



Statutory right to independent advice



The Northern Ireland Advice Services Consortium¹ and NICVA support Amendments 48 and 50 as proposed by Mr Roy Beggs and Mr Robin Swann and Mrs Dolores Kelly, Mr Alex Attwood, Mr Alban Maginness and Mr Pat Ramsey respectively.²

We explain the reasons for our support below.

Right to independent advice

A statutory right to independent advice for anyone affected by the Welfare Reform Bill. This concept was first proposed by Advice NI in evidence to the Social Development Committee during the scrutiny stage of the Welfare Reform Bill. The concept has been warmly welcomed by the Northern Ireland Advice Services Consortium (NIASC) and NICVA.³

Independent welfare advice is invaluable for people receiving social security benefits or who are considering making a claim. We can think of welfare advice as a safety net. It ensures that people receive the benefits they are entitled to or to resolve problems before they escalate. By playing a key role in promoting benefit uptake, welfare advice brings monetary and social benefits to claimants and their communities.

What do advisers do?

Advisers do not tell people what to do: they empower people by explaining their options and supporting decision making.⁴ Advisers:

- Interview people in a supportive environment to obtain a full picture of any problems
- Help the person prioritise the problems and identify solutions
- Provide up to date advice about available benefits and assess a person's eligibility
- Help complete applications
- Advocate at appeals if necessary
- Help people liaise with government departments and negotiate with companies and creditors
- Refer externally to other forms of appropriate crisis intervention (e.g. food banks)

¹ The Northern Ireland Advice Services Consortium is the umbrella organisation of Citizens Advice, Law Centre (NI) and Advice NI

² Both Amendment 48 and 50 place a duty on the Department to ensure that claimants have access to independent advice. Amendment 50 specifies that the advice must be 'confidential' and 'free of charge' so this is our preferred amendment.

³ The Welfare Reform Group is convened by Law Centre (NI) and is an umbrella grouping of organisations that campaign for positive changes to policy, service provision and legislation for those in receipt of social security while also providing advice and support to other advice giving organisations and disadvantaged persons in their capacity as individual members of the Group.

⁴ See Northern Ireland Advice Services Consortium, 'Discussion paper: welfare reform and the value of independent advice' (June 2013)

What are the benefits of advice?

Welfare advice brings numerous benefits by:

1. Empowering claimants to resolve their own issues. This improves claimants' health and stress levels and helps them feel more confident about taking charge of their financial future.⁵
2. Maximising income by promoting benefit uptake, which is currently one of Northern Ireland's main priorities for government.⁶

"My vision is that every individual and household across Northern Ireland is receiving all social security benefits to which they and their families are entitled".

Minister for Social Development⁷

Increased benefit uptake results in more money in claimants' pockets, thus:

- Reducing poverty, including Child Poverty (the eradication of which is a government priority);⁸
- Benefitting local communities due to increased spending on fuel, food, transport and recreation;
- Reducing social exclusion.⁹

"The impact of independent advice services to families during these [difficult] times cannot be overestimated".¹⁰

Child Poverty Alliance

3. Improving the quality of decision making and reducing the administrative burden on Jobcentre staff by ensuring that claimants have applied for the correct benefit, that the application is accurately completed and that all necessary evidence has been submitted.
4. Helping claimants avoid stressful crisis situations. This also reduces public expenditure on costly emergency interventions.

Perhaps counterintuitively then, we can see that welfare advice actually results in savings to the state. Welfare advice is a good long-term investment.

Figures from GB show the investment:
£1 invested in welfare advice = £8.80 potential savings for the state¹¹

⁵National Association of Welfare Rights Advisors, 'The benefit of welfare rights advice: a review of the literature' (2006); Dr Nigel J Balmer and Professor Pascoe Pleasence, 'The legal problems and mental health needs of youth advice services users: the case for advice' (November 2012)

⁶ Encouraging Benefit Uptake has been a key priority for DSD since 2005 and is now a key building block in the 2011-2015 Programme for Government

⁷ NI Executive press release, 'McCausland announces £375,000 funding to increase benefit uptake' (18/10/2013)

⁸ OFMDFM, 'Lifetime opportunities: government's anti poverty and social inclusion strategy for Northern Ireland' (2006)

⁹ CAB, 'Making the case: the value to society of the Citizens Advice service' (2014), p 9

¹⁰ Child Poverty Alliance, 'Beneath the Surface: Child Poverty in Northern Ireland' (2014), p 110

How would a statutory right to advice work?

The Department for Social Development would be under a duty to make provision for access to free, confidential and independent welfare advice.

Any claimant who makes an application under the new regime (e.g. an application for Universal Credit), or any claimant facing a reduction in their income,¹² would be informed at the Jobs & Benefit Office of their right to access independent advice.

The Department should also be required to ensure that the advice sector is adequately resourced to provide any advice needed through this provision.

Examples of a statutory right to advice

Having a statutory right to advice is not a new idea. Indeed, there are a couple of well established examples in other areas of law. For example:

- a) Every person in Northern Ireland has the right to access free advice about homelessness and preventing homelessness.¹³
- b) A person who is arrested and taken to a police station for questioning has the right to free legal advice.¹⁴
- c) A person who is detained under mental health powers can access legal advice.¹⁵

These examples recognise the fundamental importance that advice can have in protecting a person's rights from an early outset.

Why does advice need to be independent?

Independence is crucial.

Independent advice organisations are located within the communities they serve and therefore are more accessible than statutory agencies. Many people feel more confident speaking to independent advisors than to government officials and are more likely to provide any relevant personal information. By having a more open conversation, the adviser is better able to assess the claimant's entitlement and to advise on the most appropriate course of action. This increases efficiency: claimants do not apply for benefits to which they are not entitled and applications are correctly and fully completed. Indeed, the independent advice sector *complements* statutory services.¹⁶

¹¹ CAB, 'Towards a business case for legal aid: paper to the Legal Services Research Centre's eight international research conference' (July 2010)

¹² This would include claimants facing DLA re-assessment; those who do not move to PIP and see their income reduced by loss of DLA and PIP; claimants hit by time limiting the payment of contributory ESA (WRAG) to 12 months. Advice NI, 'Submission to Committee for Social Development Briefing Paper' (September 2012)

¹³ Section 2 Housing (Amendment) Act (Northern Ireland) 2010

¹⁴ Police and Criminal Evidence Act 1984, Code C, as revised.

¹⁵ This derives from ECHR Article 5(4) and was established in the case of *Winterwerp v Netherlands* ECtHR 63021/73. We note that the draft Mental Health Capacity Bill contains a specific right to independent advocacy.

¹⁶ Mark Durkan contribution to Northern Ireland Assembly Motion on Advice and Awareness, 4 March 2013

The value of the independent advice sector has been acknowledged by the Assembly,¹⁷ the Minister for Social Development and his Department¹⁸ and the Committee for Social Development. In particular, the advice sector's critical role in delivering the work of benefit uptake is recognised.

"The advice sector plays a vital role in supporting people through the changes arising from the welfare reforms"

Minister for Social Development¹⁹

What kind of advice should be provided?

The independent advice sector provides a range of advice and information channels including digital, telephone and face to face. For those vulnerable clients without access to a computer or internet, face-to-face assistance provided in a physical office offers vulnerable claimants access to advice in a format they are familiar with and trust.²⁰ For other claimants, advice delivered by phone might be appropriate while others would benefit from independent online information that enables them to self-help. For this reason, there must be provision for different types of advice.

Finally, what difference will a statutory right to advice make?

We are mindful that accessing independent advice might become increasingly difficult in the future, not least in light of the Department of Justice's proposal to remove welfare benefits from the scope of legal aid.²¹ Therefore, by making a commitment now to adequately resource the advice sector and by creating a statutory right to advice, the Department for Social Development would be providing an assurance to all those who may be adversely affected by welfare reform: claimants will be supported in making decisions and choices about their benefits.

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¹⁷ Northern Ireland Assembly Motion on Advice and Awareness, 4 March 2013

¹⁸ Official Report (Hansard) Session: 2012/2013 Date: Thursday, 21 March 2013 Committee for Social Development Benefit Uptake Strategy

¹⁹ Northern Ireland Assembly Motion on Advice and Awareness, 4 March 2013

²⁰ Access to computers is a necessity. Social Security Advisory Committee, 'The implementation of Universal Credit and the Support Needs of Claimants' (2013)

²¹ <http://www.dojni.gov.uk/consultation-on-scope-of-civil-legal-aid.htm>