justfair

Dignity and Opportunity for All: Securing the rights of disabled people in the austerity era

SUMMARY REPORT

The Just Fair Consortium works to realise a fairer and more just society for everyone in the UK by monitoring and securing the fundamental human rights contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR), including the rights to food, housing, social security, education, equality, employment and health. (www.just-fair.co.uk)

ICESCR Monitoring Reports

Every year, the Consortium publishes a number of monitoring reports assessing the extent to which rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR) are being realised in the UK. This report focuses on the rights of disabled people to independent living, work, social protection, social security and an adequate standard of living, which are set out in ICESCR and the United Nations Convention on the Rights of Persons with Disabilities.

Authorship and Acknowledgments

This report was authored by Jane Young. Aoife Nolan authored Chapter 2 and provided input throughout the report. Neil Crowther provided advice and support. Alice Donald provided editorial and overall support. Jonathan Butterworth undertook research and provided logistical support. We are extremely grateful to the organisations that provide funding for our vital monitoring and advocacy work: **Barrow Cadbury Trust, Clifford Chance Foundation, Henry Tinsley Foundation, Joseph Rowntree Charitable Trust, Network for Social Change**. Many Consortium members contributed to this report by identifying priority issues, providing data, and contributing qualitative evidence. We are particularly grateful to the Just Fair Trustees for providing expert advice and detailed editorial guidance. This report was published in July 2014.

Foreword

A desire for freedom, fairness and equality lies at the heart of my work in the House of Lords, so I was delighted to be asked to write a Foreword for this landmark report on securing disabled people's human rights. When the United Kingdom ratified the United Nations Convention on the Rights of Persons with Disabilities in 2009, with cross Party support, it not only reaffirmed its recognition of disabled people's existing human rights – including those arising from the International Covenant on Economic, Social and Cultural Rights - it undertook to make those rights an everyday reality for disabled people.

For many disabled people, fundamental rights to life, liberty and to a private and family life can only be realised with financial or practical support. Such support determines whether or not a person is forced to live in an institution, or is empowered to live in and participate fully in the community. It determines whether and at what time a person can get up and go to bed, eat a meal, have a wash, get dressed, see family and friends or go to work. Without support many disabled people face isolation and poverty, unable to assume ordinary roles in society or to contribute socially and economically. This is why the absence of such support creates avoidable dependency; it also risks violating disabled people's human rights.

In 2012, the Joint Parliamentary Committee on Human Rights (on which I sat) noted that reforms and cuts to social security benefits, housing benefit, social care and the Independent Living Fund "risk interacting in a particularly harmful way for disabled people". This timely and thoroughly evidenced report demonstrates that the risk is becoming reality for unprecedented numbers of disabled people, and that the UK is taking major backwards steps regarding disabled people's human rights, in breach of its obligations under international law.

It is both extremely worrying and deeply sad that the UK – for so long regarded as an international leader in protecting and promoting disabled people's rights – now risks sleepwalking towards the status of a systematic violator of these same rights. In the year that the UK is subject to examinations by both the UN Committee on the Rights of Persons with Disabilities and the UN Committee on Economic, Social and Cultural Rights, I hope this excellent report serves as a major wake-up call.

Baroness Campbell of Surbiton DBE
House of Lords

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1. Introduction

Even at a time of economic austerity and fiscal consolidation, States Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the United Nations Convention on the Rights of People with Disabilities (UNCRPD) are under an obligation to respect, protect and fulfil the economic, social and cultural rights of disabled people. There is a presumption that policies that result in retrogression[1] (ie backward steps in relation to the realising of the rights) are not compatible with international human rights law. There is also a duty to satisfy the minimum core obligations[2] to enable all citizens to meet their most basic needs.

This report focuses on the realisation of the following rights in relation to disabled people:

- the right to independent living under UNCRPD Article 19;
- the right to work and to fair and just conditions of employment under ICESCR Articles 6 and 7 and UNCRPD Article 27;
- the rights to social security and social protection under ICESCR Article 9 and ICESCR Article 28; and
- the right to an adequate standard of living under ICESCR Article 11 and UNCRPD Article 28.

The report seeks to evaluate the extent to which the UK is meeting its obligations to realise these rights, with reference to General Comments and Concluding Observations published by the relevant UN treaty-monitoring bodies.[3] In particular, the report seeks to identify the extent to which specific concerns, raised in 2012 by the parliamentary Joint Committee on Human

[1] UN Committee on Economic Social and Cultural Rights, General Comment No 19 on the Right to Social Security, UN Doc E/C 12/GC/19 (2008).
[2] See UN Committee on Economic Social and Cultural Rights, General Comment No 3 on on The Nature of States Parties' Obligations (Art 2 (1)), UN Doc E/1991/23 (1990).
[3] The Committee on Economic Social and Cultural Rights (CESCR) and the Committee on the Rights of Persons with Disabilities (CRPD).

Rights[4] in relation to threats to disabled people's enjoyment of their human rights, have been realised.

Evidence and case studies from disabled people and people with a long term health condition were provided via an online survey or sent directly to Just Fair. Three areas of social security policy were of concern to the greatest number of those who responded:

- Employment and Support Allowance (long term sickness benefit) and the Work Capability Assessment,
- Personal Independence Payment (for support with disability-related costs), and
- The housing benefit size criteria for claimants in social housing (reduced housing support for households with a 'spare' bedroom).

2. The right to independent living

In 2012 the Joint Committee on Human Rights, in its report on the implementation of disabled people's right to independent living under UNCRPD Article 19,[5] praised the progress made by recent UK Governments towards fulfilling disabled people's right to independent living. However, the Committee highlighted specific policy areas and reforms where there was doubt about whether the Government was meeting its obligations under Article 19, and expressed concerns about the risk of impermissible retrogression (ie backward steps) contrary to international human rights law.

2.1 Changes to housing benefit

The availability of accessible, affordable housing is a key factor in enabling independent living.[6] The JCHR therefore expressed concern that reforms limiting the amount of housing benefit payable on the basis of the size of home deemed to be required by non-disabled claimants and their families could have

[4] Joint Committee on Human Rights (2012), *Implementation of disabled people's right to independent living* Twenty–third Report of Session 2010–12; Joint Committee on Human Rights (2011), *Legislative Scrutiny: the Welfare Reform Bill*, Twenty-first Report of Session 2011-12.
[5] JCHR, *Implementation of disabled people's right to independent living*.
[6] Office for Disability Issues (2008) *Independent Living Strategy*.

a serious impact on disabled people's enjoyment of the right to independent living set out in UNCRPD Article 19.[7] Disabled people often have a disability-related reason for needing more space - for an overnight carer, for example, or to store or use medical or disability equipment. Some may need extra space because they are unable to share a room with a sibling or partner because of their impairment or health condition.[8] Disabled people are also less able to mitigate the impact of a reduction in housing benefit by earning or taking in a lodger, and are often unable to move to a smaller home because they need the extra space, because their current home has been adapted to meet their needs or because they need to live close to informal support networks.

The local housing allowance, brought in by the last Labour Government,[9] has had a detrimental impact on some disabled people living in privately rented accommodation. However, the introduction of size criteria for housing benefit claimants in social housing[10] has had a particularly damaging impact, especially since two-thirds or more of those claimants affected are disabled.[11] Although councils have been given increased funding for discretionary housing payments to mitigate the impact, there is evidence that the reforms are causing real hardship for many disabled people who are unable to move but are struggling to subsidise their rent from other income.[12]

We strongly recommend that the Government re-evaluate these reforms, especially the social housing size criteria, in the light of its obligations under UNCRPD Article 19, taking account of recent recommendations made by the Work and Pensions Select Committee to make further exemptions for disabled people.[13]

[7] JCHR, *Implementation of disabled people's right to independent living*, para 154.
[8] Memorandum submitted by Leonard Cheshire Disability; see Work and Pensions Select Committee (2010) *Impact of the changes to Housing Benefit announced in the June 2010 Budget* (Ev39 w140).
[9] Welfare Reform Act 2007, part 2 (amended by the Welfare Reform Act 2012).
[10] Welfare Reform Act 2012.
[11] DWP (2012), *Housing Benefit: Under-occupation of social housing impact assessment*.
[12] Eg, Papworth Trust (2013), *Making discretionary housing payments work for disabled people*; Aragon Housing Association (2013) *Should I stay or should I go?*; National Housing Federation (2013) *The bedroom tax in Merseyside*.
[13] Work and Pensions Select Committee (2014) *Support for housing costs in the reformed welfare system,* Fourth Report 2013-14.

2.2 Reform of Disability Living Allowance

Disability Living Allowance (DLA) plays an extremely important role in helping disabled people to enjoy their UNCRPD Article 19 right to independent living, as it makes a vital contribution towards disability-related costs, especially the cost of equipment and assistance. The JCHR was therefore very concerned at the potential impact of replacing DLA with Personal Independence Payment (PIP),[14] especially given the Government's stated intention to save 20% of the cost of the benefit in the process.[15]

Some disabled people, especially those with non-physical impairments who need support to plan and carry out a journey, will benefit from the greater recognition of their needs under PIP. For others, including hundreds of thousands for whom a small amount of support enables them to retain their independence, the restrictive nature of the PIP eligibility criteria (compared with the "open-ended" nature of DLA)[16] is likely to have a negative impact on their independence. Disabled people and their organisations have expressed concern about a number of aspects of PIP, but especially the very restrictive benchmark walking distance of 20 metres to determine eligibility for the enhanced mobility component for disabled people with physical difficulties moving around.[17] This particular aspect of PIP, which is expected to result in many losing their access to the Motability scheme,[18] is likely to have a substantially negative impact on the ability of many physically disabled people to travel independently to access work and social activities, and to play their full part in family and community life.

The Government's impact assessments included very limited consideration of the potential impact of PIP on the UK's ability to meet its obligations under

[14] JCHR, *Implementation of disabled people's right to independent living*, para 146.
[15] DWP (2012) *Disability Living Allowance reform Impact Assessment*; DWP (2012) *Disability Living Allowance reform Equality Impact Assessment*.
[16] Disability Rights UK (2012) *Response to PIP assessment criteria and thresholds consultation.*
[17] Eg, Disability Benefits Consortium (undated) *Response to the consultation on the PIP assessment moving around criteria*.
[18] The Motability Scheme enables disabled people to lease a new car, scooter or powered wheelchair, using the Higher Rate Mobility Component of Disability Living Allowance, the Enhanced Rate of the Mobility Component of Personal Independence Payment (PIP) , the War Pensioners' Mobility Supplement or the Armed Forces Independence Payment.

UNCRPD Article 19.[19] **We strongly recommend that the planned reviews of PIP include effective analysis of its practical impact on disabled people's independence, including their mobility and their participation in employment, social activities and community and family life.**

2.3 Closure of the independent living fund

The independent living fund (ILF) enables disabled people with significant support needs to employ personal assistants to enable them to live independently in their own homes rather than in residential institutions.[20] The fund is critical in enabling its users to enjoy their Article 19 right to independent living, with many enjoying a high level of independence, playing a significant role in their community and, in some cases, engaging in paid work. It is therefore unsurprising that the JCHR expressed its concern[21] at the risks posed to disabled people's independence by the closure of the fund to new applicants in 2010 and the plan to devolve the funding and the support of existing users to local authority social care departments in 2015.

It is very likely that ILF users will receive less support after the fund closes, due to the financial pressures on local authorities and the different eligibility criteria used by local social care services.[22] In November 2013, the Court of Appeal found in favour of a group of ILF users who applied for judicial review of the decision to close the fund, on the grounds that the then Minister for Disabled People had not complied with the public sector duty to promote disability equality by paying due regard to the impact of the closure on disabled users of the fund.[23] In reaching their judgement, the Appeal Court judges used UNCRPD Article 19 to assist in the interpretation of the duty to promote the equality of disabled people and ruled that the Minister had not fully considered the extent of the threat to the independence of ILF users of

[19] Department for Work and Pensions (2013) *The Government's response to the consultation on the PIP assessment moving around activity,* Annex 3, Equality Analysis.
[20] House of Commons Library (2013) *Independent Living Fund standard note,* SN/SP/5633.
[21] JCHR, *Implementation of disabled people's right to independent living*, para 152.
[22] Department for Work and Pensions (2014) *Closure of the Independent Living Fund (ILF) Equality Analysis.*
[23] *Bracking v Secretary of State for Work and Pensions*, Court of Appeal, [2013] EWCA Civ 1345 (6 November 2013).

the closure of the fund. However, the Minister for Disabled People has since confirmed that the fund will close in 2015.[24]

Given the real risk of impermissible retrogression in relation to the right to independent living under Article 19, local authorities should be provided with sufficient funding to ensure that outcomes previously achieved are sustained when responsibility for ILF users' support is transferred to the local authority.

2.4 Social care

Social care plays a vital role in enabling disabled people to exercise their right to independent living under Article 19. Developments such as direct payments and personal budgets, when implemented well and adequately funded, have enabled disabled people to have choice and control over their support and have facilitated inclusion and participation in the community. However, rising demand coupled with funding constraints[25] have led local authorities to tighten eligibility criteria[26] and increase charges for support,[27] so that many disabled people receive no support, and many of those who do only receive help with basic personal care needs such as washing and eating.[28]

As the JCHR has pointed out,[29] the Care Bill (now the Care Act 2014) provided an opportunity for the Government to create a social care system that enables further progress to be made in fulfilling UNCRPD Article 19. However, the Act does not incorporate a clear duty to promote disabled people's right to independent living. Disabled people and their organisations are concerned that draft regulations under the Act, which restrict the national eligibility criteria to

[24] Rt Hon Mike Penning MP, Minister of State for Disabled People (2014) *Statement on the future of the Independent Living Fund*, 6 March 2014.
[25] All Party Parliamentary Local Government Group and All Party Parliamentary Disability Group (2013) *Promoting independence, preventing crisis* (Scope).
[26] Ismail, Thorlby and Holder (2014) *Focus On: Social care for older people - Reductions in adult social services for older people in England, Quality Watch report* (The Health Foundation and Nuffield Trust).
[27] 'Councils press on with home care charges increase', Community Care, 24 January 2011.
[28] E Brawn, M Bush, C Hawkings and R Trotter (2013) *The other care crisis: making social care funding work for disabled adults in England*. Report by Scope, Mencap, National Autistic Society, Sense, Leonard Cheshire Disability.
[29] Joint Committee on Human Rights (2014) *Legislative Scrutiny of the Care Bill*, Eleventh Report of Session 2013-14.

those facing substantial or critical risks to their independence, will exclude many people from support that could prevent their needs from escalating.[30]

Given the critical role of social care services in facilitating independent living, we recommend that the Government ensures sufficient investment is directed towards ensuring that disabled people receive the support they need to exercise their right to independent living.

2.5 Cumulative impact of a number of policies and reforms

Since disabled people depend on an interconnecting combination of services and benefits, the interaction of different reforms and changes has the potential to have a significant impact on their independence and well-being. Although the Government has thus far declined to undertake any kind of assessment of the cumulative impact of the range of different changes, some civil society organisations have attempted to do so.[31] The results, read alongside case studies submitted to inform this report, strongly suggest that the interaction of several policy changes on individual disabled people's lives is very likely to compromise their enjoyment of the right to independent living, particularly when all the policy changes have been fully implemented.

This report recommends that the Government commissions rigorous qualitative research to ascertain how a range of changes to services and benefits interacts in the lives of disabled people living in different family and social situations. The research should focus in particular on the cumulative impact of the changes on the subjects' enjoyment of the right to independent living and identify practical measures to prevent impermissible retrogression in relation to this right.

[30] Eg, E Brawn et al, *The other care crisis: making social care funding work for disabled adults in England*.
[31] Eg, S Duffy (2014) *Counting the Cuts* (Centre for Welfare Reform, Sheffield); C Edwards (2012)*The Austerity War and the Impoverishment of Disabled People* (University of East Anglia).

2.6 Realising disabled people's right to independent living – conclusion and recommendations

Our analysis shows that the changes that have been introduced are already resulting in backward steps in terms of realising disabled people's Article 19 rights. Other changes (such as the planned closure of the ILF and the reassessment of all DLA claimants for PIP) will undoubtedly lead to further retrogression in relation to disabled people's Article 19 right to independent living if they are fully implemented in their current form. Our analysis of the above policy areas against the requirements of the UN human rights framework points to impermissible retrogression under UNCRPD Article 19.

In order to meet its obligations under UNCRPD Article 19, the Government must ensure that all policy-makers have a clear understanding of the meaning and importance of the right to independent living and the way in which policy across all departments of central and local government has the potential to impact upon the ability of disabled people to enjoy their Article 19 rights. At a time of far-reaching reform, in addition to undertaking rigorous equality and human rights impact assessments of individual policies, policymakers must assess the cumulative impact of different changes and reforms, across different Government departments, on disabled people's enjoyment of the right to independent living.

The importance of disabled people's right to independent living is such that serious consideration should be given to incorporating UNCRPD Article 19 (and related international human rights protections) into UK domestic law. This could be done so as to provide an overarching statutory duty on all areas of Government to take account of the need to respect, protect and fulfil disabled people's right to independent living, and avoid retrogression, in all relevant policymaking. Such a duty would have significant social and economic benefits, with more disabled people empowered to play their part in society and fulfil their potential.

3. The rights to work, social security, social protection and an adequate standard of living

Disabled people's enjoyment of an adequate standard of living is dependent on their ability to exercise their right to work,[32] for sufficient remuneration to support themselves and their families,[33] as well as on their ability to exercise their right to social security[34] both at those times when they are unable to work and in order to help meet disability-related costs. However, research undertaken in the UK[35] shows that, in general, disabled people are more likely than others to live in poverty; this is also highlighted in the preamble to UNCRPD.[36]

Industrial changes and economic globalisation have led to structural changes in the labour market and a new vision of social security, which is increasingly conditional on claimants seeking or preparing for work as opposed to providing protection from the impact of economic conditions.[37] Rather than promoting disabled people's right to work, the focus is on the obligation to take any job.[38] In addition, inflation and recessionary pressures on earnings mean that even those disabled people who are in work may struggle to meet their basic needs.[39]

[32] ICESCR Article 6; UNCRPD Article 27.
[33] ICESCR Article 7; UNCRPD Article 27.
[34] ICESCR Article 9; UNCRPD Article 28.
[35] S Bulloch and C Rogers (2014) *Better living, higher standards: improving the lives of disabled people by 2020* (Scope).
[36] Preamble to UNCRPD, para (t).
[37] E Carmel and T Papadopoulos (2003), 'The new governance of social security in Britain', in J Millar (ed) *Understanding Social Security: Issues for Social Policy and Practice* (Bristol: Policy Press), p 3 (online version).
[38] A Dean and R Patrick (2011), 'A New Welfare Settlement? The Coalition Government and Welfare to Work', in H M Bochel (ed),*The Conservative Party and Social Policy*, (Policy Press).
[39] Joseph Rowntree Foundation (2013) *Monitoring Poverty and Social Exclusion*.

3.1 The right to work and to fair and just conditions of employment

Disabled people's right to employment in an environment that is open, inclusive and accessible is safeguarded by ICESCR Articles 6 and 7 and specifically UNCRPD Article 27. Articles 2(2) ICESCR and Articles 4 and 5 UNCRPD also impose an obligation on States Parties to ensure disabled people are able to enjoy their right to work and to fair and just conditions of employment without discrimination.

In its 2009 Concluding Observations on the UK, the UN Committee on Economic, Social and Cultural Rights urged the UK to reinforce its measures to enable disabled people, especially people with learning disabilities, to access employment on an equal basis with others and to have opportunities to gain appropriate qualifications.[40] In 2013 the Committee examining the UK's progress under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) urged the UK to create more employment opportunities for disabled women.[41]

Statistics show that despite equality legislation prohibiting discrimination against disabled people in relation to employment, around 30% fewer disabled people than non-disabled people are in work, although the situation is a lot worse for people with learning disabilities or mental health problems, and for younger disabled people and for those without qualifications.[42] The Government is devoting considerable resources to "welfare to work" programmes,[43] to encourage disabled people to move from social security into work, rather than positively promoting disabled people's right to work in a job that suits their aptitudes, abilities and aspirations. The main emphasis is on

[40] Committee on Economic, Social and Cultural Rights, Concluding observations on the combined fourth to fifth periodic report of the UK, June 2009 (E/C 12/GBR/CO/5) para 20.
[41] Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of the UK, July 2013, paras 46 and 47.
[42] L Sayce and N Crowther (2013)*Taking control of employment support*, (Disability Rights UK).
[43] Dean and Patrick, 'A New Welfare Settlement? The Coalition Government and Welfare to Work', p 162.

changing disabled people's behaviour rather than incentivising and supporting employers.[44]

3.1.1 Support for disabled people and employers

The Government's main back to work programme, the Work Programme, has had very limited success in getting disabled people into work,[45] and its high cost (£736 million up till March 2013) raises the question of whether the Government is making the maximum use of the resources available (as required by Article 2(1) ICESCR and Article 4(2) UNCRPD) to realise disabled people's right to work. Work Choice, which is more directly targeted for disabled people, has had more success,[46] although many disabled people do not have access to it.[47] Access to Work, which provides a range of support for disabled employees, such as specialist equipment, assistance with travel to work and the provision of support workers, is popular with both disabled people and employers but needs to be more widely known[48] and better able to meet the needs of certain specific groups such as Deaf people.[49]

Specialist employment support such as Individual Placement and Support, effective in helping people with mental health problems into work, and Supported Employment, effective for people with learning disabilities, are delivered on a small scale in some local authority areas and their success demonstrates the positive impact of highly personalised support.[50] These specialist approaches include support for employers, who say they would value

[44] R Trotter et al (2013) *Work in progress: Rethinking employment support for disabled people* (published by a consortium of disability charities), p 17.
[45] Submission from Department for Work and Pensions to House of Commons Public Accounts Committee (2013) *Work Programme outcome statistics*, 33rd report, 2012-2013; Department for Work and Pensions (2013) *Work programme statistical summary*.
[46] Department for Work and Pensions (2013) *Statistical Summary of Work Programme Official Statistics,* referenced in Sayce and Crowther,*Taking control of employment support*.
[47] R Trotter, Oral evidence to the House of Commons Work and Pensions Select Committee (2014) *The role of Jobcentre Plus in the reformed welfare system*, second report of 2013-14, Ev 16, qu 99.
[48] S Dewson, D Hill, N Meager and R Willison (2009) *Evaluation of Access to Work: Core Evaluation* (Department for Work and Pensions research report 619).
[49] British Deaf Association/Inclusion London (2014) *Access to Work consultation and draft report*.
[50] R Greig, P Chapman, A Eley, R Watts, B Love and G Bourlet (2014)*The Cost Effectiveness of Employment Support for People with Disabilities - Final Detailed Research Report* (National Development Team for Inclusion).

more information and support to provide employment opportunities for disabled people.[51]

3.1.2 Training and skills

Disabled people are more likely than non-disabled people to have few or no qualifications and many need to acquire the skills needed in the modern labour market.[52] Recent reports in the UK have emphasised the need for a greater focus on skills and vocational training, a theme reflected by the OECD[53] and recently by the UN Disability Committee in relation to Sweden.[54]

3.1.3 Disabled people's treatment at work

Research shows that disabled people, especially those with learning difficulties or mental health problems, are more likely to report unfair treatment and harassment at work, often reporting that the reason for such treatment is related to their impairment or health condition.[55] This raises issues of discrimination on the grounds of disability contrary to both Article 2(2) ICESCR and Article 4 UNCRPD. If they are unable to resolve such problems internally they may face barriers to taking the issue further by making a claim in the Employment Tribunal.

3.1.4 Recommendations

Our recommendations are intended to ensure that disabled people enjoy their right to work (set out in ICESCR Article 6 and UNCRPD Article 27), their right to fair and just conditions of employment (set out in ICESCR Article 7 and UNCRPD Article 27), as well as non-discrimination and equality in their

[51] J Davidson (2011) *A qualitative study exploring employers' recruitment behaviour and decisions: small and medium enterprises* (Department for Work and Pensions research report 754).
[52] R Trotter et al, *Work in progress: Rethinking employment support for disabled people.*
[53] R Trotter et al, *Work in progress: Rethinking employment support for disabled people,* p 23.
[54] Committee on the Rights of Persons with Disabilities, Concluding Observations on the initial report of Sweden, advance unedited version, April 2014.
[55] 'Disabled employees more likely to experience ill-treatment at work', Cardiff University School of Social Sciences, 5 March 2013, reporting on Fevre, Robinson, Jones and Lewis (2013) 'The Ill-treatment of Disabled Employees in British Workplaces' *Work, Employment and Society*; N Coleman, W Sykes and C Groom (2013) *Barriers to employment and unfair treatment at work: a quantitative analysis of disabled people's experiences* (Equality and Human Rights Commission, Research report 88).

enjoyment of those rights. We recommend that employment support is refocused onto fulfilling disabled people's right to work that suits their aptitudes, abilities and aspirations. Such support should evidence-based, drawing on research into "what works". Employment support should be more personalised and include workplace based vocational training, with employers engaged and supported to provide opportunities for disabled people.

3.2 The rights to social security, social protection and to an adequate standard of living

The rights to an adequate standard of living and to social security are set out in ICESCR Articles 9 and 11. UNCRPD Article 28 sets out the right to an adequate standard of living and social protection in relation to disabled people.

In recent years the UN Committee on Economic, Social and Cultural Rights has commended the UK Government for certain measures designed to tackle discrimination against disabled people, one of the contributory causes of disability-related poverty.[56] In addition, the recognition of the particular needs of disabled people through the benefits system[57] has represented a very positive step towards fulfilling disabled people's rights to social security and to an adequate standard of living. However, it is important to examine the extent to which this progress is continuing and to identify any risks of retrogression arising from changing economic and social factors, policy changes and administrative challenges in relation to social security.

The UN Committee on Economic, Social and Cultural Rights has stated that it is vital that a minimum essential level of benefits is provided to all individuals and families to enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs and the most basic forms

[56] Committee on Economic, Social and Cultural Rights: Concluding observations on the fourth periodic report of the UK, June 2002, para 4; Committee on Economic, Social and Cultural Rights: Concluding observations on the third periodic report of the UK, December 1997, para 5(d); Committee on Economic, Social and Cultural Rights: Concluding observations on the combined fourth to fifth periodic report of the UK, June 2009, para 4; Committee on Economic, Social and Cultural Rights, Concluding observations on the combined fourth to fifth periodic report of the UK, June 2009, para 6.

[57] Through, for example, Disability Living Allowance, working tax credits and disability premiums.

of education.[58] The European Committee on Social Rights has recently drawn attention to the inadequate level of social security benefits in the UK,[59] and recent reforms have required disabled people to use benefits intended for subsistence and disability-related costs to supplement shortfalls in other benefits, such as housing benefit and council tax benefit, as evidenced, for example, by research showing that councils are failing to respect the purpose of benefits such as DLA when assessing applications for discretionary housing payments.[60]

In its report on the Welfare Reform Bill (now the Welfare Reform Act 2012),[61] the Joint Parliamentary Committee on Human Rights expressed concerns in relation to certain reforms contained within the Bill; the impact of some of these reforms is examined in detail.

3.2.1 Employment and Support Allowance and the Work Capability Assessment

The right to social security, set out in Article 9 of ICESCR, encompasses the right to access or maintain benefits either in cash or in kind to ensure protection against loss of income from paid employment as a result of sickness, disability or employment injury.[62] If there is a failure to ensure the provision of income replacement benefits in these circumstances the UK would be failing to fulfil disabled people's rights to social security. For the majority of disabled people without alternative financial resources, this would also constitute a failure to fulfil the right to an adequate standard of living set out in ICESCR Article 11. For disabled people experiencing the greatest poverty and disadvantage, the non-provision of basic income replacement benefits may result in the UK failing to satisfy its minimum core obligations under ICESCR

[58] UN Committee on Economic, Social and Cultural Rights, General Comment No 19 on the Right to Social Security, UN Doc E/C 12/GC/19 (2008), para 59(a).
[59] European Committee of Social Rights (2014), Conclusions XX-2 (2013) (Great Britain) Articles 3, 11, 12, 13 and 14 of the 1961 Charter, p 19.
[60] Eg, Papworth Trust (2014) *Discretionary housing payments need to work for disabled people;* Joseph Rowntree Foundation (2013) *The impact of localising council tax benefit*.
[61] JCHR, *Legislative Scrutiny: the Welfare Reform Bill*.
[62] CESCR, General Comment No 19, para 2.

and UNCRPD, to ensure a level of benefits sufficient to provide basic food and shelter.[63]

Eligibility for Employment and Support Allowance (ESA), the income-replacement benefit for people who are too sick or disabled to work, is assessed via the Work Capability Assessment (WCA).[64] Since ESA and the WCA were introduced by the last Government in 2008,[65] there have been major concerns about the fate of claimants who are wrongly assessed as being fit for work or for work-related activity.[66]

Due to a high volume of appeals, claimants often have to wait many months to have their appeal heard. In addition, now that claimants are prevented from lodging an appeal with the tribunal service until DWP has reconsidered its decision,[67] they may experience a gap in benefit payment until the reconsideration has been completed. If they then decide to lodge an appeal, payment is resumed until the appeal is heard. Although a basic level of benefit is paid while claimants are awaiting appeal, there may be a gap in payment while the decision is reconsidered; payment is then resumed following reconsideration if an appeal is lodged. The delay in hearing appeals also means that some claimants are reassessed within weeks of winning an appeal, leaving claimants in an almost continual loop of assessment, reconsideration, appeal and reassessment etc, which is extremely stressful.[68] This is, of course, very costly and raises the question of whether the Government is making the best use of the resources available to realise disabled people's right to social security, as required by Article 2(1) ICESCR and Article 4(2) UNCRPD .

For claimants who are assessed as being able to work sometime in the future, eligibility for contributions-based ESA (as opposed to means-tested ESA) is limited to one year. Since means-tested ESA is unavailable if the claimant has a partner earning a very low wage of around £150 per week, this limitation has

[63] CESCR, General Comment No 3, para 10.
[64] Department for Work and Pensions (2012) *Employment and Support Allowance: Help if you are ill or disabled*.
[65] Under the Welfare Reform Act 2007.
[66] Eg, Citizens Advice Bureau (2012) *Right First Time*.
[67] Hansard, Lord Freud, HL deb, col 745, 13 February 2013, debate on The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013.
[68] Hansard, Westminster Hall Deb, Col 346WH, 25 October 2012.

caused hardship for some families, especially as it takes most ESA claimants more than a year to get back to work.[69]

We recommend that Employment and Support Allowance and the Work Capability Assessment are fundamentally reformed so they enable disabled people to enjoy their rights to social security, social protection and an adequate standard of living under ICESCR Articles 9 and 11 and UNCRPD Article 28. In particular, the WCA should take proper account of impairment-related and external barriers to employment, drawing more consistently on medical evidence and giving proper consideration to the practical support that may be available to enable claimants to return to work. The appeals process should not lead to gaps in benefit payment and assessments should not be undertaken any more frequently than the medical evidence warrants.

3.2.2 Reduced availability of advice services

Although the process of applying for social security benefits is complex[70] and claimants who are represented are usually more successful in appealing incorrect decisions,[71] cuts to legal aid[72] and to local authority funding have reduced the capacity of advice services to support people needing to claim benefits.[73] The Equality and Human Rights Commission has expressed concern that this reduced capacity will have a greater impact on disabled people, who are more likely to need to claim benefits than others.[74] The shortage of advice services potentially has an adverse impact on disabled people's enjoyment of their right to social security under ICESCR Article 9, their right to social protection under UNCRPD Article 28 and, for some, their right to an adequate standard of living under ICESCR Article 11 and UNCRPD Article 28.

[69] Hansard, HL Deb, Lord Patel, col 150, 11 January 2012.
[70] Work and Pensions Select Committee Session (2010) *Decision making and appeals in the benefits system*, second report of session 2009-2010.
[71] 'Citizens Advice calls for financial penalties on Atos', Citizens Advice press release, August 2012.
[72] Legal Aid, Sentencing and Punishing of Offenders Act 2012, Part 1.
[73] D Morris and W Barr (2013), The impact of cuts in legal aid funding on charities*, Journal of Social Welfare and Family Law*, Vol 35, No 1, 79–94; Citizens Advice Bureau (2012) *Out of scope, out of mind: Who really loses from legal aid reform*.
[74] Equality and Human Rights Commission (2010) *Response to the Consultation on reform of legal aid in England and Wales*.

The Low Commission, in its report on access to advice and legal support on social welfare law,[75] recommended that resources are concentrated on making the right decision on benefit entitlement in the first instance, to reduce the need for advice and support. Its key recommendation was that the Government establish a national strategy for advice and legal support.

We recommend that the Government implement the recommendations of the Low Commission's report, paying particular attention to the needs of disabled people for advice and support to exercise their right to social security and an adequate standard of living under ICESCR Articles 9 and 11 and UNCRPD Article 28.

3.2.3 The risk of destitution

Following the global financial crisis in 2008, increasing concern has been expressed about the incidence of absolute poverty among the working age population.[76] If the Government of a State Party fails to intervene to ensure the minimum core obligations under ICESCR and UNCRPD[77] are met, those living in that State are at risk of destitution.

The increasing risk of destitution for disabled people is the result of a number of factors, including the abolition of the discretionary social fund,[78] delays and mistakes in deciding eligibility and making benefit payments, unemployment, under-employment and rising prices.[79] While disabled people receive some benefits and concessions to help with their higher living costs, these measures are inadequate to offset all disability-related costs.[80] There is evidence that disabled people are already having difficulty meeting their basic needs, with some having to turn to food banks, mainly due to housing and council tax

[75] The Low Commission (2014)*Tackling the advice deficit: A strategy for access to advice and legal support on social welfare law in England and Wales*.
[76]Eg, Institute for Fiscal Studies (2013) *Living Standards, Poverty and Inequality in the UK*.
[77]CESCR, General Comment No 3, para 10.
[78] D Gibbons (2013) *Local welfare provision, low-income households, and third sector financial services provision*, (Centre for Responsible Credit).
[79] Oxfam and Church Action on Poverty (2013) *Walking the Breadline: the scandal of food poverty in 21st century Britain.*
[80] S Bulloch and C Rogers (2014) *Better living, higher standards: improving the lives of disabled people by 2020* (Scope).

benefit changes, even before some of the major reforms, such as PIP, have been implemented.[81]

Disabled people in the work related activity group of ESA,[82] or claiming JSA, may have their benefit sanctioned if they fail to fulfil their obligations to prepare for or seek work. In their report on the Welfare Reform Bill in 2011, the JCHR specifically expressed their concern about the impact of benefit sanctions on disabled people, fearing that their use could lead to destitution.[83]

Increasing concern has been expressed by Citizens Advice Bureaux[84] that sanctions are being applied inappropriately, for minor offences or in circumstances in which claimants are unable to understand or fulfil the obligations laid upon them. This is happening despite recommendations made by the Social Security Advisory Committee to make conditionality and sanctions fairer and more effective. [85] Withholding all or part of their benefits may leave claimants unable to meet their most basic needs and compromise their health, and those without family or friends to help may suffer significant hardship despite the assistance provided by initiatives such as food banks. In terms of ICESCR and the UNCRPD, sanctions may threaten the enjoyment by disabled people of the right to social security, social protection and, in many cases, the right to an adequate standard of living.

We recommend that DWP and JobCentre Plus pay urgent attention to ensuring that the UK meets its minimum core obligations in relation to disabled people's rights to social security, social protection and an adequate standard of living as set out in Articles 9 and 11 ICESCR and Article 28 UNCRPD. With regard to conditionality and sanctions, the Government should implement in full the recommendations made by the Social Security

[81] 'Food banks become lifeline for disabled people as benefit changes hit', Disability Benefits Consortium, 17 December 2013.
[82] Employment and Support Allowance Regulations 2008, SI No. 794; Employment and Support Allowance (Sanctions) (Amendment) Regulations 2012, SI No. 2756.
[83] JCHR, *Legislative Scrutiny: the Welfare Reform Bill.*
[84] West Dunbartonshire CAB (2014), *Unjust and Uncaring: A report on conditionality and benefit sanctions and their impact on clients*; Manchester Citizens Advice Bureau (2013) *Punishing Poverty? A review of benefits sanctions and their impacts on clients and claimants.*
[85] Social Security Advisory Committee (2012) *Universal Credit and Conditionality* Occasional Paper No 9.

Advisory Committee in 2012 - that the use of sanctions should be based on the principles of communication, personalisation, fairness and evaluation.[86]

3.3 Realising disabled people's rights to work, social security, social protection and an adequate standard of living – conclusion and recommendations

Employment and social security policies under current and recent UK Governments have entailed significant expenditure on frequent assessments, multiple tribunal appeals and employment support, but despite this, there is evidence that the UK is failing to meet a range of its obligations under ICESCR and UNCRPD. These include the Government's obligation to avoid impermissible backward steps in terms of giving effect to the rights to work, social security, social protection and an adequate standard of living. We are also greatly concerned that the State does not always meet its minimum core obligations to satisfy disabled people's needs. **There is a clear need for DWP and JobCentre Plus to refocus their priorities and resources towards supporting and enabling disabled people to enjoy their rights to work, social security, social protection and an adequate standard of living set out in Articles 6, 9 and 11 ICESCR and Article 28 UNCRPD.**

[86] SSAC, *Universal Credit and Conditionality.*

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