

a) a review of the budgets available and effectiveness of spend is required to establish whether it is feasible for NI to have differing levels of social security entitlement in the long term. This review requires a human rights based approach to analysis and future planning, particularly establishing and ensuring that all maximum available resources are effectively utilised and ensuring adherence to the principle of non-retrogression.

b) a comprehensive cumulative impact assessment of the impact of any existing and proposed changes is also

¹¹³ Department for Communities, ‘A Fundamental Review of Social Housing Allocations: Consultation on Proposals’ (DfC, 2017), at 86.

¹¹⁴ In March 2018, 36,198 applicants were on the Social Housing Waiting List, with 24, 148 in housing stress. See NI Statistics and Research Agency, ‘NI Housing Statistics 2017-18’ (DfC, 2019), at 1.

¹¹⁵ Department for Communities, ‘A Fundamental Review of Social Housing Allocations: Consultation on Proposals’ (DfC, 2017), at 86.

¹¹⁶ Cabinet Office, ‘UK Government Financial Support for NI’ (CO, 2019).

¹¹⁷ In 2017, NI has 16 deaths per 100,000 population compared to a UK figure of 10.1 deaths per 100,000. Office for National Statistics, ‘Statistical Bulletin: Suicides in the UK: 2017 registrations’ (NISRA, 2018); NI Statistics and Research Agency, ‘Suicide Statistics’ (DoH, 2018), at Table 3.

¹¹⁸ NI Statistics and Research Agency, ‘Suicide Statistics’ (NISRA, 2018), at Table 12a; Department of Health, ‘Health Survey NI: First Results 2017/18’ (DoH, 2018).

¹¹⁹ NI Statistics and Research Agency, ‘Suicide Statistics’ (NISRA, 2018), at Table 1.

¹²⁰ NI Statistics and Research Agency, ‘NI Benefits Statistics Summary: November 2018’ (DfC, 2018), at 4.

¹²¹ NI Statistics and Research Agency, ‘Personal Independence Payment: Experimental Statistics’ (DfC, 2018), at 1.

required to ensure any future changes are evidence-based and do more good than harm.

c) the UK High Court decision of 2015 is implemented and an anti-poverty strategy based on objective need is developed and implemented in NI without further delay.

6.0 Two-Child Tax Credit Limit

6.1 The UN CEDAW Committee has recommended that the UK Government “repeal the two-child tax credit limit”.¹²²

6.2 The average family size in NI is 2.96 children, compared to 2.84 in the whole of the UK. The Institute for Fiscal Studies “substantially attributes” the increase in child poverty to the two-child limit and notes that NI will be “affected much more heavily”, than other regions.¹²³ The Institute explained that:

even though the two-child limit only affects a minority of benefit claimants (unlike the benefit freeze or the transition to Universal Credit, which both affect nearly all working-age recipients), it represents a substantial share of the effect of policy reforms on poverty.¹²⁴

6.3 The Institute elaborated that:

this policy has a large impact on poverty for three reasons. First, those families affected can lose a considerable amount of income – most affected families with more than two children lose £2,780 per year for every child beyond their second. Second, larger families are more likely to be in poverty or near the poverty line, and so reducing their incomes has a substantial effect on the poverty rate. Third, since the two-child limit affects families with lots of

¹²² CEDAW/C/GBR/CO/8. ‘UN Committee on the Elimination of Discrimination against Women Concluding Observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland’ 8 March 2019, at para 51(b).

¹²³ Institute for Fiscal Studies, ‘Living Standards, poverty and inequality in the UK: 2017-18 to 2021-22’ (IFS, 2017) at 27.

¹²⁴ Ibid, at 26.

children, if it pushes one household into poverty it means a substantial extra number of people in poverty.¹²⁵

- 6.4 The two-child tax credit limit may lead to women having terminations under economic duress, which given NI's current laws will require travelling to Great Britain. There is an exception to the limit for children born of rape, where the mother no longer lives with the rapist. This places the mother at risk of retaliatory violence and re-traumatisation. It risks stigmatising the child. Furthermore, the law in NI obligates anyone that is aware of a crime to report it to the police or face prosecution.¹²⁶ Despite the Attorney General of NI's guidance that this is unlikely,¹²⁷ fears remain within civil society that the non-reporting of a rape declared through this process will lead to prosecution of the mother, support network or an employee involved in processing the claim.¹²⁸
- 6.5 The NIHRC notes that CPAG is currently seeking leave to appeal to the UK Supreme Court on behalf of two lone mothers affected by the two-child limit.¹²⁹ The NIHRC understands that one of the applicants is of a religious belief that eschews contraception and termination of pregnancy and, as a result, may be financially penalised for having a third child under the two-child rule.
- 6.6 **The NIHRC recommends that the UK Government repeal the two-child tax credit limit.**

7.0 Universal Credit

- 7.1 The NI Audit Office has stated "it is too early to assess the delivery of Universal Credit in NI".¹³⁰ By June 2018, of new Universal Credit claims in NI, 18 per cent were not paid in full and on time and 52 per cent requested and received an advance payment of Universal

¹²⁵ Ibid.

¹²⁶ Section 5, Criminal Law Act (NI) 1967.

¹²⁷ Attorney General for NI, 'No 14 Human Rights Guidance for the Public Prosecution Service: The Application of Section 5 of the Criminal Law Act (NI) 1967 to Rape Victims and Those to Whom They Make Disclosures in Connection with a Claim for Social Security, Child Tax Credit or Anonymous Registration on the Electoral Roll', 20 April 2018.

¹²⁸ Roundtable discussions with NI women's policy groups and NI women's community groups, October 2017, November 2017, February 2018 and March 2018.

¹²⁹ This follows an unsuccessful challenge to the England and Wales Court of Appeal in April 2019. See *R (SC and Ors) v Secretary of State for Work and Pensions and Ors* [2019] EWCA Civ 615.

¹³⁰ NI Audit Office, 'Welfare Reforms in Northern Ireland' (NIAO, 2019), at 39.

Credit to help them through to their first payment.¹³¹ The NI Audit Office states “this provides evidence that claimants have difficulties managing financially, until their first payment”.¹³²

Accessibility

- 7.2 Despite efforts by the devolved Department for Communities, for example the Make the Call helpline,¹³³ accessibility remains an issue for obtaining social security benefits. This includes over-reliance on on-line interactions, lack of practical support for navigating the system, challenging documentation requirements and bureaucratic delays.¹³⁴
- 7.3 Representatives of the independent advice sector in NI have identified as particular challenges – hardship during the initial five-week waiting period, delays in payment, difficulties in accessing the Contingency Fund, and premature natural migration resulting in a loss of Transitional Protection.¹³⁵
- 7.4 Vulnerable groups are particularly affected. For example, asylum seekers and refugees whose first language is not English and may not have the required identification documents (eg passport or birth certificate). Delays may also result for such claimants from having to wait for new identification documents to be issued or original identification documents to be translated.¹³⁶ Disabled persons organisations have reported that persons with disabilities are afraid to engage with ‘Make the Call’ for fear that their benefits will be reduced or completely removed.¹³⁷

¹³¹ Ibid, at para 4.24.

¹³² Ibid.

¹³³ The Department for Communities has introduced a ‘Make the Call’ Benefit Uptake Programme. It aims to improve the uptake of benefits and other Government supports and services by people who are entitled, but not claiming. By 2019, it aims to target a minimum of 100,000 people (including disabled people) with the offer of a full Benefit Entitlement Check and to secure at least £40 million in additional benefits. See Department for Communities, ‘The “Make the Call” Benefit Uptake Programme’. Available at: <https://www.communities-ni.gov.uk/articles/benefit-uptake-programme>

¹³⁴ Dr Fiona Murphy and Dr Ulrike Vieten, ‘Asylum Seekers and Refugees’ Experiences of Life in Northern Ireland’ (QUB, 2017), at 66; Roundtable discussions with NI women’s policy groups and NI women’s community groups, October 2017, November 2017, February 2018 and March 2018.

¹³⁵ Advice NI, Housing Rights and Law Centre NI, ‘Welfare Reform: Mitigations on a Cliff Edge’ (Advice NI, Housing Rights and Law Centre NI, 2018), at 11-12.

¹³⁶ Dr Fiona Murphy and Dr Ulrike Vieten, ‘Asylum Seekers and Refugees’ Experiences of Life in Northern Ireland’ (QUB, 2017), at 66; Roundtable discussions with NI women’s policy groups and NI women’s community groups, October 2017, November 2017, February 2018 and March 2018.

¹³⁷ Meeting between Department for Communities and DPOs, Stormont, 4 September 2018.

- 7.5 With Universal Credit a primarily online social security benefit, digital exclusion is a particular concern. Of the 12,000 new Universal Credit claims made in NI by June 2018, 79 per cent of claims were made remotely and only 21 per cent of claimants attended the Jobs and Benefits Offices.¹³⁸ However, across the UK, NI continues to have the highest proportion of internet non-users.¹³⁹ While the number of internet non-users has declined since 2012, it is a real concern that almost 15 per cent of NI do not use the internet.¹⁴⁰ Persons with disabilities are four times more likely than non-disabled persons to be offline. Non-internet users are also likely to be female and not economically active.¹⁴¹ These are the categories of people most likely to be adversely affected by social security reforms.¹⁴²
- 7.6 A compounding issue in NI is the lack of internet services in rural areas. NI has a larger rural community per head of population than other regions of the UK.¹⁴³ According to Ofcom, 23 per cent of rural premises in NI do not have basic broadband services, compared to 1 per cent in urban areas.¹⁴⁴ A further compounding issue is the closure of libraries and reduction of library opening times,¹⁴⁵ which makes it harder for social security claimants to access free internet.
- 7.7 UK-wide claimants with “irregular or no access to the internet also consistently showed signs of faring less well throughout the Universal Credit customer journey”.¹⁴⁶ The NI Executive’s draft Programme for Government commits to “improve internet connectivity”.¹⁴⁷ There is, however, no specific commitment to improve digital skills or literacy within the population.

¹³⁸ NI Audit Office, ‘Welfare Reforms in Northern Ireland’ (NIAO, 2019), at 39.

¹³⁹ Office for National Statistics, ‘Exploring the UK’s Digital Divide’ (ONS, 2019) at 7.

¹⁴⁰ Ibid.

¹⁴¹ Ibid, at 14 and 10.

¹⁴² Equality and Human Rights Commission, ‘The cumulative impact of tax and welfare reforms’ (EHRC, 2018), at 173.

¹⁴³ The latest statistics from the Department of Agriculture, Environment and Rural Affairs show that 37 per cent of the NI population live in rural areas and 63 per cent live in urban areas. Department of Agriculture, Environment and Rural Affairs, ‘NI Rural-Urban Statistics’ (DAERA, 2018). In comparison, the latest UK Government statistics show 17 per cent of the population in England live in rural areas and 83 per cent live in urban areas. See Department for Environment, Food, and Rural Affairs, ‘Rural Population and migration mid year population 2017’ (DEFRA, 2018) at 1.

¹⁴⁴ Ofcom, ‘Connected Nations 2017 report’ (Ofcom, 2017) at para 2.5.

¹⁴⁵ Libraries NI, ‘Annual Report and Accounts 2017/18’ (2018), at 61. In 2018, it was reported that Libraries NI’s baseline had decreased by nearly £5.5m and that libraries were struggling to meet demand for assistance by social security claimants. Chris Lindsay, ‘Library cuts to hit benefit claimants’, *BBC News*, 20 April 2018.

¹⁴⁶ Department for Work and Pensions, ‘Universal Credit Full Service Survey June 2018’ (DWP, 2018), at 17.

¹⁴⁷ NI Executive, ‘Draft Programme for Government Framework 2016-21’ (NI Executive, 2016) at 85.

Separate payments

7.8 Household payments are the default for Universal Credit.¹⁴⁸ In NI, separate Universal Credit payments to an individual partner are permitted in exceptional circumstances. Domestic violence is a recognised exception, but the burden is on the claimant to declare their circumstances.¹⁴⁹ The existence of this exception is also not clear within the Department for Communities guidance on Universal Credit.¹⁵⁰ Currently separate payments are practically unavailable, as the computer system is not able to process such requests. Only four separate payments have been made in NI to date.¹⁵¹ Those that make applications in person may be able to avail of an unofficial system, where separate payments are calculated and facilitated by hand, but this depends on awareness of this option within the Jobs and Benefits staff. Such an option is not available to online claimants.¹⁵²

7.9 The NIHRC recommends that:

- a) the prevalence of accessibility issues are taken into account at all stages in policy design, including the requirement to consider reasonable accommodation that**

¹⁴⁸ The default option for couples applying for Universal Credit is to make a joint application. If successful, Universal Credit will be paid in single payments into one bank account. This can be an individual or joint bank account.

¹⁴⁹ To ensure the financial responsibilities in the home are adequately reflected and to protect victims of domestic violence, split Universal Credit payments should be the default option. The nature of domestic violence means a joint claimant that is a victim of domestic violence may not be in a position or may not want to declare their circumstances. Split payments have received support among MPs; see Department for Work and Pensions, 'Guidance Universal Credit: Further Information for Families' (DWP, 2019); roundtable discussions with NI women's policy groups and NI women's community groups, October 2017, November 2017, February 2018 and March 2018; Parliamentary Business, 'Universal Credit Split Payments' Westminster Hall, 10 October 2018, at Column 141WH.

¹⁵⁰ Department for Communities, 'Advice for Decision Making Chapter B1: Payment of UC, PIP, ESA and JSA' (DfC, 2017), at Section B1026.

¹⁵¹ Correspondence between Department for Communities and NI Human Rights Commission, 29 April 2019.

¹⁵² Claimants can apply for Universal Credit online or in person. The majority of new Universal Credit claimants are using the online process. Within the online process, an applicant is only able to provide one bank account per application. The Department for Communities has responsibility for managing social security in NI, but it must use the computer system provided by the UK Department for Work and Pensions. This computer system is under review, which is to be completed by 2023. On completion of the review, new Universal Credit claimants will be able to choose whether their benefit is paid in a single payment to an individual's bank account or a joint bank account, or if the payments are split across two bank accounts. However, in the interim claimants must apply for split payments in person. It was reported that there is a lack of awareness within staff and the wider community that split payments are an option and even when applying in person that new claimants may be directed to the online application process. It was reported that of the new Universal Credit claimants in NI, 10 per cent (3,500) are couples and the vast majority of payments are made into the woman's bank account. It was raised that this may change as Universal Credit is rolled and the demographics of new claimants changes. This is in contrast to the tax credits system, being replaced by Universal Credit, where a joint claim for Child Tax Credit and childcare element of Working Tax Credit is paid into the account of the main carer. In practice, this is usually the woman. See Women's Policy Group Meeting, Dungannon, 12 December 2018.

may be required, particularly for persons with disabilities and migrants.

- b) effective education and training programmes are developed, implemented and adequately funded to improve accessibility and digital literacy.**
- c) steps are taken to ensure everyone has access to effective and affordable accessibility and digital services. This may include offering free, accessible public internet services.**
- d) disaggregated data is collected, monitored and evaluated on instances where and reasons why social security claimants have not been able to make or maintain a social security claim.**
- e) effective steps are taken to raise awareness of and ensure non-digital channels and support for Universal Credit claimants are fully available and accessible. The exceptionality threshold necessary to access digital support should be removed.**
- f) sanctions are not imposed for non-compliance with government requirements due to lack of digital skills.**
- g) separate social security payments are made the primary option for Universal Credit.**

8.0 Rent Arrears

8.1 Statistics provided by NI Housing Executive show that almost all claimants in receipt of Universal Credit are in rent arrears. This is a significant increase compared to claimants in receipt of Housing Benefit.¹⁵³ Statistics on the proportion of residual arrears created by the Universal Credit payment schedule are not yet publically available. There is a lack of research into the reason for the arrears.

¹⁵³ Statistics provided by NI Housing Executive, 15 May 2019.

Figure 1: Rent arrears in NI in 2018/19

Social security benefit	Number of claimants in rent arrears	Per cent of claimants in rent arrears	Total value of rent arrears	Average rent arrears per claimant
Housing Benefit	23,862 (out of 59,154 claimants)	40	£4.57 million	£191.82
Universal Credit	3,504 (out of 3,800 claimants)	92	£2.45 million	£700.05

8.2 Tenants can lose their social sector size criteria supplementary payment, if they move to a property, which they are deemed to continue to under-occupy. In 2017/2018, 121 tenants in NI lost this mitigation payment.¹⁵⁴ By June 2018, 72 NI Housing Executive tenants that were in this situation saw their average arrears per household increase from £46 to £174.¹⁵⁵

8.3 The NIHRC recommends that:

- a) prompt, proactive, independent financial advice is provided to social security claimants on avoiding and dealing with rent arrears. The providers of this advice should be sufficiently resourced and funded.**
- b) social security benefits aimed at assisting with housing payments are accessible and adequate, for the purposes of ensuring an individual’s right to adequate housing.**

¹⁵⁴ Department for Communities, 'Social Sector Size Criteria Cessation Welfare Supplementary Payments: April-September 2017' (DfC, 2018); Department for Communities, 'Social Sector Size Criteria Cessation Welfare Supplementary Payments: October 2017-March 2018' (DfC, 2018).

¹⁵⁵ NI Housing Executive, 'Welfare Reform NI: A Scoping Report' (NIHE, 2018), at 47.

Contact Us

For further queries, please email:

Colin.Caughey@nihrc.org

www.nihrc.org | info@nihrc.org | +44 (0)28 9024 3987

Temple Court, 39 North Street, Belfast, BT1NA

