

# Mitigation of welfare reform in Northern Ireland: on a cliff edge

## Introduction

The sand timer is running down to March 2020 when the current Northern Ireland welfare reform mitigations package is due to expire. Concern is growing about the impact this will have on those claimants who will not be able to cope without additional support.

This article provides an overview of the operation of the package and considers the implications if mitigations are ceased. It identifies a significant underspend (mainly due to the lack of a Northern Ireland Executive) and the potential for this to be re-profiled in an updated package that would take account of emerging challenges mainly associated with universal credit. Finally, we look at the options open to civil servants (who are currently managing public services) and to any future Executive.

## The operation and cost of the welfare reform mitigations package 2016 to 2018

There are three strands to the mitigations package.<sup>1</sup> The first provided supplementary payments, for varying periods, over the four years of the package to carers, those with ill health or disability, and families. This included assistance related to the time-limited contributory employment and support allowance, disability living allowance reassessments, loss of premiums, loss of financial support for carers, mitigation of the benefit cap and the 'bedroom tax', and the introduction of a discretionary support scheme.<sup>2</sup> The second strand related to supporting claimants, especially the most vulnerable, with independent advice at key points in all of the changes. The third strand looked forward to the introduction of universal credit and, following the strategy adopted in Scotland, the need to explore new ways to alleviate hardship.

The Department for Communities has produced two annual reports (2016/17 and 2017/18) which detail the expenditure on the provision of welfare support payments in Northern Ireland. The reports contain information on the range of

**The planned implementation of welfare reform brought the Northern Ireland Assembly to the brink of collapse in 2015 due to political concerns about the impact of the major changes on vulnerable people. Following negotiations between the parties and with the government, the 'fresh start agreement' was passed. This led to the introduction of a £585 million welfare reform mitigations package designed to lessen the impact of some of the harshest aspects of the new system. The package is due to expire in 2020 and concerns are mounting about a subsequent 'cliff edge'. Ciara Fitzpatrick, Kate McCauley and Kevin Higgins look at the implications and what should be done.**

welfare supplementary payments, along with a report on advice provision, discretionary support and information on sanctions.<sup>3</sup> Spending on supplementary payments amounted to £53,364,930. This figure excludes funding allocated independent advice organisations.

## Underspend in the mitigations package

A significant underspend of £109.52 million has emerged when comparing departmental data on expenditure with the mitigations package expenditure projections detailed in the *Welfare Reform Mitigations Working Group Report*.<sup>4</sup> A significant reason for underspend is the failure to operationalise the 'cost of working allowance', which was allocated £35 million per year beginning in 2017/18. The allowance was designed to mitigate the cuts in provision of in-work benefits and to recognise the additional costs associated with working, with a special weighting for lone parents, taking account of the cost of childcare. The Department outlined

a scheme and the necessary primary legislation had been approved by the Northern Ireland Assembly. However, it emerged that payments made under the scheme would be treated as taxable income, and would in many cases impact negatively on claimants' working tax credit. The Department subsequently considered alternative schemes which might avoid this problem, but it has advised that any new scheme would have to be approved by ministers and would require secondary legislation. Other reasons for underspend include a lack of uptake of particular supplementary payments. Advice organisations have highlighted that this underspend should not be lost at the end of the current package and should be utilised to support mitigation measures post-2020.

#### **Implications if the mitigations package were to be discontinued in 2020**

Using the statistics available from the Northern Ireland Housing Executive and the Department for Communities, it is possible to consider the implications of the end of the mitigations package in respect of the 'bedroom tax' and the benefit cap. The removal of these two mitigations alone would have a significant impact on households in Northern Ireland.

Tenants who move within the social sector lose their entitlement to mitigation protection from the 'bedroom tax' 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'.<sup>5</sup> The Department has reported that a total of 175 tenants (March 2018) have lost their entitlement to this mitigation payment.

Recent analysis carried out by the Northern Ireland Housing Executive (NIHE) has found that if mitigations were to cease, there would be a total weekly loss of housing benefit to these tenants (and their social landlords) of £409,599 (based on 32,777 tenants in both NIHE and housing association properties affected by the 'bedroom tax' at 9 July 2018).<sup>6</sup> Based on the experience of those tenants who have already lost entitlement to the mitigation payments, social landlords remain concerned about the impact on rent arrears should this protection cease. The NIHE, for example, noted that of the 72 NIHE tenants who (by June 2018) had lost their mitigation payment, average arrears per household had increased from £46 to £174.<sup>7</sup>

Furthermore, it has also been noted that there is a mismatch between the type of housing stock available, the type required to meet demand and

the type required to meet the 'bedroom tax' rules. In Northern Ireland, less than one-fifth (18 per cent) of the entire social stock has one bedroom. However, single applicants consistently account for almost half (45 per cent) of the waiting list each year. According to the NIHE, therefore:<sup>8</sup>

*Even if an ample supply of suitably sized dwellings were available, the time that would be required to facilitate tenants moving to new properties is too lengthy to be completed before mitigation ends in March 2020.*

The benefit cap is an upper limit on the amount of benefit a working-age household can receive. In June 2016, the benefit cap was introduced at £26,000 a year for couples and households with children and £18,200 a year for single people without children. In November 2016, these thresholds were lowered to £20,000 and £13,400 respectively.

The Department for Communities and NI Statistics and Research Agency published experimental statistics in November 2018 highlighting the impact of the cap:<sup>9</sup>

- At July 2018, 1,580 households were capped.
- All of the households affected by the cap were either lone parents (84 per cent) or couples with children (16 per cent).
- The average amount capped at July 2018 was £48 per week.
- Eight per cent of capped households were capped by more than £100 per week.

All eligible claimants who are continuously affected by the benefit cap will receive a mitigation payment until 31 March 2020. Households may also become exempt if they made a successful claim for a disability-related benefit, such as carer's allowance, disability living allowance or personal independence payment. Forty per cent of households who have moved off the cap as at July 2018 were receiving a disability-related exempting benefit. The impact of discontinuing the mitigation scheme post-2020 in relation to the benefit cap will cause particular hardship for families with children.

#### **Outline of the options post-2020**

Law Centre NI, Housing Rights, Advice NI and many others are extremely concerned about the fast approach of the 2020 cliff edge. While demand for the current mitigations will diminish in certain areas,<sup>10</sup> some protections remain as

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vital now as they were in 2015.<sup>11</sup> It is clear that the discontinuation of the package will give rise to considerable financial hardship. It will result in significant financial loss for many claimants and is likely to result in increased poverty for both adults and children in Northern Ireland.<sup>12</sup>

The discontinuation of the mitigations package would run counter to the direction set by the Northern Ireland Executive in the fresh start agreement. Furthermore, the end of the mitigations package will have a disproportionate impact on particular social groups (eg, children affected by the benefit cap) which may be tested through legal challenges. With specific reference to the mitigation for the ‘bedroom tax’, the 2016 Supreme Court decisions in relation to a number of cases on this policy should be regarded.<sup>13</sup> The Supreme Court ruling identified that, in addition to there being certain cases in which the impact of the policy was unjustifiably discriminatory, there were also cases in which the impact was discriminatory but that such discrimination was justified as the applicant could apply for a discretionary housing payment to assist her/him in making up the shortfall. In Northern Ireland, the rules which govern discretionary housing payments are different and, under the current rules, people affected by the ‘bedroom tax’ are unable to apply for one. The discriminatory impact identified by the Supreme Court may therefore be unjustified (and potentially open to legal challenge) in Northern Ireland were the mitigations to discontinue.<sup>14</sup>

One option is to continue the mitigations package in its current form. This option will be helpful in so much as it will continue to protect claimants from the existing measures. However, it will not protect claimants from the evolving landscape – specifically, the hardships arising from universal credit.

Another option is to continue and re-profile the current package post-2020. This option would retain a number of the current mitigations while re-profiling the substantial underspend identified in the mitigation budget to provide protections for evolving welfare reforms. The re-profiled mitigations package would include investment in a number of emerging priorities.

### Priority one: universal credit

Universal credit is designed to simplify the benefit system and to incentivise claimants to seek paid work.<sup>15</sup> The delivery of universal credit has proved problematic<sup>16</sup> and evidence suggests that it is having a ‘forceful and negative impact on the lives of ordinary people and their ability

to survive’.<sup>17</sup> While it is important to acknowledge that a minority of claimants will be financially better off under universal credit,<sup>18</sup> many claimants are experiencing a considerable drop in income.

In order to mitigate against hardships arising from universal credit, we recommend:

- A one-off supplementary payment to claimants to support them through the five-week waiting period. Rather than an advance payment, which results in debt, all claimants should be offered this as a grant.
- A supplementary payment to be made available to claimants who naturally migrate to universal credit without the benefit of transitional protection.

### Priority two: housing

While the welfare supplementary payments set up to assist social tenants affected by the ‘bedroom tax’ are necessary, their introduction brings into sharp focus the absence of any such arrangements for other low-income households (within and outside the social rented sector) who have also been affected by reduced government support with their housing costs. Over the last decade, a number of key social security changes have made it increasingly difficult for low-income households in Northern Ireland to afford to stay in their homes.

In addition to the obvious need for continued access to specialist independent housing advice for both tenants and landlords, there is a pressing need to identify and secure service provision for additional practical support for tenants on low incomes. It is therefore recommended that:

- Research (to inform future service delivery) is commissioned to identify and better understand the specific needs of low-income tenants (including private tenants) affected by welfare reforms. This research should also examine best practice in the provision of practical support for this group and make recommendations about models of service delivery.
- Practical support may include (but not be limited to) provision of financial capability initiatives, access to affordable credit and access to white goods.
- Funding should be provided to enable a funded service to address these practical needs.

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**Priority three: children and families**

More support is needed for families. An accumulation of a number of cuts to social security has had an acute impact on children and families. This includes the benefits freeze, which is estimated to increase poverty more than any other policy.<sup>19</sup> Income through benefits is falling relative to minimum income standard budgets, with families and lone parents facing particular struggles.<sup>20</sup>

Additional measures needed include:

- Mitigating the impact of the 'two-child limit': a supplementary payment should be available to parents whose universal credit or tax credit award is reduced as a result of the two-child limit. Third and subsequent children should be entitled to the same benefits as their older siblings.<sup>21</sup>
- A supplementary payment should be made available to mitigate the loss of disability premiums for children transferring from disability living allowance to personal independence payment.<sup>22</sup>
- Discretionary support in Northern Ireland should be paid as a grant rather than a loan for households that include children or people with a disability.
- Lone parents should be protected from additional conditionality until their youngest child turns five years old.
- All households that include children or someone with a disability should be protected from sanctions (which would not necessarily require additional, direct expenditure).

Alongside these recommendations, communities should continue to have access to independent advice as an essential protection for people negatively affected by welfare reform.

**Conclusion**

It is recommended that the Northern Ireland civil service or any incoming Northern Ireland Executive progress option three. It is considered that continuing and re-profiling the mitigations package to reflect emerging challenges is consistent with direction of travel initially set by the Northern Ireland Executive prior to its collapse. Providing protections to vulnerable benefit claimants is clearly in the public interest. ■

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This article is based on a joint report published by Law Centre NI, Housing Rights and Advice NI, *Welfare Reform Mitigations on a Cliff Edge*, available at <https://lawcentreni.org/news/mitigations-on-a-cliff-edge>

- 1 *Welfare Reform Mitigations Working Group Report*, January 2016, <https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/ofmdfm/welfare-reform-mitigations-working-group-report.pdf>
- 2 Claimants can apply for discretionary support when in financial crisis.
- 3 Department for Communities, *Welfare Supplementary Payments, Sanctions, The Operation of Discretionary Support, and Standards of Advice and Assistance Provided*, December 2017; Department for Communities, *Welfare Supplementary Payments, Sanctions, The Operation of Discretionary Support, and Standards of Advice and Assistance Provided*, November 2018
- 4 *Welfare Reform Mitigations Working Group Report*, January 2016, Appendix 8, p37
- 5 Find more information on management transfer status at <https://www.housingadvice-ni.org/transfers>
- 6 This figure may have increased since the publication of the NIHE report since arrears accrued on a rental account can build over time. The NIHE report states that the data presented was the average arrears at the time of writing. NIHE, *Welfare Reform in Northern Ireland: a scoping report*, November 2018, [https://www.nihe.gov.uk/welfare\\_reform\\_ni\\_a\\_scoping\\_report.pdf](https://www.nihe.gov.uk/welfare_reform_ni_a_scoping_report.pdf)
- 7 NIHE, *Welfare Reform in Northern Ireland: a scoping report*, November 2018, p47
- 8 NIHE, *Welfare Reform in Northern Ireland: a scoping report*, November 2018, p43
- 9 Department for Communities, *Benefit Cap: Northern Ireland*, <https://www.communities-ni.gov.uk/system/files/publications/communities/benefit-cap-statistics-july-2018.pdf>
- 10 Demand is diminishing because transfer from disability living allowance to personal independence payment is nearing completion.
- 11 This includes the mitigations for the bedroom tax, benefit cap, discretionary support, contribution-based employment and support allowance for 12 months, discretionary support, universal credit flexibilities, as well as the continuation of independent advice services and an independent welfare changes helpline.
- 12 The financial loss per adult due to welfare reform was identified as being substantially larger than in any other part of the UK. See C Beatty and S Fothergill, *The Impact of Welfare Reform on Northern Ireland*, Centre for Regional Economic Social Research, Sheffield Hallam University, October 2013
- 13 Supreme Court judgment in respect of *R (Carmichael and Others) v SSWP* [2016] UKSC 58
- 14 For further information, see Housing Rights, *Recommendations for Discretionary Housing Payments (DHPs) in Northern Ireland pre and post 2020*, 2018
- 15 See P Larkin, 'Universal credit, 'positive citizenship', and the working poor: squaring the eternal circle?' *Modern Law Review* 81(1), 2018, pp114-31
- 16 See Advice NI, *Proposals on Universal Credit (UC): how to make it better*, November 2918
- 17 See G McKeever, M Simpson and C Fitzpatrick, *Destitution and Paths to Justice*, Joseph Rowntree Foundation/Legal Education Foundation, 2018
- 18 The number of working families that gain from the switch to universal credit increases by 200,000 – from 2.2 million families previously to 2.4 million families now. Among working families with children, the number (1.5 million) expected to be better off under universal credit now matches the number (1.5 million) expected to be worse off. See D Finch and L Gardiner, *Back in Credit? Universal credit after Budget 2018*, Resolution Foundation, 2018
- 19 A Hood and T Waters, *The Impact of Tax and Benefit Reforms on Household Incomes*, Institute for Fiscal Studies, 2017
- 20 'The minimum income standard is based on the items that members of the public think UK households need to be able to afford in order to meet material needs such as food, clothing and shelter, as well as to have the opportunities and choices required to participate in society.' See A Davis, D Hirsch, M Padley and C Shepherd, *A Minimum Income Standard for the UK 2008-2018: continuity and change*, Joseph Rowntree Foundation, 2018
- 21 This should include access to universal credit child element and childcare element.
- 22 There is currently a welfare supplementary payment for disabled adults transferring to personal independence payment, but not for children. This mitigation remains necessary because disabled children aged 16 years receive disability living allowance and must transfer to personal independence payment.