

# **United Nations Convention on the Rights of Persons with Disabilities**

## **Jurisdictional ‘Parallel’ Submission on the implementation, in Northern Ireland, of the recommendations by the Committee on the Rights of Persons with Disabilities in its 2016 report on an Inquiry, carried out under Article 6 of the Optional Protocol, into the United Kingdom**

**August 2023**

**This submission has been drafted jointly by the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission in furtherance of their role as the “Independent Mechanism” in Northern Ireland to promote, protect and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)**



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## Introduction

### *The Independent Mechanism for Northern Ireland*

- 1.1 The Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission jointly perform the role, under Article 33 (2) of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), of 'Independent Mechanism' in Northern Ireland (IMNI) to promote, protect and monitor the implementation of the Convention. Together with the Equality and Human Rights Commission (EHRC) and the Scottish Human Rights Commission (SHRC), we are designated as the United Kingdom Independent Mechanism (UKIM).
- 1.2 IMNI has contributed to the development of a UKIM submission to the UNCRPD Committee regarding a 'List of Issues' in respect of the Initial United Kingdom (UK) State Report. We have also contributed to the preparation of a parallel report to the Committee for consideration alongside the UK Initial State Report in August 2017.

### *This submission*

- 1.3 In 2016 the UNCRPD Committee reported in its findings from an Inquiry considering alleged adverse impact on persons with disabilities of the implementation of social security (welfare) reforms in the UK. The Committee concluded that there had been '*grave or systematic violations*' of the rights of persons with disabilities.
- 1.4 In late 2022, the UNCRPD Secretariat indicated that the Committee would consider actions taken by the UK following the Committee's 2016 inquiry. The UNCRPD Secretariat has advised that the Committee will consider follow-up information provided by the UK Government at the August 2023 session.
- 1.5 In 2021, as part of preparations towards the, since deferred, full examination of the implementation of UNCRPD in the UK, the Equality Commission had contracted an independent report (from Disability Action) into compliance with the Convention in Northern Ireland. This covered all areas of the Convention, in anticipation of what we then

believed to be the forthcoming substantive examination of UK compliance.

- 1.6 The research report (2022)<sup>1</sup>, included information of relevance to the 2016 Social Protection Inquiry Follow-Up, and so forms the core material that the IMNI has drawn from to inform the contribution from Northern Ireland to the UKIM submission to the Committee's follow-up to the 2016 Inquiry report.
- 1.7 Our contribution, however, also draws on supplementary information from a range of other sources, including voluntary sector, statutory and regulatory bodies, academic sources and the IMNI's policy work.<sup>2</sup>
- 1.8 In August 2022, IMNI convened three engagement events with disability stakeholders to highlight findings from the research. Stakeholder input at those events subsequently informed the development of priority issues for UKIM reporting into the 2016 Inquiry follow-up.
- 1.9 In March 2023, after the UN Committee had announced the Inquiry follow-up, IMNI convened two further stakeholder engagement events. The purpose of these events was to enable disability stakeholders to further inform priority issues for inclusion in the UKIM submission to the Inquiry follow-up. Participants attending the events broadly agreed with IMNI's proposed priority issues and provided additional input, which has been integrated into our working draft position.
- 1.10 In April 2023, the IMNI Disability Stakeholder Forum considered proposed priority issues for inclusion in the UK State Party 2016 Inquiry Update. Members broadly agreed with IMNI's proposed priority issues and also provided additional input which has been integrated into our working draft position.

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<sup>1</sup> Toman, N., O'Reilly, T., McConway, M., Hamilton, A. and O'Neill, E. (2022): [Progress towards the implementation of the UNCRPD in Northern Ireland](#) (Equality Commission for Northern Ireland).

<sup>2</sup> For example, The Trussell Trust and the Joseph Rowntree Trust (2023): [An Essentials Guarantee](#); The Mental Health Foundation (2023): [Mental Health and the Cost of Living Crisis - another pandemic in the making?](#); Department for Work and Pensions (2023): [The impact of benefit sanctions on employment outcomes](#); NI Public Service Ombudsman (2021): 'PIP and the Value of Further Evidence: An Investigation by the Northern Ireland Public Ombudsman into Personal Independence Payment'; Institute for Fiscal Studies (2022): [Living standards of working-age disability benefits recipients in the UK](#); Roberts, J., et al. (2021): [Written evidence from Jennifer Roberts, Mark Bryan, Andrew Bryce, Nigel Rice, Cristina Sechel, University of Sheffield and University of York \(DEG0132\)](#); Equality Commission for Northern Ireland (January 2023): [Response to the consultation by the Department of Health on the future of Muckamore Abbey Hospital](#).

- 1.11 Our submission below sets out IMNI’s assessment of the progress made by the UK Government relative to the 2016 CRPD Inquiry recommendations.
- 1.12 The overall conclusion is that little substantive progress has been made by the UK Government and the Northern Ireland Executive to address the recommendations of the UNCRPD’s 2016 Inquiry report. IMNI have accordingly developed a range of proposed recommendations, for consideration by the UNCRPD Committee.

## Background

- 1.13 Northern Ireland (NI) has been without a fully functioning NI Executive and NI Assembly since February 2022. This is the second suspension period since the publication of the Committee’s inquiry report, with a previous suspension running from January 2017 until January 2020. Between February and October 2022, NI Ministers continued in a caretaking capacity. In October 2022, as experienced during the previous suspension, responsibility for managing devolved issues moved to the Head of the Civil Service and Departmental Permanent Secretaries.<sup>3</sup> Since February 2022, no new policies, legislation or funding have been able to progress, and this will continue until the NI Executive and NI Assembly are reinstated.
- 1.14 NI continues to lack a disability national action plan and has operated without a NI Executive wide strategy relating to the rights of disabled people since 2018. The New Decade, New Approach agreement, which brought an end to the previous suspension of the NI Assembly, included a commitment to publish a disability strategy for NI.<sup>4</sup>
- 1.15 The Department for Communities appointed an Expert Advisory Panel and undertook ongoing engagement with a Co-Design Group and cross-departmental working group of key stakeholders. In 2021, the Expert Panel published its report, highlighting a focus on the general principles

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<sup>3</sup> The [Northern Ireland \(Executive Formation etc\) Act 2022](#) provides that the absence of NI Ministers should not prevent senior officers (Head of the Civil Service and Departmental Permanent Secretaries) from exercising departmental functions, if it is in the public interest to do so, until a new Executive is formed; the [Northern Ireland \(Interim Arrangements\) Act 2023](#) extends the period during which departmental functions may be exercised in the absence of Ministers.

<sup>4</sup> NI Office (2020): [New Decade, New Approach](#).

of UN CRPD, as a guide to inform the development of a Disability Strategy.<sup>5</sup> The plan to consult on the strategy in early 2022 has been delayed, and the Department for Communities has advised that it cannot be progressed until a new Executive is in place.<sup>6</sup>

1.16 Following the UK's withdrawal from the EU, an additional protection for disabled people has been incorporated into NI law.<sup>7</sup> In Article 2 of the Windsor Framework, the UK Government has committed to ensuring that certain rights, safeguards and equality of opportunity protections are not diminished as a result of UK withdrawal.<sup>8</sup> The UK Government and the NI Assembly and Executive are prohibited from acting in a way that is incompatible with it.<sup>9</sup> It provides specific, enhanced protection against discrimination in the directives in Annex 1 of the Windsor Framework, including on the grounds of disability in employment and vocational training.<sup>10</sup> NI law must keep pace with improvements made by the EU to the minimum levels of protection in the Annex 1 directives after 1 January 2020.<sup>11</sup> As the EU acceded to the UN CRPD prior to UK withdrawal,<sup>12</sup> the overriding obligation to promote, protect and implement the UN CRPD through EU law and policy is also relevant to the interpretation of Windsor Framework Article 2. It also informs interpretation of related EU measures that set standards below which the law in NI should not fall.<sup>13</sup>

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<sup>5</sup> Department for Communities (2020): [Disability Strategy Expert Advisory Panel Report - Report and Recommendations](#).

<sup>6</sup> Letters from Department for Communities to NI Human Rights Commission and Equality Commission NI, 18 July 2022. The Department for Communities have indicated that in the absence of an Executive and in the context of proposed budget cuts, consideration is being given to putting on hold work to develop and deliver a Disability Strategy, an Anti-Poverty strategy for Northern Ireland and a Disability Employment Strategy, with the potential for staff resources to be diverted elsewhere.

<sup>7</sup> Pursuant to Sections [78A-78E](#) of the [Northern Ireland Act 1998](#) Act 1998, the NIHRC and ECNI are mandated to oversee the UK Government's commitment in Article 2 of The Windsor Framework (formerly the Protocol on Ireland/Northern Ireland) to the [UK-EU Withdrawal Agreement 2020](#).

<sup>8</sup> Article 2, Windsor Framework (formerly the Protocol on Ireland/Northern Ireland) to the [UK-EU Withdrawal Agreement 2020](#).

<sup>9</sup> Section 7A of the [European Union \(Withdrawal\) Act 2018](#) gives effect to all the rights, obligations and remedies arising under the UK-EU Withdrawal Agreement in UK law without the need for further enactment. The Northern Ireland Act has also been amended to prohibit the NI Assembly and NI departments from acting in a way that is incompatible with Article 2 of the Windsor Framework.

<sup>10</sup> Directive 2000/78/EC, [EU Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation](#), 27 November 2000.

<sup>11</sup> Article 13, Windsor Framework to the UK-EU Withdrawal Agreement 2020. This includes keeping pace with relevant current and future CJEU case law relating to this Directive.

<sup>12</sup> [Council Decision 2010/48/EC](#) concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, 26 November 2009.

<sup>13</sup> Article 4, [UK-EU Withdrawal Agreement](#). For a list of EU measures identified by the NIHRC and ECNI, see NIHRC and ECNI (2022): [Working Paper: The Scope of Article 2\(1\) of the Ireland/ Northern Ireland Protocol](#).

1.17 Disabled people and their organisations continue to operate in a policy vacuum. As set out in this report the absence of a disability strategy<sup>14</sup> has hampered discussions relating to the development and design of policy initiatives to address the rights of disabled people.

## **Recommendations**

**IMNI recommends that the NI Executive take immediate steps to finalise, publish and effectively implement a robust disability strategy for NI accompanied by a measurable plan of action for improving the living conditions of all persons with disabilities and effective monitoring arrangements.**

**The Disability Strategy should embed consideration of Windsor Framework Article 2 and include monitoring of EU developments in respect of the six Annex 1 Equality Directives, including relevant CJEU case law.**

## **114(a): Cumulative Impact Assessment**

### **Recommendations**

**IMNI recommend that the Committee continue to call on the UK Government and devolved administrations to develop a methodology to assess the cumulative impact of tax and social security reforms.**

**IMNI recommend that the Committee call upon the Secretary the State for Northern Ireland and NI Departments to ensure that further budget cuts do not exacerbate an already difficult situation for disabled people.**

2.1 Neither the UK Government nor the NI Executive have developed a methodology for assessing the cumulative impact of tax and social security reforms. However, the value of such a methodology has been demonstrated by the work of the NI Human Rights Commission (NIHRC).

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<sup>14</sup> There have been unsuccessful attempts by Government to deliver an effective Disability Strategy, since the launch of the Promoting Social Inclusion working group on Disability in 2004, the Office of the First Minister and Deputy First Minister Disability Strategy 2012-2015, and the current Department for Communities Disability Strategy Co-design group i.e., Disabled People in Northern Ireland have been waiting for twenty years for a strategy to deliver Disability Equality.

- 2.2 In 2019, NIHRC utilised a methodology for calculating the cumulative impact of tax and social security reforms to identify a clear relationship between household disability ‘score’ and the proportion of households losing from the reforms. 32% of households containing no members with functional disabilities lose from the reforms, in comparison to 66% of households with a disability score of 5.<sup>15</sup> The increase in cost of living has underscored the need for greater understanding of how reforms impact on disabled people.
- 2.3 The Committee’s recommendation is still relevant. The persistent and sharp rise in cost of living has disproportionately impacted disabled people. Wide ranging cuts<sup>16</sup> have been proposed by government departments as a result of the budget for 2023-24 allocated by the Secretary of State for Northern Ireland.<sup>17</sup> These two factors have further

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<sup>15</sup> Reed, H. and Portes, J. (2019): [Cumulative impact assessment of tax and social security reforms in Northern Ireland](#) (NIHRC), paragraph 7.2, p. 101.

<sup>16</sup> See links below to a selection of Departmental Equality Impact Assessments of 2023-24 budgets together with an outline of impacts identified for persons with disabilities:

**Department of Education** (June 2023): [EQIA Consultation Report on the 2023-24 resource budget](#)

DE analysis that disabled people will experience major negative impacts from budget reductions to SEN, School Holiday Food Grants and Healthy Happy Minds and minor negative impacts from budget reductions to Belfast Wide Early Years Pilot under Fair Start, Playboard NI Play Policy, EA Block Grant, Entitlement Framework, Engage Programme, Extended Schools.

**Department of Health** (June 2023): [Department of Health Budget 2023-24 Equality Impact Assessment](#)

The EQIA sets out proposals for reductions in funding which are likely to have an adverse impact on the right to independent living for older and disabled people. These include reducing payments for support services provided by the Community and Voluntary Sector; a reduction in the amount of Community Aids and Adaptations to clients living in their own homes; a reduction in nursing and residential care placements; and restrictions of domiciliary care packages.

**Department for Communities** (May 2023): [Budget 2023-24 Equality Impact Assessment](#)

Cuts to programmes such as the Supporting People Programme, which supports people to live independently. Funding challenges on the administration of Universal Credit, in addition to potential closure of the Affordable Warmth Scheme to new applicants. Pausing of funding for Labour Market Partnerships (from 1 July 2023) will cause adverse impacts across Section 75 groups, especially in the context of the removal of European Social Fund (ESF) funding as “LMPs not only help those seeking work, but they are also a critical intervention to help people with a disability or health condition to remain in work”.

**Department for Infrastructure** (May 2023): [Budget 2023-24 Equality Impact Assessment Public Consultation](#)

Reductions in the budget to areas such as public transport, road maintenance, and community transport will likely have differential negative impacts on people living with a disability and older people. While some decisions are not within the power of the Permanent Secretary to take under the Northern Ireland Act 2022, community transport services (such as Rural ‘Dial a Lift’, Urban ‘Disability Action Transport Service’ and Shopmobility services) are not funded beyond 30 June 2023.

<sup>17</sup> [Northern Ireland Office](#) and [The Rt Hon Chris Heaton-Harris MP](#) (27 April 2023): [Northern Ireland Secretary announces 2023-24 Budget and contingency plans for governance](#); Department of Finance (27 April 2023): [Department of Finance statement on 2023/24 Northern Ireland Budget](#); BBC Northern Ireland (27 April 2023): [Stormont budget: NI secretary denies setting out 'punishment budget'](#); BBC Northern Ireland (27 April 2023): [As it happened: Angry reaction to Stormont budget cuts](#); BBC Northern Ireland (2 May 2023): [Stormont budget: £800m needs to be found in cuts and charges - report](#); Children’s Law Centre NI (22 June 2023): [Protect Children from Budget Cuts or Face Legal Action](#); Irish News (29 June 2023): [School funding cut for special educational needs staff](#); Fitzpatrick, C., Loader, R., McCartney, S., McConnell, B., McMullen, J., Murray, C., Orr, K., Purdy, N. and Simms, V. (June 2023): [The Consequences of the Cuts to Education for Children and Young People in Northern Ireland](#) (Ulster University, Stranmillis University College, Queens University Belfast and Newcastle University).

Department for Communities officials have advised that consideration is being given to pausing action to progress the Disability Strategy, the Anti-Poverty Strategy and the Disability Employment Strategy diverting resources elsewhere because of the budget cuts.



underscored the need for greater awareness and consideration of the cumulative impact of policy decisions.<sup>18</sup>

- 2.4 Public Authorities in Northern Ireland are required to fulfil their obligations under Section 75 of Northern Ireland Act 1998<sup>19</sup>, including to have due regard for the need to promote equality of opportunity.<sup>20</sup>
- 2.5 Public authorities should consider the potential for Section 75 analysis<sup>21</sup> and equality proofing tools (screening and equality impact assessment) being used to inform, and be informed by, cumulative impact assessment.

## 114(b): Rights-based welfare reform

### Recommendation

**IMNI recommend that the UNCRPD Committee explore what steps the NI Executive will take to sustain and expand the measures to mitigate the detrimental effects of social security reforms in NI. Such measures should ensure that disabled people are guaranteed an adequate standard of living.**

- 3.1 In 2015, the Fresh Start Agreement committed to implementing the social security reforms legislated for by the UK Parliament in 2012.<sup>22</sup> The agreement also included funding for a package of measures, worth up to £585 million over four years (up to March 2020), paid for by NI Executive funds, to ‘mitigate’ some of the reforms.<sup>23</sup>

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<sup>18</sup> For example, cuts to community transport for disabled people will impact on independent living, including access to employment, health facilities, sporting and cultural facilities etc.

<sup>19</sup> See: <https://www.legislation.gov.uk/ukpga/1998/47/section/75>.

<sup>20</sup> For further information see: <https://www.equalityni.org/S75duties>.

<sup>21</sup> See also IMNI recommendation to the Committee regarding Inquiry recommendation 114 (i).

<sup>22</sup> Northern Ireland Office (2015): ‘[A Fresh Start](#) – The Stormont Agreement and Implementation Plan’, at para 3.1-3.6. The UK Parliament legislated for equivalent reforms to those introduced in GB by the Welfare Reform Act 2012.

<sup>23</sup> It should be noted that most of the key mitigation measures concerning changes to disability-related social security benefits were limited to duration of one year only. See: Evason, E. (2016): [Welfare Reform Mitigations Working Group report](#), pp7-10.

- 3.2 In 2022, bedroom tax mitigations were extended indefinitely.<sup>24</sup> All other existing mitigations were extended until March 2025.<sup>25</sup>
- 3.3 Despite these measures, a Disability Action survey in 2021 found that 78% of disabled respondents felt that disabled people did not have enough money to have a decent life.<sup>26</sup>
- 3.4 An independent review of welfare mitigations in 2021<sup>27</sup>, made recommendations for further mitigations by the Executive. However, in the absence of a functioning Executive, these recommendations cannot be advanced.
- 3.5 The NI Executive has established a Welfare Reform Composite Evaluation Framework to measure the impact of welfare reform implementation in NI and subsequent mitigations introduced.<sup>28</sup>
- 3.6 Although the Department undertook some preliminary research<sup>29</sup> to establish a baseline, an indicative timetable for outputs from the framework has not yet been placed in the public domain.
- 3.7 The NI Audit Office recommends that the Department publish a detailed plan and indicative timetable for the expected outputs.<sup>30</sup>

## 114(c) Legislation / Policy Change and (d) Public Budgets

### Recommendations

**IMNI recommend that the NI Executive take steps to increase provision of appropriate accommodation, and related social care, to meet the specific**

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<sup>24</sup> Department for Communities (1 March 2022): 'Press Release: 37,000 now have long-term protection from the bedroom tax'.

<sup>25</sup> The Welfare Supplementary Payment (Amendment) Regulations (NI) 2022. The 2022 Regulations also ensure that claimants do not lose their bedroom tax if they move home and that any person who is responsible for children can get an extra payment to cover the benefit cap with the payment being the full value of the cut to their benefits.

<sup>26</sup> Toman, N. et al (2022): [Progress towards the Implementation of UNCRPD in Northern Ireland](#), p.72.

<sup>27</sup> Ibid, p. 6.

<sup>28</sup> Including surveys, focus groups, consultations and an analysis of administrative data.; UK Cabinet Office Disability Unit (December 2022): [UN Committee on the Rights of Persons with Disabilities 23016 Inquiry - 2022 UK follow-up report](#); NI Audit Office (2019): [Welfare Reforms in Northern Ireland](#), p. 60.

<sup>29</sup> See: <https://www.communities-ni.gov.uk/topics/welfare-changes-briefing>.

<sup>30</sup> NI Audit Office (2019): [Welfare Reforms in Northern Ireland](#).

The NI Audit Office has noted that 'This outcomes-based evaluation strategy focuses on the impact on the claimant population, wider society and the economy...with the end of the mitigation period looming, there is a need for up-to-date research which will inform future decisions on interventions and resourcing', p. 60.

needs of a range of equality groups, advancing the right to independent living.<sup>31</sup>

IMNI recommend that the Department for Communities reopens the Independent Living Fund for new claimants in NI and ensures the fund is resourced to meet demand on a long-term basis.

IMNI recommend that the Department for Communities develop and implement, in partnership with disabled people and their representative organisations, an effective Disability Employment Strategy that aims to reduce the disability employment gap in Northern Ireland.<sup>32</sup>

IMNI recommend that the Department for the Economy ensure provision of long-term funding arrangements for existing and new disability employment projects.

IMNI recommend that the Department of Communities explore the feasibility of introducing a human rights-based model of social security, drawing on that adopted by the Scottish Government<sup>33</sup>.

IMNI recommend that the Department for Work and Pensions consider the establishment of an independent process to ensure that the rates of social security benefits are calculated at a level that reflects essential costs, such as food, utilities and vital household goods.

IMNI recommend that the NI Executive take immediate action to develop and implement an effective anti-poverty strategy, which includes specific measures to address the additional costs arising from having a disability and supports disabled people into employment.

IMNI recommend that the NI Executive, NI Assembly and the Department for Communities should reform the disability equality legislation, including to ensure that disability-related discrimination is replaced by provisions prohibiting indirect discrimination and discrimination arising from disability

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<sup>31</sup> Equality Commission for Northern Ireland (2019): [Equality in Housing and Communities: Summary Key Policy Recommendations](#).

<sup>32</sup> See: [ECNI - Employment policy and equality in Northern Ireland \(equalityni.org\)](#).

<sup>33</sup> [Disability Strategy Expert Advisory Panel Report](#), pp. 42-44 and 47 (Department for Communities: December 2020); Independent Mechanism for Northern Ireland (2020): [Report on the Department of Communities to Independent Review of PIP Process and Compliance with Recommendations of the UN CRPD Committee](#), pp. 56-59.

**and the use of disability or health related questions in job applications is prohibited.<sup>34</sup>**

### *Accessible Housing*

- 4.1 The Disability Strategy Expert Advisory Panel has reported that there continues to be a lack of accessible and affordable housing for people with a range of disabilities.<sup>35</sup>
- 4.2 Long delays in accessing housing restricts the realisation by disabled people in NI of the right to live independently.<sup>36</sup> Demand for social care is increasing and access to funding is decreasing.<sup>37</sup> In a 2018 study by Disability Action on Adult Social Care, 74% of respondents reported that disabled people have little or no choice and control in relation to social care in NI.<sup>38</sup>
- 4.3 Despite a commitment in 1995 to resettle all long-stay patients from the three learning disability hospitals in NI to accommodation offering a better life for the patient<sup>39</sup>, the number of disabled people in institutional and residential settings has increased. Austerity measures, including welfare reform, have been cited as a factor for this increase.<sup>40</sup>
- 4.4 People with a learning disability continue to remain in hospital, even though they no longer need treatment and could be resettled into the community<sup>41</sup>. Funding has not matched the levels identified in the Bamford Review of Mental Health and Learning Disability, as necessary to support resettlement<sup>42</sup>. Concern has also been expressed about d/Deaf and disabled people staying long term<sup>43</sup> in assessment and treatment units<sup>44</sup>.

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<sup>34</sup> For further information see: [ECNI - Disability Law Reform - Addressing Inequality, Equality Commission NI \(equalityni.org\)](#).

<sup>35</sup> Department for Social Development/Department for Health, Social Services and Public Safety (2016): [Inter-Departmental Review of Housing Adaptations Services: Final Report and Action Plan](#).

Department for Communities (2021): [NI Homelessness Bulletin](#).

<sup>36</sup> They Work For You (2021): [Social Housing: East Belfast, Joanne Bunting, DUP](#).

<sup>37</sup> British Medical Association (2020): [Social care in Northern Ireland](#).

<sup>38</sup> Disability Action (2018): [Reform of Adult Social Care in Northern Ireland Briefing Paper](#), p.7.

<sup>39</sup> NIAO (2009): [Resettlement of Long-Stay Patients from Learning Disability Hospitals](#), para 3, p.2.

<sup>40</sup> Centre for Welfare Reform (2017): [Back to Bedlam What Kind of Future Faces People with A Learning Disability?](#).

<sup>41</sup> NIHE (2014): [The Hospital Resettlement Programme in NI after the Bamford Review](#).

<sup>42</sup> Disability Action (2017): [Alternative Report on the Implementation of the Convention on the Rights of Persons with Disabilities in Northern Ireland](#), paragraph 2.13.3, p.25.

<sup>43</sup> Two years plus.

<sup>44</sup> Ibid.

- 4.5 The main institutional residential setting for disabled people in NI is Muckamore Abbey Hospital (MAH). Disturbingly, allegations of abuse at MAH in 2017 have resulted in criminal investigations<sup>45</sup> and a public inquiry<sup>46</sup>.
- 4.6 In October 2022, the Department of Health issued a public consultation on the future of MAH<sup>47</sup>. IMNI welcomed the proposal to close MAH but recommended that the Department commit to ensuring that resettlement of patients is aligned to the rights set out in UNCRPD Article 19 and elaborated on in the UN Committee on the Rights of Persons with Disabilities' General Comment No. 5.<sup>48</sup>
- 4.7 In relation to housing for disabled people, the Disability Strategy Expert Advisory Panel<sup>49</sup> recommended that the definition of “homelessness” is revised to consider the accessibility of properties as the criteria for securing maximum points on the waiting list for priority housing.
- 4.8 In addition, it called for the NI Executive to:
- “recognise personal assistants as distinct from carers in adult social care, and ensure they are available to all disabled people including people with learning disabilities and people who have experience of mental health services.”<sup>50</sup>

#### *Status of the right to independent living in domestic law*

- 4.9 The closure of the Independent Living Fund (ILF) to new applicants from 2010 has severely limited disabled people’s choice and control and independence.<sup>51</sup>
- 4.10 In 2020, an ILF Working Group<sup>52</sup> was convened by the Department of Health<sup>53</sup> to help develop a briefing for the Health Minister on the

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<sup>45</sup> Graham, S. (2018): [Police probing more than 70 allegations of 'ill treatment' at Muckamore hospital](#), Irish News, 15 August 2018.

<sup>46</sup> Department of Health (2020): [Swann announces Public Inquiry into Muckamore Abbey Hospital](#).

<sup>47</sup> See: [Public consultation on the future of Muckamore Abbey Hospital](#).

<sup>48</sup> Equality Commission for Northern Ireland (January 2023): [Response to the consultation by the Department of Health on the future of Muckamore Abbey Hospital](#), p. 10.

<sup>49</sup> Department for Communities (2020): [Disability Strategy Expert Advisory Panel: Report and recommendations](#)

<sup>50</sup> Ibid, p. 38.

<sup>51</sup> Department for Communities (2020): [Disability Strategy and Expert Advisory Panel: Report and Recommendations](#), p.34.

<sup>52</sup> Which included a number of disabled people and their organisations.

<sup>53</sup> Disability News Service (2020): [Northern Ireland to consider expansion of Independent Living Fund](#).

feasibility and long-term sustainability of re-opening the ILF to new users.<sup>54</sup>

- 4.11 Although the Group has prepared a number of options for reopening the ILF, in the absence of a functioning NI Executive (and Health Minister), it is not possible to progress this project.<sup>55</sup>
- 4.12 There is no statutory right to Independent Living recognised in UK or NI law. A survey carried out by Disability Action (2021) found that 76% (63) of d/Deaf and disabled respondents indicated that they do not have enough access to support to live independently.<sup>56</sup>
- 4.13 The absence of an integrated strategy for Independent Living combined with little or no co-ordination between services relating to education, childcare, transport, housing, employment and social security programmes undermines policies which, if all working together, would support disabled people to live independently.
- 4.14 The roll-out of Self Directed Support as a model for choice and control for disabled people in NI has been limited and remains in the early stages of development<sup>57</sup>.

### *Employment*

- 4.15 NI has the lowest employment rate for disabled people in the UK with 36.4% of disabled people in employment compared to 80.3% of people without a disability<sup>58</sup>, a disability employment gap of 43.9%.
- 4.16 The preponderance of workers with mental health disability in the sectors hardest hit by Covid-19 meant that they were particularly vulnerable to job losses caused by the pandemic and the economic response to it.<sup>59</sup>

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<sup>54</sup> Including helping to develop the eligibility criteria for new applications.

<sup>55</sup> The Group no longer meets.

<sup>56</sup> Toman, N. et al (2022): [Progress towards the Implementation of UNCRPD in Northern Ireland](#), p.72.

<sup>57</sup> Department for Communities (2020): [Disability Strategy and Expert Advisory Panel: Report and Recommendations](#), p.36. The Panel also notes that there is also a need to reform Adult Social Care to enhance the independence of d/Deaf and disabled people.

<sup>58</sup> NISRA (2021): [Quarterly Labour Force Survey Tables – August 2021](#).

52.3% of disabled people were in employment in 2021 in GB (source: House of Commons Library (2021): [Disabled people in employment](#), p. 5.); the figure for Europe is 50.6% (source: Institute of Entrepreneurship Development (2021): [The Status of Employment and disability in the EU in 2021](#)). NI has a disability pay gap of approximately 12.5%, lower than the overall disability pay gap for the UK (19.6%)<sup>58</sup> (Source: Trade Union Congress (2020): [Disability pay and employment gaps](#)).

<sup>59</sup> Roberts, J., et al. (2021): [Written evidence from Jennifer Roberts, Mark Bryan, Andrew Bryce, Nigel Rice, Cristina Sechel, University of Sheffield and University of York \(DEG0132\)](#) paragraph 5.

- 4.17 While the UK Government asserts that employment is the route out of poverty, the Institute for Fiscal Studies (2022)<sup>60</sup> has found that although a reduction in disability benefits is associated with an increase in the likelihood of being in paid work, that four years after such a reduction 47% were not in paid work - with an increase in rates of income poverty among this group.<sup>61</sup>
- 4.18 An analysis of barriers to the employability of people with disability in NI highlighted the attitude of employers; workplace accessibility; and a lack of educational opportunities for disabled people.<sup>62</sup>
- 4.19 Research by the Department for Work and Pensions (2023) found that a sanction leads the average claimant to exit less quickly from Universal Credit into PAYE earnings and to earn less upon exiting.<sup>63</sup>
- 4.20 Disability discrimination remains the most common enquiry to the ECNI (49.5% in 2020/21).<sup>64</sup> Failure to make reasonable adjustments is a common concern.<sup>65</sup> Independent research (2021) has highlighted gaps in legislative protection between NI and GB as a significant factor contributing to ongoing inequality and discrimination experienced by disabled people in the labour market.<sup>66</sup>
- 4.21 As noted in paragraph 1.16 above, additional legal protections for disabled people have been incorporated into NI law in accordance with Windsor Framework Article 2. This includes an obligation for NI law to be amended to take account of any EU law developments that enhance minimum standards of protection under the EU Framework Employment Equality Directive<sup>67</sup> and associated CJEU caselaw<sup>68</sup>.

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<sup>60</sup> Institute for Fiscal Studies (2022): [Living standards of working-age disability benefits recipients in the UK](#).

<sup>61</sup> Ibid, p. 2. IFS found that a reduction in an individual's disability benefits is associated with an increase in the likelihood of being in relative poverty of 7 percentage points and that this association persists four years after the event (when 28% of this group are in income poverty).

<sup>62</sup> McQuaid R., et al (2013): [DELNI Economic Inactivity Strategy: Literature Review Project](#).

<sup>63</sup> Department for Work and Pensions (2023): [The impact of benefit sanctions on employment outcomes](#), p.4; See also: Disability Rights UK (12 April 2023): [Sanctions ineffective as a way of getting people into jobs or to work more hours, finds suppressed DWP report](#).

<sup>64</sup> Equality Commission for Northern Ireland (2021): [Annual Report and Accounts](#), p.18.

<sup>65</sup> Disability Action (2016): [Hard at Work: Employment and Disability in NI](#).

<sup>66</sup> Toman, N. et al (2022): [Progress towards the Implementation of UNCRPD in Northern Ireland](#), p. 406; Department for Communities (2020): [Disability Strategy Expert Advisory Panel: Report and Recommendations](#), p.83.

<sup>67</sup> Directive 2000/78/EC, 'Council Directive on Establishing a General Framework for Equal Treatment in Employment and Occupation', 27 November 2000.

<sup>68</sup> See, for example, CJEU decision in the case of *Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie*, Case C-16/19, EU:C:2021:64. The CJEU ruled that, under Article 1 of the Framework Equality Directive, the definition of 'disability discrimination' should include discrimination between persons with disabilities. It also

4.22 Concerns have been raised by disability stakeholders regarding the impact of Brexit, and the associated loss of funding via the European Social Fund (ESF), on the supported employment sector<sup>69</sup>. The UK Government's replacement fund, the UK Shared Prosperity Fund, does not provide the same standard of support to disabled people accessing employment as the ESF<sup>70</sup>.

#### *Adequate standard of living and social protection*

4.23 The UN Committee on the Rights of Persons with Disabilities has called upon the State Party to ensure that eligibility criteria and assessments to access Personal Independence Payments, Employment Support Allowance and Universal Credit are in line with the human rights model of disability.<sup>71</sup>

4.24 In its report (2019) to the Department for Communities on the Independent Review of PIP Process and Compliance with Recommendations of the UN CRPD Committee, IMNI highlighted multiple significant shortfalls in process with regard to meeting human rights standards.<sup>72</sup>

4.25 IMNI concluded that 'The Department for Communities accepted the majority of the UN CRPD Committee's 2016 and 2017 recommendations. However, acceptance does not equate to explicitly complying with these recommendations... there is still a long way to go in terms of the Department for Communities fully and effectively implementing the UN CRPD Committee's recommendations.'<sup>73</sup>

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ruled under Article 2 of this Directive any form of discrimination which is inextricably linked to a protected characteristic, amounts to direct discrimination, rather than indirect discrimination. ECNI and NIHRC has called on the NI Executive and relevant Departments to ensure that NI disability law gives effect to this CJEU decision and have called for reform of the disability equality legislation. See Equality Commission for Northern Ireland, Northern Ireland Human Rights Commission and Irish Human Rights and Equality Commission, Policy Recommendations (2023): [European Union developments in Equality and Human Rights: The impact of Brexit on the divergence of rights and best practice on the island of Ireland](#) (ECNI, NIHRC and IHREC).

<sup>69</sup> O'Connell, R. and Cunningham, T. (2022): [Impact of Brexit on s75 Equality Groups in Northern Ireland: EU Funding](#), pp. 7, 11, 20-21, 22, 24, 32, 34, 36, 37, 39, 40, 44, 57, 83, 86, 87 (Ulster University for the Equality Commission for Northern Ireland).

<sup>70</sup> Ibid pp. 407-410.

BBC NI News (2 April 2023): [UK Shared Prosperity Fund not a replacement for EU funding says Mencap](#).

<sup>71</sup> UN Committee on the Rights of Persons with Disabilities (2017): [Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland](#), paragraph 59 (c), p. 14.

<sup>72</sup> Independent Mechanism for Northern Ireland (2020): [Report on the Department of Communities to Independent Review of PIP Process and Compliance with Recommendations of the UN CRPD Committee](#),

<sup>73</sup> Independent Mechanism for Northern Ireland (2020): [Report on the Department of Communities to Independent Review of PIP Process and Compliance with Recommendations of the UN CRPD Committee](#), paragraph 5.1, pp. 45-46.



- 4.26 IMNI recommended that the approach adopted in the social security system in Scotland, as a case of good practice, particularly for the protection of the rights of people with disabilities, be considered in Northern Ireland.<sup>74</sup> The Department for Communities' Disability Strategy Expert Advisory Panel has also endorsed this approach.<sup>75</sup>
- 4.27 The UK Government has advised that inflation-linked benefits and tax credits will rise by 10.1% from April 2023, in line with the Consumer Prices Index (CPI) rate of inflation in September 2022.<sup>76</sup>
- 4.28 However, the Joseph Rowntree Foundation and the Trussell Trust have revealed that the basic rate of Universal Credit falls short of what is needed to afford essentials and is now at its lowest ever level as a proportion of average earnings.<sup>77</sup>
- 4.29 Reports from several sources have shown how social security benefits rates have failed to keep pace with the increasing cost of living.<sup>78</sup>
- 4.30 Fitzpatrick (2023) states that 'Current benefit levels in NI are at an 'all-time low'. When a centralised system of social security was introduced in GB in 1948, unemployment benefit was equivalent to 20 per cent of average weekly earnings; today's equivalent (universal credit standard allowance) has fallen to 12.5 per cent.
- 4.31 'The most recent uprating in April 2023 means that working age social protection is being maintained at the greatly diminished level of adequacy it had reached by the late 2010s'.<sup>79</sup>

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<sup>74</sup> The introduction of a principles-based approach to social security, as enshrined in legislation - The Social Security (Scotland) Act 2018 - and a social security charter - Social Security Scotland, 'Our Charter' (SSS, 2019).

IMNI recommended that, further to this, the Scottish approach may be examined with regards to the possibility of the future implementation of a similar principles-based approach in NI, including adopting the principle of social security as a human right, in accordance with UN ICSECR, Article 9, and necessary to the access and enjoyment of other human rights.

<sup>75</sup> Department for Communities (2020): [Disability Strategy Expert Advisory Panel - report and recommendations](#), pp. 42-42 and 47.

<sup>76</sup> Kirke-Wade, E. and Harker, R. (1 December 2022): [Benefits uprating 2023-24](#), p. 4 (House of Commons Library Research Briefing).

<sup>77</sup> The Trussell Trust and the Joseph Rowntree Trust (2023): [An Essentials Guarantee](#) (Full Report), pp. 3 and 15; See also Joseph Rowntree Trust (2022): [Fifty years of benefit uprating](#). The report shows that in eight out of ten benefits upratings between 2013 and 2022, the basic rate of employment benefits had lost value with a freeze in benefits imposed during 2016-2019.

<sup>78</sup> Loughborough University (2023): [The minimum income standard for the United Kingdom](#); Resolution Foundation (13 October 2022): [The Long Squeeze](#); Arnold, S., Caddick, D. and Krebel, L. (2021): [How our benefits system was hollowed out over ten years](#) (New Economics Foundation); Resolution Foundation (16 October 2019): [The benefit freeze has ended, but erosion of the social security safety net continue](#); UN Special Rapporteur on Extreme Poverty and Human Rights (2019): [Visit to the United Kingdom of Great Britain and Northern Ireland: Report of the Special Rapporteur on extreme poverty and human rights](#), page 9; Rutherford, T. (2013): [Historical rates of social security benefits](#) (House of Commons Library).

<sup>79</sup> Fitzpatrick, C. (May 2023): ['Imagining a new social security system in a new Ireland'](#), Agenda NI May 2023.

- 4.32 Research by the Ipsos Mori and the Trussell Trust (2023) found that nearly two thirds of people referred to food banks in the Trussell Trust network are disabled.<sup>80</sup> The research also highlighted that, for most people referred food banks in the Trussell Trust network, the design and delivery of the social security system are major contributors to their inability to afford the essentials.<sup>81</sup>
- 4.33 The NI Executive has a legal duty to introduce an anti-poverty strategy.<sup>82</sup> A draft Strategy has been developed which takes an intersectional approach.<sup>83</sup> The associated Anti-Poverty Strategy Co-Design Group has now published its recommendations.<sup>84</sup> However, in the absence of a functioning NI Executive, it will not be possible to progress this Strategy.
- 4.34 A report (2023) by the Resolution Foundation<sup>85</sup> found that disabled people had a disposable income (£19,319) 44% lower than that of other adults of working age (£27,766), leaving them at significant risk to rising costs.<sup>86</sup> The Foundation also found that 41% of people with a disability said they couldn't afford to keep their homes warm, compared to 23% of non-disabled people. In addition, 31% of people with a disability say they have had to reduce their expenditures on food, compared to 18% of non-disabled people.<sup>87</sup>
- 4.35 The Joseph Rowntree Foundation (2022) has highlighted a gap of 12 percentage points in poverty rates between disabled and non-disabled people.<sup>88</sup>

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<sup>80</sup> Ipsos and the Trussell Trust (2023): [Hunger in Northern Ireland](#), p. 13.

<sup>81</sup> Ibid, p 41.

<sup>82</sup> Under Section 28E of the Northern Ireland Act 1998 as amended by the St. Andrews Agreement in 2006. In 2020, the Department for Communities established an Anti-Poverty Co-Design Group to advise on the development of the strategy but at the time of writing, it has yet to be finalised.

In 2020/2021, the proportion of individuals in NI in relative poverty was 17% and the proportion of NI individuals in absolute poverty was 13% (Source: Department for Communities (2022): 'Poverty Bulletin: Northern Ireland 2020/21').

<sup>83</sup> [Executive Summary for the Anti-Poverty Strategy \(communities-ni.gov.uk\)](#). The draft Strategy recommendations, developed by an expert advisory panel, included measures to support disabled people into employment and to encourage the uptake of benefits amongst disabled people.

<sup>84</sup> Anti-Poverty Co-Design Group (2022): [Recommendations for an Anti-Poverty Strategy for Northern Ireland](#). Annex B of the report provides a detailed account of the link between disability and poverty.

<sup>85</sup> El Dessouky, O. and McCurdy, C. (2023): [Costly differences - Living standards for working-age people with disabilities](#).

<sup>86</sup> Ibid, p. 3.

<sup>87</sup> Ibid.

<sup>88</sup> Joseph Rowntree Foundation (2022): [UK Poverty 2022 - The essential guide to understanding poverty in the UK](#), pages 57-58. The poverty rate for disabled people is 32%. The difference is particularly stark for working age adults: those who are disabled are more than twice as likely to live in poverty than those who are not (38% and 17% respectively). Figures are based on After Housing Costs income, excluding extra-cost disability benefits from household income.

- 4.36 The Institute for Fiscal Studies (2022) has reported that there are around a million people in the UK who are disabled and in the most materially deprived tenth of the population but not receiving disability benefits.<sup>89</sup>
- 4.37 A report by the Mental Health Foundation (2023) has noted the link between rising poverty, financial stress and an increased risk of mental health problems and lower mental wellbeing.<sup>90</sup>

## 114(e) Accessible Communication

### Recommendations

**IMNI recommends that the NI Executive review current arrangements for raising awareness of social security entitlement amongst disabled people.**

**IMNI recommend that the UK Government and NI Executive take steps to ensure that system for assessing the eligibility of social security benefits to disabled people are reviewed to ensure they are accessible.**

- 5.1 The Anti-Poverty Strategy Expert Advisory Panel have recommended an engagement programme targeted towards d/Deaf and disabled people to provide information regarding welfare mitigation strategies and new provision.<sup>91</sup>
- 5.2 Similarly, the Disability Strategy Expert Advisory Panel has highlighted the need to facilitate the use of self-directed support and direct payments including accessible information to ensure all disabled people can access and use these options'.<sup>92</sup>

### *Personal Independent Payments*

- 5.3 In 2017, the High Court found that changes to Personal Independence Payment (PIP) mobility descriptors unlawfully discriminated against

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<sup>89</sup> Institute for Fiscal Studies (2022): [Living standards of working-age disability benefits recipients in the UK](#), p 2.

<sup>90</sup> The Mental Health Foundation (2023): [Mental Health and the Cost of Living Crisis - another pandemic in the making?](#) The report identifies people with disabilities as a high-risk group (p. 35); The Institute for Fiscal Studies has found that four-fifths of the rise in the number of disability benefit recipients over the last two decades is accounted for by psychiatric conditions [Source IFS (2022): [Living standards of working-age disability benefits recipients in the UK](#), p.3].

<sup>91</sup> Department for Communities (2021): [Report from the Anti-Poverty Strategy Expert Advisory Panel](#), paragraph 24, p.8.

<sup>92</sup> Disability Strategy Expert Advisory Panel (2020): [Disability Strategy Expert Advisory Panel - Report and Recommendations](#), pp. 36 and 38. IMNI recommends that accessible communications should include alternatives to digital formats.

claimants with poor mental health, thus violating Articles 8 and 14 ECHR.<sup>93</sup>

- 5.4 In 2020, the Department for Communities (DfC) sponsored a second independent review of the assessment process for the PIP.<sup>94</sup> The review found that, while some claimants have noticed improvements, “the current process is not a positive experience for everyone, and is still viewed by many with mistrust and suspicion. Evidence gathered...suggests more work needs to be done”.<sup>95</sup> DfC has published its response to the independent review, accepting the majority of its recommendations in full.<sup>96</sup>
- 5.5 In 2021, the NI Public Service Ombudsman (NIPSO) found that DfC repeatedly failed to ensure that Capita's Disability Assessors<sup>97</sup> appropriately completed requests for further evidence from health professionals. This was described as a missed opportunity “to gather specific, appropriate and useful evidence”.<sup>98</sup> NIPSO found “systemic maladministration, having identified repeated failures which are likely to reoccur if left remedied”.<sup>99</sup> DfC stated it would “carefully consider all the recommendations of the report”.<sup>100</sup>
- 5.6 Toman et al<sup>101</sup> have highlighted that 4% of individual PIP decisions made between April 2013 and December 2017 were overturned on appeal<sup>102</sup>. Only 48% of new PIP claims within NI were successful during the period of June 2016 to February 2021.<sup>103</sup> 27% of claimants who had previously received Disability Living Allowance (DLA) and were reassessed for PIP,

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<sup>93</sup> [RF v Secretary of State for Work and Pensions and Others \[2017\] EWHC 3375](#).

<sup>94</sup> Marie Cavanagh, [Personal Independence Payment: a Second Independent Review of the Assessment Process](#), (Department for Communities, 2020).

<sup>95</sup> Marie Cavanagh, 'Personal Independence Payment: a Second Independent Review of the Assessment Process', (DfC, 2020), at 9.

<sup>96</sup> Department for Communities, '[The Second Independent Review of the Personal Independence Payment Assessment Process - Department for Communities' Response](#)', (DfC, 2021).

<sup>97</sup> Capita is contracted by DfC to carry out disability assessments of claimants.

<sup>98</sup> NI Public Service Ombudsman, 'PIP and the Value of Further Evidence: An Investigation by the Northern Ireland Public Ombudsman into Personal Independence Payment', (NIPSO, 2021), at 82.

<sup>99</sup> NI Public Service Ombudsman, 'PIP and the Value of Further Evidence: An Investigation by the Northern Ireland Public Ombudsman into Personal Independence Payment', (NIPSO, 2021), at 6.

<sup>100</sup> Department for Communities, 'Press Release: Communities Minister Commits to Further Improvements in PIP Delivery', 17 June 2021.

<sup>101</sup> Toman, N. et al (2022): [Progress towards the Implementation of UNCRPD in Northern Ireland](#), p. 508.

<sup>102</sup> Department of Communities (2018): Personal Independence Payment (PIP) - Experimental Statistics (February (2018)), p. 1. See: [Personal Independence Payment statistics | Department for Communities \(communities-ni.gov.uk\)](#).

<sup>103</sup> Department of Communities (February 2021): [Personal Independence Payments \(PIP\) - Experimental Statistics \(February 2021\)](#), p. 1.

were unsuccessful and were left with no access to disability-specific benefits between June 2016 and February 2018.<sup>104</sup>

- 5.7 In 2021, the UK Government held a public consultation on shaping further social security support, which included proposals to amend arrangements for the assessment of those seeking social security supports.<sup>105</sup> Similar proposals have not been brought forward with respect to NI.

## 114(f) Access to Justice

### Recommendation

**IMNI recommends that the NI Executive take steps to assess (i) the availability of credible advice on eligibility for social security benefits to disabled people; (ii) the availability of legal advice and support to assist a disabled person in challenging an initial assessment.**

- 6.1 Independent research commissioned by the ECNI noted that d/Deaf and disabled people have reported significant challenges accessing advice and support to obtain their benefit entitlements.<sup>106</sup>
- 6.2 The research also highlighted findings by The View Digital<sup>107</sup> of a survey of NI advice workers, highlighting fears for claimants' rights in the 'broken social security system':
- 75% of cases advice workers anticipated a denial of the minimum essential level of benefits required to access food, housing, and healthcare;
  - 55% of claimants were not able to access professional advice and representation at each stage of the social security assessment process;

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<sup>104</sup> Department for Communities (February 2018): [Personal Independence Payments \(PIP\) - Experimental Statistics \(February 2021\)](#), p. 1.

<sup>105</sup> [Shaping future support: the health and disability green paper - GOV.UK \(www.gov.uk\)](#).

<sup>106</sup> Toman, N. et al (2022): [Progress towards the Implementation of UNCRPD in Northern Ireland](#), p. 508.

<sup>107</sup> The View Digital (6 September 2021): [Advice workers fear for claimants' rights in 'broken social security system' in Northern Ireland.](#)

- 83% of claimants were not informed by the Department about the criteria used to assess their eligibility for the benefit they applied for; and
- 80% of claimants did not fully understand the nature of the assessment process – a figure which rose to 98% of Universal Credit claimants.<sup>108</sup>

6.3 ECNI has a role in ensuring the effective application of equality laws in NI, including a duty to provide advice to anyone who believes they have experienced unlawful discrimination on various grounds, including disability<sup>109</sup>. However, ECNI is constrained by limited resources from supporting every alleged case of discrimination.<sup>110</sup>

## **114(g) Consulting and Actively Involving Disabled People and their Representative Organisations**

### **Recommendation**

**IMNI recommends that the NI Executive take immediate steps to introduce a disability strategy with an accompanying Disability Forum to be composed of disabled people and their representative groups. This should be sufficiently resourced on a long-term basis.**

7.1 The NI Executive, in the Draft Programme for Government 2016, committed to involve disabled people in a “central regional disability forum”.<sup>111</sup> This commitment has never been realised and is interlinked with the need for a disability strategy for NI. The Disability Strategy Expert Advisory Panel note that: ‘The absence of a NI wide governance framework involving...disabled people and their organisations and their limited access to key decision making structures...has been a persistent challenge in the development of policies and legislative measures that

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<sup>108</sup> Ibid.

<sup>109</sup> This means providing legal advice and, in some instances, representation for people taking cases of disability discrimination to Tribunals and Courts. See: ECNI (2022): [Policy for the provision of legal advice and assistance to individuals](#).

<sup>110</sup> Toman, N. et al (2022): [Progress towards the Implementation of UNCRPD in Northern Ireland](#).

<sup>111</sup> Department for Communities (2016): Programme for Government, Delivery Plan Indicator 42: Average life satisfaction score of people with disabilities.

affect...disabled people'.<sup>112</sup> The Panel recommended that the NI Executive develop an NI Disability Forum to work with government, with d/Deaf and disabled people in a leadership role.<sup>113</sup> Some three years later this commitment remains unrealised.

## **114(h) Reducing Negative or Discriminatory Stereotypes**

### **Recommendation**

**IMNI recommends that the NI Executive implement specific long-term measures to eliminate disability discrimination; to tackle prejudicial attitudes; and to promote values of acceptance and respect for difference, including:**

- **developing key awareness-raising actions e.g. public awareness strategies and campaigns, based on the human rights-based approach to disability, with different target audience groups;**
- **continuing to raise awareness of, challenge and seek to eradicate disability hate crime;**
- **the development of hate crime legislation that carefully considers and ensures compliance with Windsor Framework Article 2;**
- **the adoption of a victim-centred approach when investigating, prosecuting and remedying disability hate crime;**
- **promoting disability awareness throughout all levels of the education system from an early age; and**

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<sup>112</sup> Disability Strategy Expert Advisory Panel (2020): [Report and Recommendations](#), p.16.

<sup>113</sup> Ibid, p.18. The Report also recommends that the Executive:

- Work with women, girls, children and young people, older people, ethnic minorities, people with learning disabilities and mental health issues, d/ Deaf people and others to ensure their direct participation and involvement in such a Forum;
- Prioritise the views of d/Deaf and disabled people and their representative organisations Fund and support the operation of DPOs to engage effectively in decision making and support the expansion of DPOs across Northern Ireland;
- Fund d/Deaf and disabled people's participation in the monitoring framework using models of good practice elsewhere;
- Ensure that every Minister and senior civil servant has a copy of General Comment No. 7 and considers every consultation and engagement with d/Deaf and disabled people against the CRPD Committee's recommendations set out in paragraph 94.

- including disability awareness in pre-school, primary and secondary school curriculums.

- 8.1 A recent research report has highlighted ‘...persistent prejudice towards disabled people, including negative attitudes towards disabled people claiming social security benefits’ noting that, at the time of writing, there is no coordinated strategy to raise awareness of the diverse experience of disability within NI<sup>114</sup>.
- 8.2 In 2021, the Addressing Bullying in Schools (Northern Ireland) Act 2016 came into force.<sup>115</sup> The 2016 Act places statutory duties on schools to take steps to prevent bullying and to record bullying incidents. However, the 2016 Act does not place a requirement on schools to report incidences of bullying to the Department of Education or the Education Authority Northern Ireland.<sup>116</sup>
- 8.3 Hate crimes against disabled people increased from 63 in 2018-19 to 93 in 2020-2021 and have continued to increase.<sup>117</sup> UKIM believes the number of reported incidents significantly under-represents the extent of disability hate crime throughout the UK, including in NI<sup>118</sup>.
- 8.4 The EU Victims’ Directive falls within scope of Windsor Framework Article 2.<sup>119</sup> It recognises that victims of hate crime are at a high risk of secondary and repeat victimisation and, as such, will benefit from special protection measures during criminal proceedings, with particular attention paid to victims of hate crime, gender-based violence and disabled victims.<sup>120</sup>

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<sup>114</sup> Toman, N. et al (2022): [Progress towards the Implementation of UNCRC in Northern Ireland](#), p. 224.

<sup>115</sup> Department of Education (April 2021), [Press Release: Schools to implement Addressing Bullying Act, 21 April 2021](#).

<sup>116</sup> To provide an overview of numerical trends in bullying across equality grounds.

<sup>117</sup> Police Service of Northern Ireland (December 2021): [Trends in Hate Motivated Incidents and Crimes Recorded by Police in Northern Ireland 2004/5 to 2021/22](#), table 1.1, p.6. The latest statistics, for the period January to December 2022, show an increase in disability hate crimes to 119, the highest 12 month level for crimes since the recording of disability motivation began in 2005/06 [Source: PSNI (23 February 2023): [Incidents and Crimes with a Hate Motivation Recorded by Police in Northern Ireland - Update to 31st December 2022](#)].

IMNI notes the recommendations made by Judge Marrinan (202?) in the [Independent Review of Hate Crime Legislation in Northern Ireland](#). The Equality Commission NI’s response to the Review is available [here](#)

<sup>118</sup> UK Independent Mechanism (2017): [Disability Rights in the UK](#), p. 149, p.72.

<sup>119</sup> Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime’, 25 October 2012.

<sup>120</sup> Article 22, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012. Article 8 and Recitals 56-58, Directive 2012/29/EU, ‘Directive of the European Parliament and of the Council Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime’, 25 October 2012.



8.5 Following the Independent Hate Crime Review in 2020,<sup>121</sup> and the Department of Justice response to the Review,<sup>122</sup> the first of a two-stage public consultation was launched in 2022 seeking responses on improving the effectiveness of NI hate crime legislation.<sup>123</sup> Both NIHRC and ECNI responded to the Consultation within their respective remits highlighting the need for a victim centred approach in line with the UN CRPD<sup>124</sup> and the EU Victims' Directive.<sup>125</sup> The Department of Justice has put in place a dedicated Hate Crime Branch to take forward work on implementing the Independent Review's recommendations.<sup>126</sup>

## **114(i) Considering Disabled People at Risk in the Implementation of Policies or Programmes**

### **Recommendations**

**IMNI reiterates the importance of public authorities in Northern Ireland using the equality appraisal tools, associated with their duties under Section 75 of the Northern Ireland Act 1998<sup>127</sup>, to assess the impact of policies and programmes on disabled people. Where adverse impacts are identified, to consider alternative policies and mitigating actions.**

**IMNI also recommends monitoring of all key government measures by equality ground (including disability) and the routine collection of equality disaggregated data to facilitate this.**

9.1 There continues to be a disproportionate number of disabled people living on a low income or in poverty. They are particularly vulnerable to

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<sup>121</sup> Independent Hate Crime Review Team, 'Hate Crime Legislation in NI: Independent Review', (DoJ, 2020).

<sup>122</sup> Department of Justice, 'Review of Hate Crime Legislation in Northern Ireland - Departmental Response', (DoJ, 2021).

<sup>123</sup> Department of Justice, 'Improving the Effectiveness of Hate Crime Legislation in NI: A Public Consultation and Call for Views' (DoJ, 2022).

<sup>124</sup> CRPD/C/GBR/CO/1, 'UN CRPD Committee Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland', 29 August 2017, at para 19.

<sup>125</sup> NI Human Rights Commission, [Response to Public Consultation on Improving the Effectiveness of Hate Crime Legislation in NI](#) (NIHRC, 2022); Equality Commission for Northern Ireland. [Response to consultation: Department of Justice – Improving the effectiveness of Hate Crime Legislation in Northern Ireland](#) (ECNI 2022).

<sup>126</sup> Department of Justice, 'Review of Hate Crime Legislation in NI - Departmental Response' (DoJ, 2021), at 13.

<sup>127</sup> [Section 75 of the Northern Ireland Act 1998](#) and [Schedule 9](#); For further information see: [ECNI - Section 75 duties for Public Authorities](#).

waiting periods when receiving benefits and are more likely to use resources such as food banks.<sup>128</sup>

- 9.2 There is a need for Government, Departments and Public Authorities to collect comprehensive equality data to identify equality impacts and shape targeted actions to advance equality; and to address key gaps in equality data.<sup>129</sup>
- 9.3 All key measures of Government (including across the Programme for Government and key strategies) should not only be tracked in aggregate but also across the full range of equality grounds, including disability. The key measures of government will be more fully delivered if they target and track delivery across the full range of equality groups. Embedding equality into all key measures would further assist equality considerations to come to the fore and be a core component of delivery.

## 114(j) Establishing Mechanisms and Indicators to Monitor Impact

### Recommendation

**IMNI recommends that the NI Executive take immediate steps to finalise and publish a Disability Strategy for Northern Ireland accompanied by indicators that reflect the attainment of UNCRPD rights.**

- 10.1 Research undertaken in respect of Northern Ireland highlights the lack of progress in the development of a mechanism and indicators to measure the implementation of CRPD rights.<sup>130</sup> Indicators accompany a disability strategy. The absence of a disability strategy means that discussions on the use of human rights-based indicators in NI have not taken place.

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<sup>128</sup> See for example: Northern Ireland Human Rights Commission (2019): [Cumulative impact of tax and social security reforms in Northern Ireland](#), paragraph 7.2, p. 101; Joseph Rowntree Foundation (2022): [UK Poverty 2022 - The essential guide to understanding poverty in the UK](#), pages 57-58; The Trussell Trust (2021): [State of Hunger](#), pp. 11 and 13; Anti-Poverty Strategy Co-Design Group (November 2022): [Recommendations on the development of an Anti-Poverty Strategy for Northern Ireland](#), Annex B, pages 80-92.

<sup>129</sup> You can see a summary of ECNI's published recommendations at [www.equalityni.org/equalitydata](http://www.equalityni.org/equalitydata).

<sup>130</sup> Toman, N. et al (2022): [Progress towards the Implementation of UNCRPD in Northern Ireland](#), pp. 16, 19, 34, 55, 58, 59, 84, 96.

In May 2023 Department for Communities officials informed stakeholders that in the face of spending cuts associated with its budget for 2023-24, work on the Social Strategies, including the Disability Strategy and the Anti-Poverty Strategy, would be suspended and staff currently working on these would be redeployed. See also: Department for Communities (May 2023): [Budget 2023-2024 Equality Impact Assessment](#), paragraph 7.4, p.16.