UK 'is first country to face UN inquiry into disability rights violations'

Posted by Melanie Brown on Friday, 15 August 2014 in Disability in the News

The UK government appears to have become the first country to face a high-level inquiry by a United Nations committee, as a result of "grave or systemic violations" of the rights of disabled people.

The committee has the power to launch an inquiry if it receives "reliable information" that such violations have been committed by a country signed up to the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and its optional protocol.

These investigations are conducted "confidentially", so the UN's Committee on the Rights of Persons with Disabilities (CRPD) - which is carrying out the inquiry - has refused to confirm or deny that the UK is being investigated.

But a recording has emerged of a former CRPD member revealing that the inquiry has been launched.

Professor Gabor Gombos, co-founder of Voice of Soul, Hungary's first organisation for ex-users and survivors of mental health institutions, and co-chair of the World Network of Users and Survivors of Psychiatry, tells the audience on the recording that CRPD has "started its first inquiry procedure against the United Kingdom".

He tells the Sixth International Disability Law Summer School at the National University of Ireland in Galway in June that inquiries are only used where there are suspicions of "grave" violations of human rights in a country.

He says: "Where the issue has been raised and the government did not really make effective actions to fix the situation... it is a very high threshold thing; the violations should really be grave and very systemic."

Only last month, a new report, Dignity and Opportunity for All: Securing the Rights of Disabled People in the Austerity Era, laid bare the coalition's failure to meet its international human rights obligations under both UNCRPD and the International Covenant on Economic,

Social and Cultural Rights (ICESCR).

That report - published by the Just Fair coalition, which includes Disabled People Against Cuts and Inclusion London - suggested that the UK had gone from being an international leader in disability rights to risking becoming a "systematic violator of these same rights".

Last week, Disability News Service (DNS) reported that CRPD appeared to have postponed its public examination of how the UK has been implementing the disability convention until after next year's general election.

Some activists were unhappy that the committee's decision to postpone the examination would allow the UK government to avoid having to justify a clear regression in disability rights since the 2010 election.

But it now appears that the committee may have taken this decision because it had launched the much more serious - and so far unprecedented - inquiry into the UK's violation of disabled people's rights.

A DPAC spokeswoman said: "DPAC is not in a position to comment on the UN inquiry on the UK's breaches of the UNCRPD, but we would share the view that there have been grave and systematic violations of disabled people's rights especially, but not exclusively, articles 19 [on living independently and being included in the community] and 28 [on providing an adequate standard of living and social protection]."

Jorge Araya, CRPD's secretary, told DNS in a statement: "Inquiry proceedings regulated in article six and seven [which relate to the inquiry procedure] of the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities, are confidential.

"So, for this very reason, stated in this treaty, I apologise but I cannot respond to your queries."

So far, the Conservative minister for disabled people, Mark Harper, has failed to comment on the CRPD inquiry.

14 August 2014

News provided by John Pring at www.disabilitynewsservice.com

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

on 6th July 2014

Reports

Report: A **report** published today by Just Fair finds that the UK government is in breach of its legal obligations to respect, protect and fulfill the human rights of disabled people. **(Click here for full report).**

The report is the first comprehensive analysis of the extent to which the UK government is meeting its international obligations to realise the rights of disabled people in the austerity era. It examines the rights to independent living, work, social security, social protection and an adequate standard of living.

Combining legal analysis with testimony-based evidence, the report concludes that government policies are compromising disabled people's enjoyment of these fundamental rights, causing significant hardship.

The report - Dignity and Opportunity for All: Securing the rights of disabled people in the austerity era - analyses the impact on disabled people of public austerity and the reform of social security.

Evidence 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).

Please find the survey results and anonymised case studies below.

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.

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.

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

FULL 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

Dignity & Opportunity for All

Securing the rights of disabled people in the austerity era

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Executive Summary

Scope and purpose of the report

The UK has signed a number of international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the United Nations Convention on the Rights of People with Disabilities (UNCRPD), and in doing so has taken on obligations to progressively realise disabled people's economic, social and cultural rights. In the context of the global financial crisis and economic austerity, this report analyses recent progress by the UK towards the realisation of certain key rights under ICESCR and UNCRPD, seeking to assess the extent to which the UK is respecting, protecting and fulfilling these rights and whether recent austerity policies have resulted in impermissible retrogression.

The analysis in this report builds on assessments by UN bodies, including observations and recommendations from the relevant UN committees and the findings of UN Rapporteurs. It also builds on and develops findings of the Parliamentary Joint Committee on Human Rights (JCHR), which analyses the human rights implications of specific areas of policy and law. Evidence and case studies are taken from a variety of research reports, the findings of parliamentary Select Committees, and from an online survey of disabled people and their families.

The right to live independently and to be included in the community (UNCRPD Article 19)

In the decade prior to the global financial crisis the UK made some significant progress in realising disabled people's right to independent living, through the adoption of progressive and enabling policies in several policy areas including social care, employment, social security, transport and housing. However, in its 2012 report *Implementation of disabled people's right to independent living*, the JCHR expressed its concern that changes in certain policy areas, and the cumulative impact of these changes on disabled people, risked constituting impermissible retrogression in relation to the right to independent living set out in UNCRPD Article 19.

Key concerns

The findings of this part of the report focus on the provision of adequate housing for disabled people who rely on housing benefit, financial assistance towards disability-related costs and the provision of personal assistance. Recent changes to housing benefit, notably the social sector size criteria, have made only limited provision for the specific needs of disabled people for whom independent living may depend on adaptations, an extra room or local support networks. At the same time, the introduction of Personal Independence Payment (PIP), to replace Disability Living Allowance (DLA), which provides a contribution toward disability-related costs, threatens to reduce support for many disabled people, including those who have difficulty moving around, those who need constant supervision and those who need a small amount of support to maintain their independence. Both of these changes will have an impact on the financial resources available to disabled people to maintain their independence.

Over the last 20-30 years the adoption of personal budgets and direct payments has increased disabled people's independence and autonomy through the provision of personal assistance rather than residential care or traditional homecare services. However, pressure on local authority budgets has led to disabled people losing support or having their support reduced. The Care Act 2014 is a positive development but it does not include independent living in its list of high-level outcomes and the national eligibility criteria under the Act are likely to restrict support to those with higher levels of need. In addition, the Independent Living Fund (ILF), which supports disabled people with high support needs to live in the community, is to be subsumed into local authority social care departments with no guarantee that users' level of support will be maintained. These changes and budget pressures risk reducing sharply the level of support, resulting in a clear threat to independent living.

Recommendations

We recommend that recent housing benefit changes and the introduction of PIP be thoroughly reviewed, and necessary changes made to the rules and criteria to reverse any impermissible retrogression in relation to the right to independent living. Sufficient investment should be made in social care

services to ensure that disabled people with support needs have the personal assistance needed to live independently and play a full part in their community. In addition, since disabled people's independence is affected by a combination of recent changes and reforms, we recommend that an assessment be made of their cumulative impact on disabled people's ability to live independently, and that their impact be monitored to guard against impermissible retrogression in relation to UNCRPD Article 19.

Work, social security, social protection and an adequate standard of living

The enjoyment by disabled people of an adequate standard of living (ICESCR Article 11 and UNCRPD Article 28) is dependent on their ability to exercise both their right to work, in order to ensure sufficient remuneration to support themselves and their families (ICESCR Article 7 and UNCRPD Article 27), and their right to social security (ICESCR Article 9 and UNCRPD Article 28) when they are unable to work. Barriers to employment and the impact of disability-related costs mean disabled people are significantly less likely to enjoy an adequate standard of living than non-disabled people. Therefore, both employment and social security policies are critical to ensuring their rights in these areas under ICESCR and UNCRPD.

The right to work and to fair and just conditions of employment (ICESCR Articles 6 and 7 and UNCRPD Article 27)

Equality legislation seeks to eliminate barriers to employment for disabled people so they can exercise their right to work under ICESCR Article 6 and UNCRPD Article 27. However, "welfare to work" policies favoured by current and recent governments pressurise disabled people to prepare for and seek any work as a condition of receiving benefits. This is very different from support for disabled people in realising their right to work. Initiatives such as the Work Programme expend considerable resources on supporting disabled people to work but generally fail to utilise methods proven to be effective or to provide incentives and support for employers. We recommend that resources are re-focused on implementing personalised, local support proven to be effective in supporting both disabled people and employers, matching the

needs of employers with those of disabled people and focusing on work-based training and skills development to meet the needs of the labour market. Such measures are more likely to result in progress towards realising disabled people's right to work. Furthermore, support for employers may also help reduce the disproportionate level of harassment and discrimination reported by disabled people in the workplace, thereby increasing their enjoyment of the right to fair and just conditions of employment under ICESCR Article 7 and UNCRPD Article 27.

The right to social security and to an adequate standard of living under ICESCR Articles 9 and 11 and UNCRPD Article 28

Following several years of significant progress in realising disabled people's rights to social security and an adequate standard of living through equality legislation and the benefits system, the UK is undergoing an extensive programme of welfare reform. In its legislative scrutiny of the Welfare Reform Bill, the JCHR expressed significant concern about the impact of these measures on disabled people's human rights, especially given the lack of impact assessment of the human rights implications of the reforms.

Under the current and previous governments, out of work sickness benefits have been reformed by the replacement of incapacity benefit by employment and support allowance (ESA), for which entitlement is assessed through the work capability assessment (WCA). Frequent, stressful and inaccurate WCAs, the withholding of benefit while DWP reconsiders a decision on entitlement, long waiting times for appeals, and a 12-month limit on contributory ESA, all combine to deny disabled people their right to social security, causing near-destitution in some cases. In order to reverse impermissible retrogression and to meet the UK's minimum core obligations under ICESCR and UNCRPD we recommend that ESA and the WCA be fundamentally reformed, so that ESA provides a robust safety net for those unable to work due to impairment or health condition.

Wide-ranging welfare reform increases the need for high quality advice at a time when advice services are being cut due the removal of legal aid from social welfare law and reduced funding from local authorities. To ensure disabled people have access to the advice and support they need to claim the

benefits to which they are entitled, and thereby exercise their right to social security and to an adequate standard of living, the Low Commission recommends a multi-faceted solution, including a national strategy for advice and support. We agree with and echo this recommendation.

A combination of several factors, including delays in benefits decisions and payment, welfare reform, unemployment, under-employment, low wages and rising prices, is increasing the risk of poor people, including many disabled people, facing destitution. Disabled people and others are increasingly turning to food banks and other crisis support as they struggle to afford food, even before many of the reforms have started to have an impact; this indicates a failure to meet the UK's minimum core obligations under ICESCR and UNCRPD.

In its scrutiny of the Welfare Reform Bill, the JCHR expressed concern that conditionality, enforced by benefit sanctions, which can affect disabled people claiming either ESA or Jobseekers' Allowance (JSA), could lead to destitution in some circumstances. The evidence shows that some sanctions are being imposed unfairly, for example on claimants who do not understand or are unable to meet the conditions of claiming benefit because of their impairment. We recommend that DWP implements the recommendations of the Social Security Advisory Committee (SSAC), that conditionality and sanctions be based on the principles of communication, personalisation, fairness and evaluation, to avoid impermissible retrogression in relation to the rights to social security and to an adequate standard of living and failure to meet the UK's minimum core obligations under ICESCR and UNCRPD.

Recommendations

There is a clear need to refocus policy and expenditure towards evidence-based approaches to progressively realise the rights of disabled people to work, to social security and to an adequate standard of living. We recommend that the ethos and performance management of DWP and JobCentre Plus be re-focused so that their primary responsibility is to ensure claimants receive the support they need to enjoy their rights under Articles 6, 7, 9 and 11 ICESCR and Articles 27 and 28 UNCRPD.

1. Context and methodology

1.1 The scope of this analysis

Just Fair acts as a hub and advocate of an emerging economic, social and cultural rights movement in the UK. The organisation aims to ensure that UK law, policy and practice complies with international human rights obligations under the International Covenant on Economic, Social and Cultural Rights (IESCR) and related conventions in the UN human rights framework. This latest piece of research focuses on the human rights of disabled people in the UK, under both the ICESCR and the United Nations Convention on the Rights of People with Disabilities (UNCRPD), and concentrates specifically on progress towards achieving the following rights:

- The right to live independently and to be included in the community (UNCRPD Article 19);
- The right to work and to fair conditions of employment (ICESCR Articles 6 and 7 & UNCRPD Article 27);
- The right to social security (ICESCR Article 9) and social protection (UNCRPD Article 28);
- The right to an adequate standard of living (including adequate food, clothing and housing) (ICESCR Article 11 & UNCRPD Article 28).

The analysis in this report updates and builds on relevant findings and recommendations included in the following reports:

- Concluding observations following the UK's examination by the UN Committee on Economic, Social and Cultural Rights under the International Covenant on Economic, Social and Cultural Rights (June 2009);
- Concluding observations following the UK's examination by the UN Committee on the Elimination of all forms of Discrimination Against Women, under the Convention on the Elimination of all forms of

Discrimination Against Women (CEDAW), in relation to disabled women (July 2013);

- Report by the UN Special Rapporteur on Housing following her country visit to the UK in August/September 2013.[1]
- Parliamentary Joint Committee on Human Rights Twenty-first Report of Session 2010-12, *Legislative scrutiny of the Welfare Reform Bill*, published in December 2011;
- Parliamentary Joint Committee on Human Rights Twenty–third Report of Session 2010–12, *Implementation of disabled people's right to independent living*, published in March 2012.

Note: The Joint Committee on Human Rights (JCHR) consists of 12 members, drawn from both the House of Commons and the House of Lords. Its remit includes the consideration of matters relating to human rights in the UK (excluding individual cases). The JCHR is the authoritative voice on human rights within Parliament. It conducts a variety of roles, including scrutinising draft legislation for human rights compatibility. In addition, the Committee scrutinises the UK's compliance with the main UN human rights treaties and seeks to increase Parliament's role in the implementation of the obligations contained in those treaties. In performing these roles, the JCHR hears evidence from people directly affected by the issue concerned, as well as from civil society organisations, public authorities, legal experts and ministers.

1.2 The UK's obligations under ICESCR and UNCRPD

The ICESCR and the UNCRPD articles relevant to this report have not been incorporated into UK law and therefore cannot be relied on directly in UK courts. However, following ratification, they became binding on the UK

[1] Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik. Addendum; Mission to the United Kingdom of Great Britain and Northern Ireland, Human Rights Council Twenty-fifth session, Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 30 December 2013 HRC/25/54/Add 2, pp 16-17.

Government, which is therefore subject to a range of international legal obligations imposed by those treaties.

This report is published at a time when the UK Government is implementing a policy of unprecedented public spending cuts, the stated aim of which is to eliminate the structural economic deficit following the global financial crisis in 2008. The reduction in public spending over the next few years is forecast by the Office for Budget Responsibility to take UK Government consumption of goods and services to its smallest share of Gross Domestic Product since 1948.[2]

Both the UN Committee on Economic, Social and Cultural Rights[3] and the Commissioner for Human Rights of the Council of Europe[4] have recently emphasized the obligation on nation States to continue to make progress towards realising economic, social and cultural rights and to avoid retrogressive measures, despite the global economic crisis. These actors have emphasised the need to avoid measures that have a discriminatory impact on disadvantaged groups, including disabled people, and to ensure that States' core obligations under the UN treaties are met. The Council of Europe Commissioner for Human Rights explained[5]:

> *Economic policy is not exempt from the duty of member States to implement human rights norms and procedural principles. As embodied in international human rights law, civil, political, economic, social and cultural rights are not expendable in times of economic hardship, but are essential to a sustained and inclusive recovery.*

In its 2011 report on the Welfare Reform Bill, and its 2012 report on independent living, the parliamentary Joint Committee on Human Rights expressed concern that there was a risk of impermissible retrogression (i.e. backward steps contrary to international human rights law) in relation to the rights of disabled people, arising from various Government reforms and

[2] Office of Budget Responsibility (2013), *Economic and Fiscal Outlook* (Cm 8748).
[3] CESCR, Letter to States Parties dated 16 May 2012, Reference CESCR/48th/SP/MAB/SW.
[4] Council of Europe Commissioner for Human Rights (2013) *Safeguarding human rights in times of economic crisis issue paper*.
[5] Council of Europe Commissioner for Human Rights, *Safeguarding human rights in times of economic crisis*, p 7.

spending decisions.[6] This report includes an assessment of the degree to which some of the risks identified by the JCHR have materialized, and makes recommendations to mitigate the impact of spending decisions and reforms on disabled people.

In 2015 the UN Disability Committee is scheduled to examine the UK Government's report on the implementation of the UNCRPD. In addition, the UN Committee on Economic, Social and Cultural Rights requested reports by June 2014 for its next UK examination under ICESCR in 2016. The analysis in this report seeks to inform these forthcoming examinations.

1.3 Research methodology

In addition to desk research, this report draws on the lived experience of disabled people and people with long term health conditions,[7] who were consulted on their priorities and experiences. The report therefore includes a selection of case studies on the impact of a range of welfare and social care policies on disabled people's lives and well-being.

An online survey revealed that the following issues are causing the greatest concern to disabled people and their families:

- Employment and Support Allowance and the Work Capability Assessment;
- Personal Independence Payment; and
- The housing benefit size criteria for claimants in social housing (known as the 'bedroom tax' by its opponents and the 'removal of the spare room subsidy' by the Government).

[6] See Sections 3.5 and 4.3.4 below.

[7] Those who take a rights-based approach to the issues facing disabled people, and view disability as a social construct rather than a medical phenomenon, prefer to use the terminology 'disabled people and people with long term health conditions'. In this report, all references to 'disabled people' should be assumed to include people with long term health conditions, who may prefer to describe themselves as 'chronically sick' to draw attention to the fact that the barriers they face are sometimes different in nature to those faced by disabled people who are not sick. In addition, while those who view disability as a social construct prefer to use the phrase 'disabled people', the use of the phrase 'people with disabilities' is also in common use and more closely reflects the language used in the UN treaties.

Many of those consulted also cited the significant impact on disabled people of the cumulative effects of several policies, an issue also raised by the JCHR in its report on the implementation of the right to independent living.[8] Particular attention is paid to the concerns raised by disabled people themselves.

1.4 Guide to the report

Chapter 2 explains the scope and nature of the specific Convention articles covered by this report and the UK's obligations. Chapter 3 analyses the right to independent living, enshrined in UNCRPD Article 19, and focuses specifically on:

- Recent progress in realising disabled people's right to independent living
- Changes to housing benefit
- Reform of Disability Living Allowance
- Closure of the Independent Living Fund
- The adequacy of social care services
- The cumulative impact of a range of changes and reforms

Chapter 4 analyses the rights to work, social protection, social security and an adequate standard of living, set out in ICESCR Articles 6, 7, 9 and 11 and UNCRPD Articles 27 and 28. It focuses specifically on:

- Structural changes to the labour market and to social security
- "Welfare to work" programmes and employment support for disabled people
- Incentives and support for employers
- The importance of training and skills
- Discrimination faced by disabled people in the workplace
- Recent progress in realising disabled people's rights to social security, social protection and an adequate standard of living
- The adequacy of social security benefits
- Problems with Employment and Support Allowance and the Work Capability Assessment

[8] Joint Committee on Human Rights (2012) *Implementation of disabled people's right to independent living*, Twenty–third Report of Session 2010–12, Conclusions and recommendations para 10.

- Reduced availability of advice services
- The risk of destitution, including as a result of benefit sanctions

Note: Universal Credit is likely to have significant human rights implications. However, thus far its implementation has been very limited and it has not yet started to affect disabled people. Therefore, its impact cannot be adequately analysed at this stage and will not be addressed in this report.

2. Understanding the UK Government's obligations

2.1 Introduction to Chapter 2

The chapter explains the scope and nature of the specific Convention rights covered by this report and of the general obligations of the Government to respect, protect and fulfil those rights.

2.2 The key rights

2.2.1 The right to live independently and to be included on the community

Article 19 of the United Nations Convention on the Rights of People with Disabilities (UNCRPD) requires the Government to take appropriate measures to ensure the full enjoyment by disabled people of the right to live in, participate in and enjoy full inclusion in the community, with choices equal to others. Disabled people should be able to choose where and with whom to live on a equal basis with others. They should not be obliged to live in a particular living arrangement. Living options and support should be sufficient to ensure such choice and inclusion and, in particular, to prevent isolation or segregration from the wider community.

Article 19 brings together a number of existing rights under other international human rights treaties[9] and makes them relevant to the specific experiences of disabled people. Particular examples include the right to liberty[10] (that is, the right not to be confined to an institution or become a prisoner in one's own home) and to private and family life[11] (to be the author of one's own life, to have relationships and to 'be in the world').[12] It is also instrumental to the protection and promotion of a number of other rights, such as the right not to

[9] JCHR, *Implementation of disabled people's right to independent living*.
[10] Article 9 International Covenant on Civil and Political Rights (ICCPR).
[11] Article 17 ICCPR.
[12] JCHR, *Implementation of disabled people's right to independent living*, para 15.

be subject to inhuman and degrading treatment[13] – a very real risk faced by people who are institutionalised or isolated, as exemplified by the scandals at Winterbourne View[14] and the high incidence of abuse and neglect of older disabled people.[15]

As the Government has acknowledged, independent living is not about disabled people doing everything for themselves, *'but it does mean that any practical assistance people need should be based on their own choices and aspirations.'*[16] According to the Council of Europe Commissioner on Human Rights:[17]

> *…living and being included in society is about being able to share in those schemes available and utilised by people in that society. It is about the opportunity to access the public sphere: being able to access housing markets and transportation systems just like anyone else: being able to walk down the high street, to seek out friends and develop relationships with others. It is the opportunity to take risks, be responsible for one's life, and in doing so, to be accorded the same, even if incomplete, safety net and protection available to other members of the community. Reaffirming the right to live in the community means making this baseline a reality for people with disabilities, and in that process responding to the preferences and desires of each person.*

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

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) secures the right of everyone to social security, including social insurance. ICESCR Article 11 (1) guarantees the right of everyone to an

[13] Article 7 ICCPR; Article 15 UNCRPD.
[14] Department for Health (2013) *Winterbourne View Hospital - Review and Response*.
[15] HCISC (2013), *Abuse of Vulnerable Adults in England - 2012-13, Provisional report, Experimental statistics*.
[16] Disability Rights Commission (2002) as referenced in Office for Disability Issues (2012), *Fulfilling Potential Discussion Paper*.
[17] Council of Europe Commissioner on Human Rights (2012) *The right of people with disabilities to live independently and be included in the community, issues paper*.

adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Article 28 of the UNCRPD reaffirms disabled people's right to an adequate standard of living and social protection. This is especially important given the fact that disabled people and people with long term health conditions face a much higher risk of living in poverty. This arises from reduced opportunities to raise income through paid employment, from extra disability-related costs of living, and from barriers in accessing basic 'goods' such as suitable housing.[18] Hence Article 28 requires the Government to address disability-related poverty proactively. This will include ensuring that disabled people and their families living in situations of poverty receive assistance from the State with disability-related costs, ensuring access by persons with disabilities to public housing programmes, and guaranteeing equal access by persons with disabilities to retirement benefits and programmes.[19]

The UN Committee on Economic, social and Cultural Rights (CESCR) has provided an authoritative interpretation of the right to social security under ICESCR. According to that body, the right to social security encompasses the right to access or maintain benefits either in cash or in kind to ensure protection against loss or lack of income from paid employment as a result of sickness, disability or employment injury.[20] The means via which governments are required to meet their obligations regarding the right to social security must be available, adequate, accessible and affordable.[21] States must not subject people to arbitrary and unreasonable restrictions of existing social security programmes or entitlements.[22] States must ensure the participation of beneficiaries of social security schemes, including disabled people, in the administration of those schemes.[23]

[18] Office for Disability Issues (2013) *Building Understanding Slide Deck* 78-84 and 104.
[19] Article 28 UNCRPD.
[20] 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 2.
[21] See CESCR, General Comment No 19, paras 9-28.
[22] CESCR, General Comment No 19, para 9.
[23] CESCR, General Comment No 19, para 26.

Availability: A social security system should be established under domestic law, and public authorities must take responsibility for the effective administration or supervision of the system.[24]

Adequacy: benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone can realise his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as set out in Articles 10, 11 and 12 of ICESCR.[25]

Accessibility: all persons should be covered by the social security system, especially individuals belonging to the most disadvantaged and marginalised groups.[26] Furthermore, qualifying conditions for benefits must be reasonable, proportionate and transparent. The withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law.[27] The UN Disability Committee has also discussed the requirements of 'accessibility' for social protection regimes.[28]

Affordability: the direct and indirect costs and charges associated with making contributions must be affordable for all, and must not compromise the realisation of other Covenant rights.[29]

In addition to these elements, benefits must be provided in a timely manner and beneficiaries, including those with disabilities, should have physical access to the social security services in order to access benefits and information, and make contributions where relevant.[30]

[24] CESCR, General Comment No 19, para 11.
[25] CESCR, General Comment No 19, para 22.
[26] CESCR, General Comment No 19, para 23.
[27] CESCR, General Comment No 19, para 24.
[28] See UN Committee on the Right of People with Disabilities, General Comment No.2 on Article 9: Accessibility, UN CRPD/C/GC/2 (2014) , paras 40, 42.
[29] CESCR, General Comment No 19, para 25.
[30] CESCR, General Comment No 19, para 27.

2.2.3 The rights to work and to just and favourable conditions of work

Article 6 of ICESCR safeguards the right to work, while Article 7 sets out the right of everyone to the enjoyment of just and favourable conditions of work, including fair wages and equal remuneration for work of equal value without distinction of any kind, and equal opportunity for promotion. Article 8 of ICESCR safeguards trade union rights, including the right of all peoples to join and form such bodies.[31] Disabled people's right to work and employment is reaffirmed by Article 27 of the UNCRPD, which includes the right of persons with disabilities to work, on an equal basis with others, the opportunity to gain a living by work freely chosen or accepted in a labour market and a work environment that is open, inclusive and accessible to persons with disabilities.

Under Article 27 of the UNCRPD the Government must safeguard the right to work by taking appropriate steps, including through legislation, to prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment. The Government must also protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, and promote employment opportunities and career advancement for persons with disabilities in the labour market. They must provide assistance to persons with disabilities in finding, obtaining, maintaining and returning to employment and employ them in the public sector. Moreover, the UK should promote the employment of persons with disabilities in the private sector through appropriate policies and measures. The Government must also ensure that reasonable accommodation is provided to persons with disabilities in the workplace, as well promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

[31] The obligations imposed by these rights are discussed in detail in UN Committee on Economic, Social and Cultural Rights, General Comment No 5 on People with Disabilities, UN Doc E/1995/22 (1994), paras 20-27.

2.3 What are governments required to do to implement their obligations under UNCRPD and ICESCR?

2.3.1 Respect, protect and fulfil

In its report on disabled people's right to independent living, the UK Parliamentary Joint Committee on Human Rights (JCHR) discussed the nature of the Government's obligations arising from its international human rights treaty obligations under UNCRPD:

> *The **obligation to respect** means that States must not interfere with the enjoyment of the rights of people with disabilities. For example, they must respect their right to education by not excluding them from school on the basis of their disability and must respect their right to health by not carrying out medical experiments on them without their free and informed consent.*
>
> *The **obligation to protect** means that States must take positive steps to protect the rights of disabled people against violation by third parties, including private individuals and organisations. For example, the State must protect people with disabilities against inhuman and degrading treatment by privately run prisons or care homes, and must protect their right to work by ensuring that private businesses cannot discriminate against employees on grounds of their disability.*
>
> *The **obligation to fulfil** means that States must take appropriate actions (including legislative, executive, administrative, budgetary, and judicial actions) towards the full realisation of economic, social and cultural rights (as described in both ICESCR and UNCRPD). For example, the State must fulfil the right not to be abused or mistreated by taking positive steps to ensure that adequate training and information are provided to health professionals, police and prison officers, and must fulfil the right*

of disabled people to take part in the life of their community by taking steps to enhance accessibility.[32]

The same typology of "respect, protect, fulfil" has been used to analyse the obligations under ICESCR.[33]

2.3.2 The obligation to adopt, reform or develop domestic legislation, policies and strategies

Article 4(1)(a) of the UNCRPD obliges States Parties to adopt all appropriate measures to implement the rights set out in the convention. Such measures include legislation, strategies, administrative measures, policies and programmes. Existing legislation, strategies and policies should be reviewed to ensure that they are compatible with human rights obligations, and should be repealed, amended or otherwise changed if inconsistent with the requirements of those instruments.[34]

2.3.3 Progressive realisation and maximum available resources

Recognising that resources are necessarily finite and that not every aspect of the rights under ICESCR and the UNCRPD can be achieved immediately, ICESCR Article 2(1) and UNCRPD Article 4(2) require governments to take steps, to the maximum of their available resources, with a view to *achieving progressively* the full realisation of the economic, social and cultural rights set out in the conventions.[35]

However, far from indefinitely postponing the achievement of the rights, the conventions impose an obligation to move as expeditiously and effectively as

[32] JCHR, *Implementation of disabled people's right to independent living*.
[33] This system of categorising obligations has been a feature of all of the Committee on Economic, Social and Cultural Rights' General Comments on substantive rights under ICESCR since 1999.
[34] Article 4 UNCRPD.
[35] Guidance for Human Rights Monitors published by the Office of the High Commissioner on Human Rights implies that the principles and comments developed by the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child should be considered to apply to interpretation of UNCRPD – see Office of the High Commissioner on Human Rights (2010) *Monitoring the Convention on the Rights of Persons with Disabilities - Guidance for Human Rights Monitors*, Professional training series No 17.

possible towards that goal and also impose obligations which have immediate effect.[36] In its General Comment on the scope of the right to social security under ICESCR, the CESCR explained:

> *To demonstrate compliance with their general and specific obligations, States Parties must show that they have taken the necessary steps towards the realisation of the right to social security within their maximum resources, and have guaranteed that the right is enjoyed without discrimination and equally by men and women.*[37]

The 'duty to take steps' under ICESCR Article 2(1) has been interpreted as imposing an immediate obligation on governments to adopt a national strategy and plan of action to realise economic, social and cultural rights.[38] With regard to social security, the strategy and action plan should take into account the equal rights of the most disadvantaged and marginalised groups and respect people's participation.[39] The strategy should also set targets to be achieved and the time-frame for their achievement, together with corresponding indicators, against which they should be continuously monitored.[40] It must also contain mechanisms for obtaining financial and human resources.[41] UNCRPD Article 33 requires States to establish, maintain or strengthen a framework to monitor implementation of the Convention; monitoring processes must involve, and ensure the participation of, civil society and in particular disabled people.

2.3.4 Equality and non-discrimination

Under Article 2(2) of ICESCR, the UK Government is under an obligation to guarantee the rights contained in the Covenant without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status ('prohibited grounds'). This includes disability. With regard to disabled people, UNCRPD Article 5

[36] 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), para 9.
[37] CESCR, General Comment No 19, para 62.
[38] See, eg, CESCR, General Comment No 19, para 68.
[39] CESCR, General Comment No 19, paras 68, 69.
[40] CESCR General Comment No 19, para 68.
[41] CESCR General Comment No 19.

prohibits all discrimination on the basis of disability and guarantees to persons with disabilities equal and effective legal protection against discrimination on all grounds. These are immediate obligations that the State must give effect to straight away. They are not subject to progressive realisation or the extent of the resources available to the State. UNCRPD Article 5 requires the UK to take all appropriate steps to ensure that reasonable accommodation is provided in order to promote equality and eliminate discrimination. Articles 6 and 7 of the UNCRPD draw particular attention to the need to consider the rights of disabled women and disabled children, respectively.

Article 2(2) of ICESCR prohibits both direct discrimination (when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground)[42] and indirect discrimination (laws, policies or practices which appear neutral at face value, but have a discriminatory impact on the exercise of Covenant rights).[43] UNCRPD Article 5 requires governments to take all appropriate steps to ensure that 'reasonable accommodation' is provided to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of *all* human rights and fundamental freedoms – including those under ICESCR and UNCRPD.[44] The CESCR has also highlighted that some individuals or groups of individuals face discrimination on more than one of the prohibited grounds of discrimination.[45] This is true of disabled women, for instance. According the Committee, such 'multiple discrimination' has a unique and specific impact on individuals and merits particular consideration and remedying.[46]

2.3.5 Non-retrogression

The duty of progressive realisation entails a strong presumption against deliberate retrogressive measures (or backward steps) in terms of rights enjoyment.[47] This is of particular relevance in the current economic climate in

[42] UN Committee on Economic, Social and Cultural Rights, General Comment No 20 on Non-discrimination in Economic, Social and Cultural Rights (Art 2, Para 2 of the Covenant), UN Doc E/C 12/GC/20 (2009), para 10.
[43] CESCR, General Comment No 20, para 10.
[44] Article 5 UNCRPD – Non Discrimination.
[45] CESCR, General Comment No 20, para 17.
[46] CESCR, General Comment No 20, para 17.
[47] CESCR, General Comment No 3, para 9.

the UK given the Coalition Government's adoption of fiscal austerity resulting in deep reductions in public expenditure. The CESCR has said:[48]

> *Violations [of the right to social security] include, for example, the adoption of deliberately retrogressive measures incompatible with the core obligations […] the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to social security; [...] active denial of the rights of women or particular individuals or groups. Violations through acts of omission can occur when the State Party fails to take sufficient and appropriate action to realise the right to social security. In the context of social security, examples of such violations include the failure to take appropriate steps towards the full realisation of everyone's right to social security; the failure to enforce relevant laws or put into effect policies designed to implement the right to social security [...]*

It has also said that:[49]

> *a general decline in living and housing conditions, directly attributable to policy and legislative decisions by the States Parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.*

In the context of considering the right to social security, the CESCR has explained that:[50]

> *if any deliberately retrogressive measures are taken, the State Party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State Party. The Committee will look carefully at whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of*

[48] CESCR, General Comment No 19, para 64.
[49] UN Committee on Economic Social and Cultural Rights, General Comment No 4, The right to adequate housing, para 11.
[50] CESCR, General Comment No 19, para 42.

affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realisation of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level.

2.3.6 Core obligations

Economic, social and cultural rights impose a minimum core obligation on States to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights.[51] With regard to the right to social security, the UK must ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.[52] The UK must also respect existing social security schemes and protect them from interference.[53]

Concerning the core obligations imposed by the right to work, the UK must ensure the right of access to employment, especially for disadvantaged and marginalised individuals, avoid any measure that results in discrimination and unequal treatment in the private and public sectors, and adopt and implement a national employment strategy and plan of action based on and addressing the concerns of all workers on the basis of a participatory and transparent process.[54]

In order for a State Party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those obligations: [55]

[51] CESCR, General Comment No 3, para 10.
[52] CESCR, General Comment No 19, para 59.
[53] CESCR, General Comment No 19, para 59.
[54] CESCR, General Comment No 18 on the Right to Work, UN Doc E/C.12/GC/18 (2006), para 31.
[55] CESCR, General Comment No 3, paras 11.

> *…even where the available resources are demonstrably inadequate, the obligation remains for a State Party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constraints [...]*

2.3.7 Taking the human rights of persons with disabilities into account

Under Article 4(1)(c) of the UNCRPD the UK must take into account the protection and promotion of the human rights of disabled people including economic, social and cultural rights, in all policies and programmes. For instance, before any action is carried out by the State Party, or by any other third party, that interferes with the right of an individual to social security, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and include: (a) an opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies.[56] Under no circumstances should an individual be deprived of a benefit on discriminatory grounds or of the minimum essential level of benefits.[57]

2.3.8 Effective remedies

In terms of Article 2(1) of ICESCR, any persons or groups who have experienced violations of their economic, social and cultural rights should have access to judicial, administrative or other effective remedies at both national and international levels.[58] For example, all victims of violations of their right to social security should be entitled to adequate reparation, including restitution,

[56] CESCR, General Comment No 19, para 78.
[57] CESCR, General Comment No 19, para 78.
[58] See, eg, UN Committee on Economic, Social and Cultural Rights, General Comment No 9 on The Domestic Application of the Covenant, UN Doc. E/C.12/1998/24 (1998), para 9.

compensation, satisfaction or guarantees of non-repetition.[59] National ombudspersons, human rights commissions, and similar national human rights institutions should be permitted to address violations of the rights.[60] The CESCR has emphasised on a number of occasions that the incorporation in the domestic legal order of the ICESCR can significantly enhance the scope and effectiveness of remedial measures.[61] As noted above, this has not occurred in the UK.

2.3.9 Assessing whether the Government is in breach of its obligations in a time of crisis

In response to the worldwide economic crisis, the CESCR declared that States Parties should avoid, at all times, taking decisions which might lead to the denial or infringement of economic, social and cultural rights.[62] The Committee has established criteria in order to determine whether governments may be in breach of their obligations:

1. Measures must be temporary, covering only the period of crisis.
2. Measures must be necessary and proportionate, in the sense that the adoption of any other policy would be more detrimental to economic, social and cultural rights.
3. Measures must not be discriminatory and must comprise all possible measures, including tax measures, to support social transfers to mitigate inequalities that can grow in times of crisis, and to ensure that the rights of disadvantaged and marginalised individuals and groups are not disproportionately affected.

[59] CESCR, General Comment No 19, para 77.
[60] See, eg, UN Committee on Economic Social and Cultural Rights, General Comment No.14 on The Right to the Highest Attainable Standard of Health (Art 12), UN Doc E/C 12/2000/4 (2000), para 59; UN Committee on Economic Social and Cultural Rights, General Comment No.12 on The Right to Adequate Food, UN Doc. UN Doc E/C 12/1999/5 (1999), para 32.
[61] See, eg, CESCR, General Comment No 19, para 79; CESCR, General Comment No.14, para 33.
[62] CESCR, Letter to States Parties dated 16 May 2012, Reference CESCR/48th/SP/MAB/SW.

4. Measures must identify the minimum core content of rights or a social protection floor, as developed by the International Labour Organisation, and ensure the protection of this core content at all times.[63]

2.4 Conclusion to Chapter 2

The UK accepted a range of specific obligations upon ratifying the ICESCR and the UNCRPD. In Chapters 3 and 4 we will explore the degree to which the UK Government is meeting these obligations across a number of policy areas affecting the lives of disabled people.

[63] CESCR, Letter to States Parties dated 16 May 2012, Reference CESCR/48th/SP/MAB/SW.

3. Disabled people's right to independent living

3.1 Introduction to Chapter 3

The right to independent living is a vital element of the United Nations Convention on the Rights of People with Disabilities (UNCRPD) and has also been a key priority for disabled people since the start of the independent living movement in the 1970s and 1980s.[64] In its 23rd report, published in March 2012,[65] the parliamentary Joint Committee on Human Rights (JCHR) addressed the UK's progress in realising the right to independent living, focusing particularly on UNCRPD Article 19. A detailed analysis of this Article is provided in Section 2.2.1.

3.2 Independent living in the UK

Independent living in the UK has older roots than the UNCRPD and the following definition,[66] originally adopted by the Disability Rights Commission and predating the UNCRPD, is widely accepted and used by both Government and disability organisations:

> [Independent living means] *all disabled people having the same choice, control and freedom as any other citizen—at home, at work, and as members of the community. This does not necessarily mean disabled people "doing everything for themselves", but it does mean that any practical assistance people need should be based on their own choices and aspirations.*

In its evidence provided for this report, Inclusion London has suggested a fuller description of independent living, as follows:

> *Independent living for disabled people is nothing more or less than having the same opportunities, choices and rights as other citizens. It's*

[64] See eg, J Evans (2003), *The independent living movement in the UK*.
[65] JCHR, *Implementation of disabled people's right to independent living*.
[66] JCHR, *Implementation of disabled people's right to independent living*, para 8, quoting several sources including the Government's Independent Living Strategy (2009).

> *about being able to choose when to go bed, what to eat. Independent living is being able to live in your own home with people you choose to live with, being able to leave that home to get out and about - go shopping, go to see a band, go to court! It's about having the chance to be a parent and friend, have a family and social life. Independent living is taking part in community and public life having the opportunity to get a job, build a career, have an education and volunteer. Independent living is being able to contribute, participate and be included.*

As the independent living movement developed in the 1970s and 80s, disabled people's organisations[67] concluded that a number of components are necessary to support the degree of choice, control and freedom envisaged, including: information; counselling and peer support; housing; aids and equipment; personal assistance; transport; physical access; employment; education and training; income and benefits; advocacy.[68] Thus enjoyment of the right to independent living is dependent on access to a wide range of services and facilities across all aspects of life, and a diminution in access to any of these is likely to have a retrogressive impact.

It is important to note that disabled people do not have an explicit right to independent living under UK domestic law. Implementation of the right to independent living in the UK has involved a complex web of legislation, policy, practices and resources. These various components are underpinned by different, often competing assumptions and definitions, are led by different agencies at both national and local level and their availability and quality can vary significantly between different localities.

3.3 Recent achievements in the realm of independent living

In its report, the JCHR commended the significant progress made by the UK in recent years. Indeed, it was noted that the UK Government had been instrumental in negotiating the UNCRPD and had ratified early, in 2009. The

[67] Notably, Hampshire Coalition of Disabled People, 1989.
[68] C Barnes and G Mercer (2006) *Independent Futures: Creating user-led disability services in a disabling society* (Bristol: Policy Press).

Committee made particular mention of the following policies and legislation as having been instrumental in making positive progress towards realising disabled people's right to independent living:[69]

- The Disability Discrimination Act (DDA) 1995, amended and extended by other regulations and statutes, notably the DDA 2005, which imposed duties on public authorities to take a more pro-active role in promoting disabled people's rights;
- The Human Rights Act 1998, which enshrines the European Convention on Human Rights in UK law;
- The Equality Act 2010, which superseded the Disability Discrimination Acts, extending the protection of disabled people;
- The introduction of direct payments,[70] giving disabled people control over their social care support, enabling them to employ personal assistants of their choice;
- The Welfare Reform Act 2009, which introduced the right to control, piloted by 'trailblazer' local authorities;[71]
- The Health Act 2009, which introduced personal health budgets;[72]
- The establishment of the Disability Rights Commission in 2000 (now superseded by the Equality and Human Rights Commission);
- The seminal cross-departmental report, 'Improving the Life Chances of Disabled People', which aimed to help 'disabled people to achieve independent living by moving progressively to individual budgets for disabled people, drawing together the services to which they are entitled and giving them greater choice over the mix of support they

[69] JCHR, *Implementation of disabled people's right to independent living*, paras 38-47.
[70] The Community Care (Direct Payments) Act 1996.
[71] The Right to Control gives disabled people more choice and control over their support by combining funding from six different sources and allowing them to decide how best to meet their needs. It was piloted in seven local authority 'trailblazer' areas.
[72] A personal health budget is an amount of money allocated to support a patient's identified healthcare and wellbeing needs, planned and agreed between the patient and their NHS team.

receive in the form of cash and/or direct provision of services';[73] and the establishment of Equality 2025 to advise on how to achieve the report's aims by 2025;

- The establishment of the Office for Disability Issues within the Department for Work and Pensions (DWP), charged with co-ordinating disability policy across Government;
- The publication of the Independent Living Strategy[74] in 2008, which included commitments across Government to improve accessibility, increase inclusion and promote personalisation of services – including housing, transport, health, social care, employment, among others – and established an Independent Living Scrutiny Group to report annually on progress;
- The Valuing People[75] and Valuing People Now[76] strategies to adopt human rights principles in supporting people with learning disabilities;

3.3.1 The importance of personalisation and self-directed support

Much of the progress in the realisation of disabled people's right to independent living over the last 20 years or more has come via the introduction of direct payments[77] in lieu of traditional homecare services and through the development of personalisation, including via personal budgets - although clearly these can only be effective if they are adequately funded. Direct payments in particular have enabled disabled people to choose who they employ as personal assistants (PAs) to support them, and when and how their PAs provide support – which in turn has enabled many disabled people to have successful careers. For disabled people with particularly high support

[73] Cabinet Office (2005) *Improving the Life Chances of Disabled People*.
[74] Office for Disability Issues (2008) *Independent Living: A cross-government strategy about independent living for disabled people*.
[75] Department of Health (2001) *Valuing People: A new strategy for learning disability for the 21st century: Implementation.*
[76] Department of Health (2009*) Valuing People Now: a new three-year strategy for people with learning disabilities.*
[77] Community Care (Direct Payments) Act 1996.

needs, the Independent Living Fund (ILF)[78] has supplemented and complemented local authority support.

3.3.2 Accessibility of housing and transport

Since the mid-1990s there has also been significant progress in increasing the accessibility of housing and transport, two key elements in realising disabled people's right to independent living. In 1999 the Building Regulations were changed to include, for the first time, basic accessibility standards for new homes.[79] More recently, encouraged by the first edition of the London Plan published by the Greater London Authority in 2004, there has been pressure for all new homes to be built to a higher accessibility standard, notably the Lifetime Homes standard,[80] which seeks to ensure new homes can more easily be adapted to accommodate the needs of individuals and families at different stages in their lives and particularly the advent of impairment. It is also, of course, important for some new housing to be built to full wheelchair access standard, for which there is readily available design guidance.[81] However, in a recent review[82] the Government has declined to enforce a default accessibility standard equivalent to the Lifetime Homes standard, thus missing an important opportunity to implement the higher access standards that are needed in the private housing sector, in which there is currently a dearth of accessible housing.[83]

The accessibility of transport is mainly delivered through regulations that provide for progressive improvement, with deadlines by which certain modes of transport must be accessible. For example, incremental increase in the proportion of accessible buses is governed by the Public Service Vehicle Accessibility Regulations 2000 and a number of amendment regulations,[84] under the DDA 1995. In relation to rail travel, Network Rail is currently rolling

[78] The Independent Living Fund is a trust run under the auspices of the Department for Work and Pensions.
[79] The Building Regulations (Amendment) Regulations 1998.
[80] See http://www.lifetimehomes.org.uk/.
[81] S Thorpe (2006) *Wheelchair Housing Design Guide* (Habinteg Housing Association, 2nd Edition).
[82] Department for Communities and Local Government, 'Building Regulations', Note supporting the written ministerial statement on the housing standards review, 13th March 2014.
[83] Currently, for many disabled people who need accessibility features, suitable housing can only be found in the social rented sector (see section on housing benefit, below).
[84] The Public Service Vehicle Accessibility Regulations 2000, as amended in 2000, 2002, 2003 & 2004.

out its Access for All programme,[85] progressively undertaking accessibility works to stations over the course of several years.

3.4 The impact of austerity

It is clear that, at least prior to 2008, the UK made significant efforts to realise disabled people's right to independent living, via a range of measures addressing issues as diverse as housing, transport, social care, peer support via disabled people's user-led organisations and others. However, despite the strong presumption against retrogression that runs through the treaty framework,[86] there is evidence that the policy response to the 2008 financial crisis has compromised progress in implementing disabled people's right to independent living.

In relation to the rights of disabled women, in its Concluding Observations on the UK's seventh period report in July 2013, the UN Committee on the Elimination of Discrimination against Women expressed its concern at the impact of austerity measures:[87]

> *The Committee is concerned that the cuts have had a negative impact on women with disabilities and older women…. [and] urges the State Party to mitigate the impact of austerity measures on women and the services provided to women, especially women with disabilities and older women….*[88]

3.4.1 The impact of austerity measures in other States Parties to UNCRPD

It is clear from the experience of other States Parties that difficulties in funding and enabling support for independent living are not confined to the UK. A few developed countries that have also ratified the UNCRPD have already been examined or have received recommendations from the UN Disability Committee in relation to Article 19.

[85] Access for All http://www.networkrail.co.uk/improvements/access-for-all/.
[86] CESCR, General Comment No 19 , para 1.
[87] Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of the UK, July 2013, paras 20 and 21.
[88] Bold in original text removed.

In relation to Sweden the Committee expressed its concern that:[89]

> *… State-funded personal assistance has been withdrawn for a number of people since 2010…*

and that

> *… persons who still receive assistance have experienced sharp cutbacks without known or seemingly justified reason.*

The Committee went on to recommend:[90]

> *…. that the State Party ensure that personal assistance programmes provide sufficient and fair financial assistance to ensure that a person can live independently in the community.*

In relation to Austria, the Committee expressed its concern that people with 'psychosocial' and 'intellectual disabilities' were excluded from 'personal assistance programmes' and recommended that 'personal assistance programmes' should be properly funded and made available to 'all persons with intellectual and psychosocial disabilities'.[91]

Since these reports and recommendations form a growing body of jurisprudence under the UNCRPD it is important that the UK takes account of the Committee's comments and recommendations when deciding policies which affect disabled people's enjoyment of their Article 19 right to independent living.

[89] Committee on the Rights of Persons with Disabilities, Concluding Observations on the initial report of Sweden, April 2014, para 43.
[90] CRPD, Concluding Observations on the initial report of Sweden, para 44.
[91] Committee on the Rights of Persons with Disabilities, Concluding Observations on the initial report of Austria, September 2013, para 38.

3.5 Risks to independent living highlighted by the Joint Committee on Human Rights

In its 23rd report, "Implementation of the Right to Independent Living", published in March 2012, the Joint Committee on Human Rights (JCHR) raised concern that:[92]

> *The range of reforms proposed to housing benefit, Disability Living Allowance, the Independent Living Fund, and changes to eligibility criteria (for social care) risk interacting in a particularly harmful way for disabled people. Some disabled people risk losing DLA and local authority support, while not getting support from the Independent Living Fund, all of which may force them to return to residential care. As a result, there seems to be a significant risk of retrogression of independent living and a breach of the UK's Article 19 obligations.*

The following sections will attempt to identify the extent to which these risks have been realised, now the details of the changes under the Welfare Reform Act 2012 have been enshrined in regulations and are being implemented, and there has been more time to observe the impact of austerity measures on the ability of local authorities to continue to provide social care services that promote independent living.

This section therefore examines the following policy areas:

- 12.1: Changes to housing benefit
- 12.2: The replacement of disability living allowance by personal independence payment
- 12.3: The independent living fund
- 12.4: Social care support
- 12.5: The cumulative impact of various policies and reforms

3.5.1 Changes to housing benefit

The availability of accessible, affordable housing is a key factor in enabling disabled people to enjoy the right to independent living[93] and to 'choose their

[92] JCHR, *Implementation of disabled people's right to independent living*, para 161.

place of residence and where and with whom they live on an equal basis with others'.[94] Since disabled people are less likely to own their own homes[95] and are more likely to live in poverty,[96] changes to housing benefit are likely to have a disproportionate impact on their lives. In its 23rd report the JCHR cited several housing-related benefit issues that were of concern in relation to disabled people's enjoyment of the right to independent living. These included the overall benefit cap,[97] restrictions on local housing allowance for homes in the private rented sector,[98] the social sector size criteria,[99] the adequacy of discretionary housing payments to mitigate the impact of proposed changes on disabled people[100] and restrictions on the payment of mortgage interest through income support.[101]

3.5.1.1 The impact of the benefit cap

The Government has taken the decision to exempt from the overall benefit cap any household in which the claimant, their partner or children are in receipt of certain disability benefits, including disability living allowance (DLA), personal independence payment (PIP) and the support group component of employment and support allowance (ESA).[102] Whilst this is a positive step, it should be noted that the tighter criteria for PIP (as explained below in section 3.5.2) will mean some households become liable to the benefits cap when family members claiming DLA are reassessed for PIP.

3.5.1.2 Local housing allowance for private sector tenants

The Local Housing Allowance (LHA) was introduced by the last Labour Government in 2008. Broadly, the calculation of LHA is based on the claimant's circumstances (notably their income and the size of their family) and the level of rents in the local area.[103] In 2009 the Equality and Human Rights

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[93] Office for Disability Issues (2008) *Independent Living Strategy*, Executive Summary para 14(3).
[94] UNCRPD Article 19(a).
[95] Office for Disability Issues (2009) *Access to Goods and Services*, Executive Summary.
[96] Leonard Cheshire (2008) Disability Poverty in the UK.
[97] JCHR, *Implementation of disabled people's right to independent living*, para 154.
[98] JCHR, *Implementation of disabled people's right to independent living*, para 154.
[99] JCHR, *Implementation of disabled people's right to independent living*, para 154.
[100] JCHR, *Implementation of disabled people's right to independent living*, para 160.
[101] JCHR, *Implementation of disabled people's right to independent living*, para 155.
[102] Housing Benefit (Benefit Cap) Regulations 2012.
[103] Welfare Reform Act 2007, part 2 (amended by the Welfare Reform Act 2012).

Commission challenged[104] the last Labour Government on its failure to consider the impact of the changes on disabled people, who often need extra space or particular facilities for reasons connected with their impairment. In addition, the Work and Pensions Select Committee highlighted the failure to conduct an equality impact assessment or comply with the public sector duty to promote disability equality, and raised concerns that:[105]

> *… the current LHA rules constitute a real barrier to independent living for disabled people who require an extra bedroom…*

The Committee urged the Government to make reasonable adjustments to the policy for disabled people.

Changes to the LHA were introduced in April 2011[106] to allow an extra bedroom for a non-resident overnight carer. Following the *Burnip, Trengove & Gorry* case[107], in which it was successfully argued that the current rules were discriminatory under Article 14 of the European Convention on Human Rights, and in which judgement was handed down by the Court of Appeal in May 2012, an allowance has also been made for an extra bedroom for a child who is unable to share a bedroom for a disability-related reason (although this was not formalised in regulation until October 2013).[108]

From 2011[109] LHA rates have been based on the 30th percentile of local rents, meaning that LHA covers the rent for only about a third of properties in a local area. There are caps on the maximum amount of benefit that can be paid for each size of property[110] (reviewed periodically to take account of inflation) and the four-bedroom LHA rate is the maximum payable.[111]

[104] C Stothart, 'DWP is probed for 'neglecting equality'', Inside Housing, 30 October 2009.
[105] House of Commons Work and Pensions Select Committee (2010) *Local Housing Allowance,* Fifth Report of Session 2009–10, para 167.
[106] Housing Benefit (Amendment) Regulations 2010.
[107] *Burnip v Birmingham City Council & Anor,* Court of Appeal, (Rev 1) [2012] EWCA Civ 629 (15 May 2012).
[108] Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013.
[109] Housing Benefit (Amendment) Regulations 2010 (SI 2010/2835).
[110] Housing Benefit (Amendment) Regulations 2010 (SI 2010/2835).
[111] Housing Benefit (Amendment) Regulations 2010 (SI 2010/2835).

Submissions to the Work and Pensions Select Committee in 2009[112] made it clear that, despite very limited exemptions, LHA would have a significant impact on the enjoyment by disabled tenants and their families of the right to independent living. Many disabled people have additional requirements that restrict the range of accommodation available to them – for example, they might need a ground floor flat or space to store mobility equipment, or to live close to informal support networks.[113]

In addition, the non-dependant deduction system fails to recognise the need for some disabled children to continue to live at home as adults so they can be supported by their family.[114] These adverse impacts were raised in written evidence to the JCHR, notably by Disabled People Against Cuts, and the Committee reflected these concerns in its report.[115]

3.5.1.3 The size criteria for housing benefit claimants in social housing

Under the Welfare Reform Act 2012, similar reforms to the LHA have been made to housing benefit for claimants in social housing, although the impact has been different, due to both the nature of social housing and the way in which these latter reforms have been rolled out. Respondents to the online survey undertaken to inform this report attached significant importance to the impact of the size criteria on claimants in the social rented sector and on disabled people's right to independent living; it therefore demands detailed scrutiny.

The size criteria, or under-occupation penalty[116] (termed the 'bedroom tax' by opponents and the 'removal of the spare room subsidy' by the Government), decreases the amount of housing benefit received by social housing tenants deemed to have more bedrooms than they need, necessitating tenants in this position to top up their rent from other income or move to a smaller property.

[112] Memoranda submitted by CPAG (LH 49), EHRC (LH 97), Mencap (LH 91) and others to the Work and Pensions Select Committee; see Work and Pensions Committee (2010) *Local Housing Allowance*, Fifth Report of Session 2009-10.
[113] 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).
[114] Memorandum submitted by Leonard Cheshire Disability; see Work and Pensions Select Committee, *Impact of the changes to Housing Benefit announced in the June 2010 Budget*.
[115] JCHR, *Implementation of disabled people's right to independent living*, para 154.
[116] Housing Benefit (Amendment) Regulations 2012, Reg 5, B13.

The policy applies to housing benefit claimants of working age living in social housing and has been presented as 'replicating the size criteria that apply to Housing Benefit claimants in the private rented sector'.[117] However, unlike the introduction of the local housing allowance (see Section 3.5.1.2 above), the under-occupation penalty applies to existing tenancies; therefore, in April 2013, the penalty immediately reduced the amount of housing benefit payable to those affected, many of whom had lived in their homes and claimed housing benefit for many years. The stated aims of the policy are to make larger homes available to tenants living in over-crowded conditions and to make savings to the housing benefit bill by not awarding full benefit when homes are 'under-occupied'.[118]

3.5.1.4 Impact assessment of the social housing size criteria on disabled people's right to independent living

Surprisingly, despite the concerns expressed by the JCHR in its report, the Government stated in its impact assessment[119] that the under-occupation penalty had no impact on human rights. The assessment did, however, draw attention to the fact that about two-thirds of the households affected by the measure include a disabled person and also acknowledged the impact on disabled tenants whose homes had significant adaptations. The JCHR, however, explained that adaptations are not the only factor to be considered in relation to the role of housing in the enjoyment of the right to independent living:[120]

> *We welcome the Government's statements that they do not wish to see people forced to move from houses which have undergone adaptation, but the interaction between where a person lives and other elements of the right to independent living go further than the issue of adaptations alone.*

The Government's impact assessment also failed to address the specific role played by social housing (as opposed to private rented housing) in enabling

[117] Department for Work and Pensions (2012) *Housing Benefit: Under-occupation of social housing impact assessment,* Evidence base para 5.
[118] DWP, *Housing Benefit: Under-occupation of social housing impact assessment*.
[119] DWP, *Housing Benefit: Under-occupation of social housing impact assessment*.
[120] JCHR, *Implementation of disabled people's right to independent living*, para 159.

disabled people to live independently. The vast majority of accessible homes are available in the social sector; it is relatively rare for private sector landlords to sanction or fund adaptations and owner-occupation is an option for relatively few disabled people.[121] Disabled people are also less likely to be in work. The greater likelihood of disabled people living in social housing **and** claiming benefits renders them particularly vulnerable to the impact of the new size criteria. Furthermore, social housing tenants often have limited say in where they live, with social housing allocated by local authorities or housing associations rather than chosen by tenants.[122] Disabled people may be deliberately allocated homes with one extra bedroom, often to provide more space or in case overnight care is needed in the future, to store disability-related equipment, or because there were no homes of the 'correct' size or type (such as adapted or ground floor homes) available.[123] Indeed, many disabled people have a disability-related need for more space.

The Government's impact assessment demonstrates an awareness that the policy would have a disproportionate impact on disabled people but fails to acknowledge the breadth of the difficulties, focusing principally on those facing disabled people living in adapted accommodation.[124]

3.5.1.5 Mitigation of housing benefit changes through discretionary housing payments

Rather than exempt disabled people from the social housing size criteria – or indeed the local housing allowance - the Government's approach has been to mitigate the policy's disproportionate impact on disabled people by providing extra funding for local councils to award discretionary housing payments (DHPs) to those having difficulty meeting the shortfall in their rent. In relation to the social housing size criteria, the Government's intention was that DHPs would be particularly targeted to those disabled people with significantly

[121] Office for Disability Issues (2009), *Access to Goods and Services*, Executive Summary.
[122] Oral evidence from Steve Wilcox, formerly Professor of Housing Policy, University of York. See Work and Pensions Committee (2014) *Support for housing costs in the reformed welfare system*, Fourth Report of Session 2013–14 (HTC 720), transcript of oral evidence, 6 November 2013, Q 54.
[123] Cambridge Centre for Housing and Planning Research (2011) *Under-occupation and the New Policy Framework*, p 8.
[124] DWP, *Housing Benefit: Under-occupation of social housing impact assessment*.

adapted homes,[125] but the nature of a discretionary fund is such that, although guidance can be provided, local authorities cannot be instructed to use the fund to help a particular group of people.

Concerns about the adequacy of DHPs to mitigate the impact of the various changes to housing benefit were raised in the JCHR report:[126]

> *We welcome the increase in the Discretionary Housing Fund, but are concerned that its discretionary nature means it will not provide an adequate guarantee that the right of disabled people to exercise choice and control over where they live will be consistently upheld in the light of reductions in Housing Benefit.*

There is evidence, both anecdotally and from recent research, that the JCHR's concerns in this respect have been realised; using DHPs to mitigate the discriminatory effects of the under-occupation penalty has not had the desired outcome - of protecting disabled tenants, especially those with significantly adapted properties or who have a disability-related reason for needing more space, from the impact of the under-occupation penalty. [127] In December 2013 the National Housing Federation reported[128] the results of a survey that showed almost one-third of disabled people who applied for a DHP were unsuccessful, with a huge variation across the country; in Kent, for example, only one in ten disabled people who applied for a DHP were successful. In addition, the only way in which a decision not to award a DHP can be challenged is by making an application to the High Court for judicial review – a very different matter from appealing a housing benefit decision.

The Appeal Court judges in the *Burnip* case[129] made *obiter*[130] comments to the effect that it was not appropriate to expect disabled people to use income-

[125] DWP, *Housing Benefit: Under-occupation of social housing impact assessment*, Evidence base para 11.
[126] JCHR, *Implementation of disabled people's right to independent living*, para 160.
[127] See, 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*.
[128] 'Vulnerable cut off from bedroom tax relief as demand for emergency help triples', National Housing Federation, 19 December 2013.
[129] *Burnip v Birmingham City Council & Anor* Court of Appeal [2012] EWCA Civ 629 (15 May 2012).
[130] Although such comments are not part of the binding precedent of the case, they are considered authoritative.

replacement benefits (such as ESA) or benefits designed to meet the extra costs of disability (DLA) to top up their rent.[131] However, there is evidence that some local authorities are not respecting disabled people's need to use their DLA to meet their disability-related needs, with many suggesting to disabled people that they should use their DLA to top up their housing benefit.[132] It was reported in January 2014[133] that permission has been granted for a judicial review to be brought against Sandwell Council's decision to take DLA into account when making decisions on the award of DHPs, and reports of further progress in this case are awaited.

The failure of local authorities to respect the purpose of DLA and exclude this benefit in decisions on the award of DHPs to disabled people affected by the size criteria is of particular concern, since the availability of payments to help meet the extra costs of disability has been one of the key methods by which the UK enables disabled people to realise their right to independent living. In this respect it is clear that local authorities are not taking account of their obligations under UNCRPD in relation to exercising their discretion to award DHPs to disabled tenants affected by the under-occupation penalty.

3.5.1.6 Evidence of the impact of the social housing size criteria

There have been a number of high profile cases in the media in which disabled people with significant adaptations, or who need an extra room because, for example, a disabled person is unable to sleep in the same room as his or her partner or an extra room is required for home dialysis or equipment storage, have experienced significant hardship and stress due to mounting rent arrears. Research by disability charities,[134] housing academics and housing associations[135] has also indicated the significant impact of this policy on independent living.

[131] *Burnip v Birmingham City Council & Anor*, para 45.
[132] Papworth Trust (2014) *Discretionary housing payments need to work for disabled people.*
[133] 'Green Light For Judicial Review Into Sandwell Council's Discretionary Housing Payment Assessment', Irwin Mitchell solicitors, 23 January 2014.
[134] Papworth Trust, *Making discretionary housing payments work for disabled people*.
[135] Eg, Northern Housing Consortium and University of York (2013 and 2014) *Real Life Reform Reports 1, 2 and 3*; National Housing Federation (2013) *The Bedroom Tax in Merseyside - 100 days on.*

The impact on of the social sector size criteria on independent living has also been reported by the UN Special Rapporteur on Housing following her visit to the UK in August/ September 2013, during which she took evidence from individual claimants on the impact of the under-occupation penalty:[136]

> *At the root of many testimonies lies the threat to a hard-won right to live independently. For persons with physical and mental disabilities, as well as for the chronically ill, adequate housing means living in homes that are adapted to specific needs; close to services, care and facilities allowing them to carry out their daily routines; and in the vicinity of friends, relatives or a community essential to leading lives in dignity and freedom. Often, the compounded impact of an acute shortage of adapted and affordable accommodation, combined with other changes to the welfare system, has left them "between a rock and a hard place": downsizing or facing rent arrears and eviction. Many testimonies refer to anxiety, stress and suicidal thoughts as a result, precisely the type of situations that should be avoided at all costs…. The Department for Work and Pensions has made available additional funding under the DHP scheme to assist those affected by this measure, but… DHPs are time-bound and limited in scope.*

Several respondents to the online survey highlighted their own experiences and views in relation to the under-occupation penalty, for example:

> **Case study (from online survey on the We are Spartacus website):**
> ***Bedroom tax****: I'm full-time active wheelchair user. I do not need a carer, although I frequently do when I'm ill. My concern is that as a wheelchair user I need an extra room to store disability equipment such as a spare wheelchair and medical and incontinence equipment. I also need a larger area in which to move around. Although as a single disabled person I was allocated and need a 2-bedroom home, I am not entitled to discretionary housing payments because my DLA is taken into account. If I was to*

[136] Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, on her mission to the United Kingdom of Great Britain and Northern Ireland. Human Rights Council, 25th Session, Agenda Item 3, Promotion of the protection of all human rights, civil, political, social, economic and cultural including the right to development, (29 August–11 September 2013) HRC/25/54/Add 2, para 65.

> *move I would need to find an equally adapted home. I discovered that the local authority would not fund a further disabled facilities grant (DFG) if I left an adapted home - but I would need this. I assume this is intentional; it's concerning, as the Government says moving is possible even for disabled people, which is incorrect.*

More recently, the Work and Pensions Select Committee has expressed significant concern about the impact of the social sector size criteria (SSSC) on disabled claimants:[137]

> *We note that the SSSC is affecting many people with disabilities who have adapted homes or who need a spare room to hold medical equipment or to accommodate a carer. We are deeply concerned that the policy is causing severe financial hardship and distress to people with disabilities, many of whom will not easily be able to move. We do not believe that Discretionary Housing Payments are able to provide effective support to these households because of their short-term and temporary nature, the variability in award and the distress that having to re-apply can cause to affected households.*

3.5.1.7 Use of the human rights framework by courts and tribunals considering the social housing size criteria

The social housing size criteria regulations have been challenged by judicial review and also through housing benefit appeals to tribunal. An application for judicial review of the regulations was heard in the High Court and in the Court of Appeal, which gave its judgement in January 2014.[138] Although UNCRPD Article 19 cannot be directly relied upon before the courts, part of the claimants' case was that the policy was in breach of Article 14 of the European Convention on Human Rights, which prohibits discrimination in the enjoyment of the human rights outlined in that Convention (and incorporated into domestic law by the Human Rights Act 1998). In their judgment, the Court of Appeal found for the Government on the basis that although the policy has a disproportionate impact on disabled people and is therefore indirectly

[137]Work and Pensions Select Committee (2014) *Support for housing costs in the reformed welfare system,* Fourth Report 2013-14, para 77.

[138] *MA & Ors v Secretary of State for Work and Pensions*, Court of Appeal [2014] EWCA Civ 13 (20 February 2014).

discriminatory,[139] it was not 'manifestly with reasonable foundation',[140] whilst the provision of DHPs represents appropriate mitigation.[141]

A separate application for judicial review, brought by the Rutherfords,[142] who are raising their severely disabled grandson in an adapted home that includes a room for an overnight carer (without whom the grandparents would be unable to continue to care for their grandson at home), also failed. The regulations permit a extra bedroom when the claimant or their partner need a night carer, but there is no similar provision for children who need carers. However, in this case, the judge expressed the view that the availability of DHPs, and the expectation that they would continue to be available to the Rutherfords, meant that they suffered no financial disadvantage from the reduction in their housing benefit. The case was distinguished from *Burnip*, where DHPs were deemed too uncertain and inadequate to justify the cut in housing benefit. Following the Rutherford decision it may be that DHPs have to be paid indefinitely in all similar cases to avoid a breach of Article 14.

Human rights arguments have been used more successfully in the First Tier Tribunal. In October 2013 it was reported[143] that a First Tier Tribunal in Glasgow had allowed an appeal against the under-occupation penalty on the grounds that applying the penalty to a couple who cannot share a room because of one partner's disability is a breach of their human rights. Similarly, in April 2014 one of the appellants in the MA case, Ms Carmichael, won her individual appeal in the Tribunal.[144] Both cases were distinguished from *MA* on the grounds that couples who cannot share a bedroom due to one or both partners' disability are a specific, identifiable group of claimants.

However, the First Tier Tribunal is only concerned with the particular facts of the case before it and not the general merits of the policy. Its decisions do not set a judicial precedent, so other tribunal judges remain free to take a different

[139] See section 2.3.4 for more on indirect discrimination.
[140] This is the test applied by the English courts when considering whether a discriminatory policy can be justified. The threshold is deliberately low and affords considerable deference to Parliament.
[141] *MA & Ors v Secretary of State for Work and Pensions*, para 80-82.
[142] *Rutherford &Ors v Secretary of State for Work And Pensions* [2014] EWHC 1613 (Admin) (30 May 2014).
[143] 'Disabled woman wins bedroom tax appeal', Inside Housing website, 4 October 2013.
[144] 'Ignoring the Court of Appeal?' Nearly Legal website, 24 April 2014.

view. It is noticeable however that the number of successful cases in the Tribunal appears to be on the increase.

3.5.1.8 The social housing size criteria and the "maximum use of available resources"

Each State Party to ICESCR and UNCRPD is expected to progressively realise economic, social and cultural rights to the maximum extent of its available resources,[145] and there is also a 'strong presumption' against measures that would be retrogressive in their impact, even in a time of financial austerity.[146] In this context it should be noted that one of the key objectives in adopting the social housing size criteria was to save public funds by reducing the housing benefit bill,[147] but doubts have been raised over the amount of money that the policy will actually save. Research by the University of York,[148] published in October 2013, concluded that savings from the under-occupation penalty would be considerably lower than anticipated and that the policy actually increases costs for both local authorities and housing associations. Thus it appears that, at the same time as having a retrogressive impact on disabled people's enjoyment of the right to independent living, the application of the size criteria is also proving ineffective in saving money; in relation to this policy, this would appear to undermine any justification that maximum use is being made of available resources to progressively realise disabled people's right to independent living.

In the longer term, the under-occupation penalty poses risks to housing associations'[149] ability to invest,[150] due to the likelihood of continuing rent arrears, including from tenants who have never been in arrears before the policy came into effect.[151] This necessarily has implications for the availability

[145] ICESCR Article 2(1); UNCRPD Article 4.
[146] CESCR, Letter to States Parties dated 16 May 2012, Reference CESCR/48th/SP/MAB/SW.
[147] *MA & Ors v Secretary of State for Work and Pensions* [2013] EWHC 2213 (QB) (30 July 2013).
[148] R Tunstall (2013) *Testing DWP's assessment of the impact of the social rented sector size criterion on housing benefit costs and other factors* (Centre for Housing Policy, University of York).
[149] Housing associations, also known as registered social landlords, are independent, not-for-profit organisations that provide homes for people in housing need. Many local authorities have transferred their social housing stock to housing associations.
[150] Oral evidence from Carol Matthews, Group Chief Executive, Riverside, to Work and Pensions Select Committee (2014), *Support for housing costs in the reformed welfare system* (HC 720), 4 December 2013, Q124.
[151] National Housing Federation, *The bedroom tax in Merseyside - 100 days on*.

of resources to increase the supply of accessible, affordable homes necessary to progressively realise disabled people's right to independent living and other economic, social and cultural rights, and calls into question the extent to which the policy fulfils the UK's obligations under UNCRPD to make maximum use of available resources to progressively realise disabled people's economic, social and cultural rights.

3.5.1.9 Conclusion and recommendations

Evidence from case studies, research, select committee inquiries and the record of legal proceedings suggests that the concerns expressed by a number of bodies, including the JCHR and civil society organisations, have been realised. Both the local housing allowance and the under-occupation penalty are compromising disabled people's right to independent living by threatening the support they enjoy by reason of their home and its proximity to local informal support. There is also evidence that the financial impact of the under-occupation penalty on housing associations is likely to restrict their ability to invest in accessible and affordable housing, the provision of which is an essential element of the progressive realisation of the right to independent living.

We recommend that the Government re-evaluate recent changes to housing benefit, notably the local housing allowance and the social housing size criteria, in the light of its obligations under Article 19 of the UNCRPD. There is prima facie evidence that the policies are retrogressive, threatening disabled people's occupation of accessible and affordable housing to enable them to live independently, exercising their right to choose where they live on an equal basis with others. Specific attention should be paid to the following issues:

- **Disabled people's needs for 'extra' rooms (or more space) for disability-related reasons;**
- **The financial and other pressures on disabled tenants for whom moving to a smaller home is either impossible (due to a shortage of suitable, smaller homes), impractical or would prevent them from taking advantage of adaptations or other provision, such as local**

support networks, that enable them to exercise their right to independent living;

- **The impact of the policy on the resources available to housing associations to invest in social housing that supports independent living.**

It is also recommended that consideration be given to recent recommendations from the Work and Pensions Select Committee to include more exemptions for disabled people, either on the basis of eligibility for DLA or PIP, or on the basis of a disability-related need for an extra room - for example for medical equipment, or for a carer – including a partner carer or part-time carers.[152]

3.5.2 The reform of disability living allowance

Disability living allowance (DLA) is of fundamental importance to independent living, as its purpose is to help disabled people meet the extra costs that arise from disability, especially the costs of achieving greater independence. It is simply more expensive to live as a disabled person[153] and the principle that the State should recognise this in the benefits system has enjoyed cross-party support since DLA was first introduced in 1992. Support with the extra costs that arise from being a disabled person is a key element in the policy framework that supports the right to independent living; as Baroness Campbell explained during debate in the House of Lords on the Welfare Reform Bill;[154]

> *...DLA helped to pay the extra costs experienced by disabled people to allow them to participate in their communities and to work where social and economic barriers excluded them. The barriers still exist. Discrimination legislation has not wiped them away. It will take years before the transport infrastructure allows full access. This leaves many disabled people dependent on DLA mobility support.*

[152] Work and Pensions Select Committee (2014) *Support for housing costs in the reformed welfare system*.
[153] E Brawn (2014) *Priced out: ending the financial penalty of disability by 2020* (Scope).
[154] Hansard, Baroness Campbell, HL deb, col GC159, 14 November 2011.

Under the Welfare Reform Act 2012, DLA is being replaced by Personal Independence Payment (PIP) for working age disabled people; there are no current plans to include adults of pension age or children in this reform. The Government stated its intention at the outset that the introduction of PIP will save 20% of the cost of this benefit for working age claimants[155] by the time the new benefit has been fully rolled out. Many organisations have expressed concern that a primary aim of saving 20% of the cost may not be compatible with protecting disabled people's right to independent living.[156] As stated earlier, under ICESCR and UNCRPD it may be legitimate to re-focus expenditure in a time of recession or financial crisis, but there remains a strong presumption against adopting deliberately retrogressive measures.[157]

In its 23rd report, the JCHR expressed concern that tightening the eligibility criteria, such that around 500,000 existing DLA claimants would fail to be eligible for PIP and a number of claimants would receive a reduced level of support, would result in fewer disabled people being able to overcome barriers to independent living.[158] Many claimants who fail to qualify for PIP are likely to be those currently claiming the lowest rate of the care component of DLA, which is not replicated in PIP; the concern is that if help is taken away from those for whom a small amount of support enables them to live independently, their situation could deteriorate, compromising their independence.[159]

There are potentially three considerations in assessing the extent to which the concerns highlighted by the JCHR in its 23rd report have materialised: the adequacy of the impact assessments undertaken by DWP, the criteria and other information contained within the PIP regulations and guidance, and thirdly the outcomes for PIP claimants. However, since PIP is being rolled out

[155] DWP (2012) *Disability Living Allowance reform Impact Assessment*; DWP (2012) *Disability Living Allowance reform Equality Impact Assessment*.
[156] JCHR, *Implementation of disabled people's right to independent living*, para 140.
[157] CESCR, Letter to States Parties dated 16 May 2012, Reference CESCR/48th/SP/MAB/SW.
[158] JCHR, *Implementation of disabled people's right to independent living*, para 146.
[159] Disability Rights UK (2012) *Response to PIP assessment criteria and thresholds consultation*, pp 27-28.

gradually,[160] evidence from the lived experience of claimants is limited at this stage.

3.5.2.1 Impact assessments of DLA reform/PIP

An overriding theme of both the 21st and 23rd JCHR reports was concern about the adequacy of the Government's assessment of the impact of its welfare reforms on disabled people's human rights, particularly the right to independent living. The impact assessments on DLA reform[161] were last updated in May 2012 (before the details of PIP had been finalised), although Government responses to consultations have included sections on equality impact and analysis. It appears that only the Government's response to the consultation on the "moving around activity",[162] published in October 2013, mentions the relevance to PIP of the right to independent living enshrined in UNCRPD Article 19; significantly, the Equality and Human Rights Commission (EHRC) had drawn attention to this issue in its response[163] to that particular consultation:

> *The guiding principles of the CRPD include individual autonomy and independence of persons with disabilities, together with their full and effective participation and inclusion in society. The UK Government ratified this Convention in June 2009 and is expected to take sufficient measures to implement its requirements in policy formation. Article 19, for example, recognises the equal right of people with disabilities to live in the community with choices equal to others...*[164]
>
> *Given the anticipated impact on the autonomy and independence of persons with disabilities and their ability to participate fully in society, we recommend that the Government reconsider the proposal to reduce the moving around criteria [to 20m] in the light of the CRPD and the UK's*

[160] Department for Work and Pensions (2013) *Timetable for PIP replacing DLA*.
[161] DWP (2012) *Disability Living Allowance reform Impact Assessment*.
[162] Department for Work and Pensions (2013) *The Government's response to the consultation on the PIP assessment moving around activity*, Annex 3, Equality Analysis.
[163] Equality and Human Rights Commission (2013) *Response to the consultation on the PIP assessment moving around criteria*.
[164] EHRC, *Response to the consultation on the PIP assessment moving around criteria*, para 5 (relevant principles)

obligations under Article 8 of the European Convention on Human Rights.[165]

Although very few DLA claimants have yet completed the claim process for PIP, disabled people have understandable concerns about its impact:

Case study (from online survey on the We are Spartacus website):
If I lose my DLA I lose my only means of getting out of my home, I won't be able to afford the extra costs my disability causes such as incontinence pads, higher fuel bills because I have more washing, bathing & heating needs than able bodied people plus appliances that help me cope like dishwasher & tumble dryer, mobile phone for emergencies etc. Whilst the media are portraying people as scroungers for having things like these, they are assisting me to cope with my life.... if I lose my DLA my husband will also lose the carer [allowance] he claims for me which will cause us even more hardship. I don't sleep very well anymore and feel like I am just a burden to everyone, I never used to feel like this until this Government started these measures. Even though in constant pain I was a happy person knowing that all the bills were paid and my husband could afford to care for me, now my future is so uncertain I am just living in fear. (Woman)

3.5.2.2 Eligibility criteria for PIP

The eligibility criteria for PIP are self-evidently a critical determinant of the extent to which the new benefit fulfils its purpose – to help with the extra costs that arise from disability. If the criteria are drawn too tightly, or fail to address issues that give rise to extra costs, disabled people faced with significant extra costs will fail to qualify for the benefit that is supposed to help with these; as the JCHR intimated,[166] the danger in a primary policy aim of saving money is that many disabled people who need help could be denied it.

This is not the place to set out in detail the eligibility criteria for PIP but, in summary, they are based on a set of activities and descriptors[167] for a 'daily

[165] EHRC, *Response to the consultation on the PIP assessment moving around criteria*, para 15 (conclusion)
[166] JCHR, *Implementation of disabled people's right to independent living*, para 140.
[167] Social Security (Personal Independence Payment) Regulations 2013 No. 377, Schedule 1, Part 3.

living' component and a 'mobility' component. There are ten activities relating to the daily living component including, for example, 'preparing food', 'washing and bathing', 'communicating verbally' etc, and two activities relating to the mobility component: 'planning and following a journey' and 'moving around'. Each activity includes several descriptors, by which a number of points is awarded depending on which descriptor offers the best fit with the needs of the claimant. For each component, an aggregate score (across the activities relevant to that component) is derived to determine whether an award is made at the standard or enhanced rate of that component. It is important to note that in order to be deemed able to undertake an activity, a claimant must be able to do so 'safely, to an acceptable standard, repeatedly and in a timely fashion'.[168]

There has been significant concern that the adoption of a narrow set of criteria, or 'activities', in the PIP assessment makes the benefit a lot more restricted in scope. In the words of Disability Rights UK:[169]

> *The difference is stark; for DLA, anything to do with the body and its functions can count. For PIP the assessment is much more restrictive and will impede many disabled people accessing support.*

One of the Government's stated aims in relation to DLA reform was to take more account of the needs of disabled people with non-physical impairments;[170] this is reflected, to a certain extent, in the PIP activities. In relation to the mobility component, the 'planning and following a journey' activity seeks to assess the needs of claimants who have mobility difficulties related to going out, navigating outside and coping with journeys, whereas the 'moving around' activity seeks to assess the needs of claimants who have physical mobility difficulties. Significantly, in contrast to the eligibility criteria for the mobility component of DLA (in which, with a few exceptions, the higher rate is not generally available to claimants who have non-physical mobility difficulties), a claimant can be awarded the enhanced rate of the mobility component under the 'planning and following a journey' activity alone. Along

[168] The Social Security (Personal Independence Payment) (Amendment) Regulations 2013, No. 455.
[169] Disability Rights UK, *Response to PIP assessment criteria and thresholds consultation*, page 17.
[170] DWP, *The Government's response to the consultation on the PIP assessment moving around activity*.

with the inclusion of daily living activities of particular relevance to people with non-physical impairments, this is designed to meet the Government's stated policy aim of taking a 'fairer' approach to the needs of disabled people with different types of impairment.

Charities, disabled people's organisations and disabled people have identified a number of issues with the criteria for PIP,[171] in relation to the impact on particular groups of disabled people who will either lose their eligibility or receive PIP at a lower rate than their current DLA award, with consequent impacts on their independence. Disability Rights UK, which has significant expertise in the areas of benefits and independent living, has explained[172] that the principal support needs that PIP fails to acknowledge include:

- Moving around indoors, including using stairs, getting in and out of bed, getting to the toilet and other indoor activities;[173]
- General supervision to keep disabled people safe - lack of supervision could put disabled people in danger of injuring themselves during an epileptic fit or a fall, or due to the risk of self-harm;[174]
- Assistance at night time[175] – under the PIP criteria there is no specific provision for assistance required during the night, the nature of which can be very different from the assistance required during the day.

Those organisations and individuals who have responded to the various consultations have given detailed analyses of the impacts of the narrower and stricter criteria for PIP, in comparison to DLA, both on disabled people themselves and on public services and other Government budgets.[176]

Individual disabled people have also explained the likely impact of the introduction of PIP:

[171] All 173 organisations' responses to the PIP assessment and thresholds consultation are available on the Government's website.
[172] Disability Rights UK, *Response to PIP assessment criteria and thresholds consultation*.
[173] Disability Rights UK, *Response to PIP assessment criteria and thresholds consultation*, pp 17-18.
[174] Disability Rights UK, *Response to PIP assessment criteria and thresholds consultation*, pp 18-22.
[175] Disability Rights UK, *Response to PIP assessment criteria and thresholds consultation*, p 22.
[176] Eg, Disability Rights UK, *Response to PIP assessment criteria and thresholds consultation*, pp 3-16.

Case study (from online survey on the We are Spartacus website):
I'll cost more to NHS as my physio compliance will be low (It's pretty much the only effective treatment other than expensive non NHS treatments such as massage & acupuncture), instead of having annual rehab I'll probably need physio more regularly, I'll be at my GP more frequently, have more mental health issues, need more pain relief as my tolerance increases, more referrals, less likely to get back to work & my finances will become even tighter… (Woman)

3.5.2.3 Eligibility criteria for the "moving around" activity

Perhaps the most controversial aspect of PIP has been the descriptors and points for the 'moving around' activity. Under the regulations, for claimants who have physical difficulties moving around, the enhanced mobility component of PIP is only available to those unable to move, without a wheelchair, more than 20 metres. Most disability organisations and disabled people have pointed out that this is a much shorter distance than 50 metres, the distance used in other policy areas,[177] and that a very large number of current DLA claimants who receive the higher rate mobility component will lose that vital support, including the benefits of the Motability scheme.[178] Charities have made the point that the extra costs faced by disabled people who can move up to 50 metres are not significantly lower than those faced by people who can only move up to 20 metres.[179] The impact of this change, made after the main consultation stages relating to PIP had ended, prompted an application for judicial review, lodged in April 2013.[180]

In their response to an additional consultation on the "moving around" activity,[181] organisations and individuals highlighted the significant impact the introduction of a 20-metre benchmark distance would have on disabled

[177] Eg, Department for Transport *Inclusive Mobility* (referenced in Building Regulations Approved Document M), Section 3.4 (Seating) and Section 5.1 (Car parking provision).
[178] 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.
[179] Disability Benefits Consortium (undated) *Briefing: The PIP 20 metre rule.*
[180] 'Legal action begins against Government disability reforms', Leigh Day & Co, 8 April 2013.
[181] DWP, *Response to the consultation on the PIP assessment moving around criteria*.

people's ability to enjoy the right to independent living,[182] for example in relation to their ability to travel to medical appointments, shops, social activities, volunteering, employment, their children's schools and elsewhere. The Equality and Human Rights Commission highlighted the importance of UNCRPD Article 19 (see above) in this respect, and in addition explained that:[183]

> *The Human Rights Act 1998 requires the Government to act compatibly with the European Convention on Human Rights as far as its statutory powers and duties allow them to. The European Court of Human Rights has clarified that the cluster of rights protected by Article 8 of the Convention (the right to respect for private and family life) includes participating in society.[184] Examples of participation include the ability to interact with other members of society, to form wider relationships beyond the family and to develop one's potential as a citizen.*

The Government has justified the impact of the use of a 20 metre benchmark walking distance on people with physical mobility impairments as an inevitable consequence of making PIP 'fairer' to claimants with non-physical impairments.[185] However, no mitigation has been offered to help those disabled people who will inevitably find it more difficult to travel independently as a result of losing their higher/enhanced rate mobility component and, in many cases, their access to the Motability scheme. (Whilst Motability has announced transitional support,[186] this is independent of Government). A number of current DLA claimants have explained the difficulties they would face if they lost their eligibility for the Motability scheme, for example:[187]

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[182] Eg, Disability Benefits Consortium (undated) *Response to the consultation on the PIP assessment moving around criteria*.
[183] EHRC, *Response to the consultation on the PIP assessment moving around criteria*, para 6.
[184] *Gaskin v UK* 1990 and *Pretty v UK* 2002
[185] DWP, *Response to the consultation on the PIP assessment moving around criteria*, para 6.26.
[186] Lord Sterling, Chair of Motability (2013), Statement on Motability's one-off transitional support package for customers who, following their initial reassessment by Government for the new PIP benefit, will no longer be eligible for the Motability Scheme.
[187] Disability Benefits Consortium, *Response to the consultation on the PIP assessment moving around criteria*, p 10.

> *If I lost my access to the Motability scheme and subsequently my car I would have to give up my job meaning I would lose my house in a heartbeat and the consequences of this on my condition would be absolutely disastrous. I know I don't have a long time left at work and I need all the help I can get. Public transport is an absolute no-go for me these days. I would have to get two buses and walk a long distance from bus stop to work. I would have no energy by the time I got to work; I wouldn't be able to do my job. If I had to find another job at my age, with my health issues, it would be near impossible to get one - especially considering the economy so I would just need jobseekers allowance instead of my DLA and wouldn't contribute anything back in tax and national insurance. The security of transport makes me a more attractive prospect to an employer.*

The Government's own projections show that by the time PIP has been fully implemented (May 2018), more than 400,000 fewer claimants will be eligible for the enhanced mobility component than are currently eligible for the higher rate mobility component of DLA.[188] However, this is an underestimate of the impact on claimants with physical mobility difficulties, since the total number claiming the enhanced mobility component under PIP will include those who qualify for the enhanced rate under the 'planning and following a journey' activity, who would not have qualified for the higher rate mobility component of DLA. Baroness Hollis has therefore estimated the total number of physically disabled people who will lose their higher/enhanced mobility component to be around 600,000.[189] Thus more than half a million people with physical mobility difficulties will receive less help to get out and participate in the community under the new benefit.

3.5.2.4 The impact of the claim process for PIP

The roll-out of PIP for new claimants began in April 2013 and the gradual roll-out of reassessments for some current DLA claimants (mainly those whose awards are due for renewal in selected postcodes) started in October 2013. The claim process, which includes an initial phone call, submission of a detailed

[188] Department for Work and Pensions (2012) *PIP Re-assessment and Impacts.*
[189] Hansard, Baroness Hollis, HL deb, col 940, 25 February 2013.

claim form and, for most claimants, a face to face assessment, is taking a great deal longer than expected.[190] This can have a particularly serious impact on newly disabled claimants, who experience the stress of many weeks or months of uncertainty, during which time they receive no benefit[191] (although when payment starts it is backdated to the initial date of claim), at a time when they may be experiencing extra financial pressures. As the roll-out of PIP continues it will be important to take account of the difficulties faced by claimants in coping with the claim process, including any delays.

3.5.2.5 Conclusion and recommendations

While the Government produced an impact assessment of DLA reform, and included impact analysis within its responses to consultations, it does not appear to have assessed the impact of PIP on disabled people's Article 19 right to independent living, although the relevance of Article 19 was acknowledged in its response to the consultation on the moving around activity.[192] This is of particular concern given the significant support currently provided by DLA to help mitigate the impact of disability-related costs and contribute towards the cost of support for independent living.

The restrictions inherent in the PIP eligibility criteria, in comparison to the more 'open-ended' criteria for DLA, are likely to have a significant impact on disabled people's enjoyment of the right to independent living, including those for whom a small amount of support enables them to retain their independence and prevent their situation from deteriorating. In addition, disabled people and their organisations have pointed out that 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 is likely to have a significantly 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.

Having assessed the likely impact of PIP on disabled people's right to independent living, it is recommended that the reviews already planned for

[190] National Audit Office (2014) *Personal Independence Payment: early progress*.
[191] NAO, *Personal Independence Payment: early progress*.
[192] DWP, *Response to the consultation on the PIP assessment Moving around activity*, para 6.19.

PIP should address the impact on disabled people's rights under Article 19. Specifically, any evaluations and reviews should include:

- **Qualitative analysis of the impact of PIP (both the assessment criteria and the claim process) on disabled people's day to day lives and the lives of their families, focusing on the impact on independence, including independent mobility and participation.**
- **Identifying any transfer of costs to other budget areas (for example, any increased demand for hospital transport and ambulance services and any impact on adult social care services), to help identify the extent to which disabled people have become reliant on other services.**

Reviews and impact assessments should be undertaken with the intention of making changes to the PIP regime, if the findings indicate that PIP has had a detrimental impact on disabled people's enjoyment of the right to independent living.

3.5.3 The independent living fund

3.5.3.1 The history and role of the independent living fund

Although now closed to new applicants, the independent living fund (ILF) provides discretionary funding for disabled people with significant support needs to enable them to pay for the services of a personal assistant (either privately employed or sourced via an agency), with the particular aim of enabling fund users to live in the community rather than in a residential setting.[193] It is therefore unsurprising that the JCHR recorded specific concerns that the proposed closure of the fund would breach the UK's obligation under Article 19(a) to allow disabled people to choose where and with whom they live, and lead to retrogression in relation to 19(b), which describes the kinds of support necessary for disabled people to live independently.[194]

Eligibility criteria for the ILF changed as the fund changed and developed during the 1990's but, importantly, all but the earliest applicants had to be eligible for the highest rate care component of disability living allowance and

[193] House of Commons Library (2013) *Independent Living Fund standard note,* SN/SP/5633.
[194] JCHR, *Implementation of disabled people's right to independent living*, para 152.

be receiving a certain level of funding from their local authority adult social care service department (most recently around £340 per week). Although the fund was closed to new applicants in December 2010 it continues to support its existing users. In its response to a consultation on its future, the Government explained the background to the ILF as follows:

> *The original purpose of the ILF was to provide the additional funding disabled people needed to live at home when the alternative was residential care. The original motivation for the LA contribution to care packages of £200 per week was that figure was the approximate cost of residential care in 1993. The ILF payments were intended to be top up funding needed to employ carers and personal assistants to allow users to live at home.*[195]

3.5.3.2 Proposed closure of the ILF

The current Government has decided to close the fund completely in 2015 and devolve the resources to local government social care departments. As the JCHR reports,[196] this decision caused considerable concern amongst disabled people and voluntary sector organisations, especially in the light of long term pressures on resources within local authority adult social care departments (due to a combination of the economic downturn, increased demand from an ageing society and cuts to local authority funding). In evidence to the JCHR inquiry, the Association of Directors of Adult Social Services said they 'simply have not got the money to make up the shortfall',[197] and the JCHR further reports the ADASS's concerns in more detail:[198]

> *The Association of Directors of Adult Social Services confirmed that the closure of the Fund was having "an adverse impact". In evidence to us they said that "we are already experiencing people coming to us in adult social care who previously would clearly have gone to the Independent Living Fund" and that "with the majority of authorities having eligibility criteria of substantial or critical, there is little doubt that there will be*

[195] Department for Work and Pensions (2012) *Government response: Consultation on the future of the independent living fund*, ch 4, para 11.
[196] JCHR, *Implementation of disabled people's right to independent living*, para 148.
[197] JCHR, *Implementation of disabled people's right to independent living*, para 148.
[198] JCHR, *Implementation of disabled people's right to independent living*, para 150.

many people who cannot now be assisted in the way that the Independent Living Fund was able to assist people".

In its response to the consultation on the proposed closure of the fund in 2015, the Government reported that the majority of respondents expressed concern that, if and when funding was passed to local authorities, and particularly if it were not ring-fenced, users would not receive the same degree of support.[199] Some respondents recognised the complexity and illogicality of having both local and national sources of funding in combination to support each user[200] and, in general, the concern about closure of the ILF wasn't so much about where the funding comes from, but about the very real fear that care packages would be reduced if funding was devolved to local authorities' adult social care budgets.[201]

Case study of ILF user, sent to Just Fair in response to call for evidence:
I am now 21 and having [personal assistants] *is still so important to me. I am a role model for young disabled people and I have a really busy, full life. I am volunteer at Imagineer in Halifax which is an organisation that helps people direct their own support and I help provide training courses about disability and equality. I also have a new job at Triangle which is a team that promotes communication with children and young people where I will also be helping give training for deaf and disabled people. I regularly give speeches in conferences and Universities with students about my story and experience. For all of these things I need a PA with me so I can travel to the various places I need to be, to interpret using sign language and to help with my personal needs throughout the day.*

If I was to lose the independent living fund, which would mean that a stranger from a care agency to visit me for a maximum of 1 hour and 20 minutes each day, there would be no possible way I could achieve any of the things I am already working towards. My family are extremely supportive and already help me so much but they should not be expected

[199] DWP, *Government response: Consultation on the future of the independent living fund*, qu 1, para 1.
[200] DWP, *Government response: Consultation on the future of the independent living fund*, Executive Summary, para 5.
[201] JCHR, *Implementation of disabled people's right to independent living*, para 149.

> *to care for me, they are my family, not my PAs. They should not be expected to give up their life in exchange for mine. If these cuts happen I would be isolated, depressed and vulnerable. I would have no life. My life would not be my own but would belong to the people who made the cuts and therefore worthless to me.* (young woman)

3.5.3.3 Judicial review of the decision to close the ILF

Five ILF users applied for judicial review of the Government's decision to close the fund. The Court of Appeal found for the applicants[202] on the grounds that the then Minister for Disabled People failed to comply with her duty to promote equality under the Equality Act 2010 Section 149 (the public sector equality duty, PSED), by not having paid due regard to the need to advance equality of opportunity between disabled people and non-disabled people. The words of Lord Justice Elias are of particular significance in relation to the use of the UNCRPD to assist in the interpretation of the PSED:[203]

> *… there is no evidence that [the Minister for Disabled People] had her attention drawn to the positive obligation to advance equality of opportunity, nor indeed (although it was not suggested that this was of itself directly a breach of the PSED) to the more specific obligations which the UK has undertaken with respect to the disabled in the United Nations Convention on the Rights of Persons with Disabilities and which ought to inform the scope of the PSED with respect to the disabled. I have in mind in particular Article 19 which requires States to take effective and appropriate measures to facilitate the right for the disabled to live in the community, a duty which would require where appropriate the promotion of independent living. There was no evidence that any of these considerations were in the mind of the Minister...*

In his judgement Lord Justice Coombe concluded that although the Minister was told that ILF users could see their care packages reduced[204] there was no evidence that the Minister's attention was drawn to detailed consultation responses from local authorities that warned of the threat to independent

[202] *Bracking v Secretary of State for Work and Pensions*, Court of Appeal, [2013] EWCA Civ 1345 (6 November 2013).
[203] *Bracking v Secretary of State for Work and Pensions*, para 77.
[204] *Bracking v Secretary of State for Work and Pensions*, para 62.

living – to ILF users' ability to live in their own homes and participate in employment or education - if the ILF was closed.[205]

3.5.3.4 Final decision to close the ILF

Since the PSED, and hence the Court of Appeal's judgement, concerns the decision-making process rather than the substance of a decision, the Minister for Disabled People has since made a statement to the effect that the fund will close in June 2015.[206]

3.5.3.5 Conclusion and recommendations

Due to the nature and purpose of the Independent Living Fund, the legal arguments and Court of Appeal judgement in the ILF case were, of necessity, clearly focused on the threat the fund's closure would pose to disabled people's enjoyment of the right to independent living, as the JCHR warned in its 23rd report.[207] While the decision of the Court of Appeal that the closure of the ILF was unlawful did not depend on Article 19, the court clearly considered the UK's obligations under UNCRPD, and Article 19 in particular, as highly relevant to Ministers' obligations to pay due regard to the need to promote equality of opportunity under the PSED enshrined in Section 149 of the Equality Act 2010.[208]

From the above it seems fair to conclude that the key issue, when evaluating the Government's final decision to proceed with the closure of the ILF, is that any change in support that threatens fund users' enjoyment of the right to independent living would constitute impermissible retrogression in relation to UNCRPD Article 19. It is therefore incumbent on the Government to ensure the ongoing provision of sufficient support to enable fund users to choose where and with whom they live and to participate as they are currently able to, whether that be through paid work or in other ways.

Given the real risk of impermissible retrogression in relation to the right to independent living under Article 19, the progress of ILF users should be

[205] *Bracking v Secretary of State for Work and Pensions*, paras 50-64.
[206] Rt Hon Mike Penning MP, Minister of State for Disabled People (2014) *Statement on the future of the Independent Living Fund*, 6 March 2014.
[207] JCHR, *Implementation of disabled people's right to independent living*, para 152.
[208] *Bracking v Secretary of State for Work and Pensions*, para 77 (Lord Justice Elias).

monitored during and after the closure of the fund. 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. These outcomes provide positive models of independent living, which depends not on which organisation administers the funding but on the way in which it is used to promote independent living and equality of opportunity.

3.5.4 Social care

3.5.4.1 The role of social care in enabling independent living

Social care, particularly self-directed support via personal budgets and/or direct payments, is one of the most important factors in enabling disabled people to realise their right to independent living.[209] Since the 1980s, spearheaded by the independent living movement, thousands of disabled people, most notably those with physical impairments, have used direct payments to recruit and employ personal assistants of their choice to enable them to live active, fulfilling lives in the community, with many undertaking paid work and bringing up families.[210] Under the 'Putting People First' initiative,[211] personal budgets have been widely implemented across adult social care services, benefiting people with all kinds of impairment, with the aim of giving service users more choice and control over their support, whether they manage the budget for their support themselves or have it managed for them. It is important to note, however, that personal budgets and personalisation are not synonymous with independent living;[212] if the personal budget is insufficient to meet an individual's support needs or there is a lack of flexibility permitted in its use, merely delivering services in this way will not enable independent living.

[209] JCHR, *Implementation of disabled people's right to independent living*, para 165.
[210] J Evans, *The independent living movement in the UK*.
[211] Department of Health (2007) *Putting People First*.
[212] All Party Parliamentary Local Government Group and All Party Parliamentary Disability Group (2013) *Promoting independence, preventing crisis* (Scope).

3.5.4.2 Tightening eligibility criteria for social care

Despite the positive development of direct payments and personal budgets, funding of social care has proven inadequate in meeting both existing and future projected demand.[213] Older people are living longer, but not necessarily in good health, and more children and adults are surviving injuries and conditions that would once have been fatal but now result in some degree of long-term impairment.[214]

Over the last few years, under both the current and previous Governments, many local authorities have tightened their eligibility criteria, so that fewer disabled people are eligible for support.[215] Quality Watch has reported that:[216]

> *…. this trend to move public funding away from those with more moderate needs predates the financial crisis. The proportion of councils restricting public funding to those people with needs that are judged to be "substantial" or above has grown steadily from 65 per cent of councils in 2006/07 to 87 per cent of councils in 2013/14.*

This has led to 69,000 working age disabled adults with moderate needs and 8,000 with substantial needs losing their eligibility for social care.[217]

Since most local authorities now only provide support to those facing substantial or critical risks to their independence, and a few restrict eligibility to those whose risk is critical, some of the major charities have recently raised concerns about the lack of support for disabled people who face moderate risks to their independence.[218] In their report, the charities make the following

[213] APPLGG and APPDG, *Promoting independence, preventing crisis*, pp 9-11.
[214] P Beresford et al (2011) *Supporting People* (Policy Press), pp 19-21.
[215] APPLGG and APPDG, *Promoting independence, preventing crisis*, pp 27-28.
[216] 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).
[217] APPLGG and APPDG, *Promoting independence, preventing crisis*, using modelling from Fernandez, Snell, Forder and Wittenberg (2013) *Implications of setting eligibility criteria for adult social care at moderate needs level*, DP2851 (PSSRU at LSE).
[218] 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, p 8.

bleak observations about the impact of tightening eligibility criteria for social care on working age disabled people:[219]

> *New evidence from our survey shows that disabled adults:*
>
> - *are failing to have their basic needs met: with nearly four out of ten (36 percent) unable to eat, wash, dress or get out of the house due to underfunded services in their area.*
> - *are withdrawing from society: with nearly half (47 percent) saying the services they receive do not enable them to take part in community life and over one third (34 percent) being unable to work or take part in volunteering or training activities after losing support services.*
> - *are increasingly dependent upon their family: with nearly four in ten (38 percent) seeking support services saying they experienced added stress, strained relationships and overall decline in the wellbeing of friends and family.*
> - *are experiencing isolation, stress and anxiety as a result: with over half (53 percent) saying they felt anxious, isolated, or experienced declining mental health because they had lost care and support services.*

Some responses to the online survey also expressed concern at the tightened eligibility criteria for social care support:

> **Case study (from online survey on the We are Spartacus website):**
> *My father has dementia. Social services wouldn't even assess his needs. The reason they gave? His needs aren't critical. There's a loophole in the law such that if he doesn't appear to be eligible for care, they don't have to actually assess his needs. Then they refused to assess my needs as a carer because they haven't assessed him as needing a carer. Meanwhile, I don't get any support from social services despite having a severe and enduring mental illness.*

[219] E Brawn et al, *The other care crisis: making social care funding work for disabled adults in England*, p 8.

In a situation that may be analogous to the issue of eligibility criteria in the UK, the UN Disability Committee has expressed its concern[220] that eligibility for social services in Spain was linked to specific 'grades' of disability and that personal assistants could only be hired by disabled people with 'level 3 disabilities', and only for work and education. The Committee's Concluding Observations are therefore likely to be particularly relevant to the UK:[221]

> *The Committee encourages the State Party to ensure that an adequate level of funding is made available to effectively enable persons with disabilities: to enjoy the freedom to choose their residence on an equal basis with others; to access a full range of in-home, residential and other community services for daily life, including personal assistance; and to so enjoy reasonable accommodation so as to better integrate into their communities.*
>
> *The Committee encourages the State Party to expand resources for personal assistants to all persons with disabilities in accordance with their requirements.*

3.5.4.3 High charges for social care

Due to the funding crisis, a number of councils have also decided to impose higher charges for social care services.[222] Councils have discretion in the amount they charge, but their charging policies are expected to take account of Department of Health guidance[223] which seeks to set a minimum amount that must be retained by service users after paying for their social care, **and** to ensure charging policies do not discourage service users from participating in paid work. However, despite this guidance, charges imposed have a significant impact on equality of opportunity; for example, under most local authority charging policies, once disabled people have saved £23,250 - towards a home, maybe - they are forced to pay the full cost of their support package,

[220] Committee on the Rights of Persons with Disabilities, Concluding observations under Article 35 of the Convention on reports submitted by Spain, September 2011.
[221] CRPD, Concluding observations on reports submitted by Spain, paras 40 & 42.
[222] 'Councils press on with home care charges increase', Community Care, 24 January 2011.
[223] Department of Health (2013) *Fairer Charging Policies for Home Care and other Non-residential Social Services*.

regardless of its cost. Their non-disabled peers do not, of course, have similar constraints placed on their ability to save.

Even disabled people whose only income derives from social security benefits may be charged for their social care support. DLA is paid to disabled people to help cover the extra costs of disability, but local authorities are permitted to take this income into account when assessing ability to pay, so long as they also take account of disability-related expenditure.[224] However, there is wide variation in the willingness of local authorities to take a flexible, broad view of what constitutes disability-related expenditure,[225] leaving many disabled people losing part of their DLA but also having to meet their disability-related costs out of their remaining income.

The level of social care charges can leave disabled people with some very difficult decisions:

> **Case study: Young woman unable to afford social care**
> *The council wanted £72 a week for my care package which I simply cannot afford, so I've had to choose between a care package and money for transport to see friends. My care package would have provided me with support to shower, take my medication and have breakfast in the morning, prepare a meal in the evening and change for bed after a busy day. It would also have helped me get dressed after I my hydrotherapy exercises in the local swimming pool (I couldn't get NHS funding for hydrotherapy) and helped with doing laundry, making phone calls and reading/organizing post. I chose to cancel my care package to save my mental health and my emotional support network. Without it I don't go swimming, rarely shower, often sleep fully clothed and my Mum helps with laundry, food shopping, paperwork etc.*

3.5.4.4 Social care reform – an opportunity to fulfil UNCRPD Article 19?

It has long been recognised by both current and recent Governments, that social care needs substantial reform. The Care Act,[226] which recently received Royal Assent, constitutes the biggest overhaul to social care services since the

[224] DoH, *Fairer Charging Policies for Home Care and other Non-residential Social Services*.
[225] Coalition on Charging (2008) *Charging into Poverty?* (available from Disability Rights UK).
[226] Care Act 2014.

National Assistance Act 1948. During the Care Bill's passage through Parliament the JCHR[227] and many others, including the All Party Parliamentary Disability Group and the All Party Parliamentary Local Government Group,[228] urged the Government to use the Care Bill to make further progress in implementing the right to independent living under the UNCRPD Article 19, since Article 19 (and other related provisions of international human rights law) have not so far been incorporated into UK domestic law.[229] However, the Law Commission, in its wide-ranging review of social care published in 2011,[230] and the Bill's Scrutiny Committee,[231] decided against its inclusion.

The Care Act puts an overriding obligation on local authorities to promote well-being, with a number of high level "well-being outcomes" listed in Clause 1. These outcomes are certainly not retrogressive and should make a positive contribution to the promotion of independent living:

- personal dignity (including treatment of the individual with respect);
- physical and mental health and emotional well-being;
- protection from abuse and neglect;
- control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided);
- participation in work, education, training or recreation;
- social and economic well-being;
- domestic, family and personal relationships;
- suitability of living accommodation;
- the individual's contribution to society.

[227] Joint Committee on Human Rights (2014) *Legislative Scrutiny of the Care Bill*, Eleventh Report of Session 2013-14.
[228] APPLGG and APPDG, *Promoting independence, preventing crisis*.
[229] JCHR, *Implementation of disabled people's right to independent living*, para 52.
[230] Law Commission (2011) *Adult Social Care.*
[231] Joint Committee on the Draft Care and Support Bill (2013) *Report - draft Care and Support Bill*.

In its evidence for this report, Inclusion London made the following comment about the dangers of failing to include the concept of independent living in the Care Bill:

> *The current "well being" definition in the Care Bill does incorporate some aspects of independent living but it leaves out vital independent living concepts of choice, access, inclusion, rights and equal participation. We need independent living and these concepts included in the Care Bill to ensure support services in the 21st century enable disabled people to play equal and active lives as citizens – out in society – making choices, participating and contributing. Without explicitly including independent living as a duty we are in danger of regressing back to a well-intentioned but ultimately paternalistic and individualistic view of disabled people that does not address the barriers and marginalisation disabled people face nor our desire for equality.* ***We need a social care system that is committed to the full and equal participation of disabled people as much as the well-being of the individual****. (emphasis added)*

Whilst the Department of Health drafted a human rights memorandum to assist the JCHR,[232] this document referred only briefly to Article 19, stating merely that Part 1 of the Bill '*is consistent with numerous provisions of the UN Convention on the Rights of Persons with Disabilities…*'.

UNCRPD Article 4 requires the Government to 'closely consult with and actively involve' disabled people in the development of policy and legislation. As befits the Bill's importance, there was extensive consultation on the Care Bill, with the active involvement of charities and organisations representing disabled people. However, whilst the need to support people to live "independently" is emphasized in background documents, it is not clear that this reflects the meaning of independent living used by the JCHR. There is limited evidence from the White Paper, impact assessments and consultations that the Government has fulfilled its obligations to take specific account of UNCRPD, and especially Article 19, and the independent living movement's understanding of independent living, in the development of the Care Act 2014.

[232] Department of Health (undated) *Care Bill: Memorandum to the Joint Committee on Human Rights*.

3.5.4.5 Will the national eligibility criteria be compatible with Article 19?

In regulations under the Care Act the Government is setting national eligibility criteria, so there should be a great deal more consistency in the way disabled people's needs are assessed in different parts of the country. However, a number of organisations, including Scope[233] and Age UK,[234] have expressed concern that setting the national care threshold at "substantial"[235] will exclude thousands of disabled people from vital support with day to day tasks and personal care.[236]

These concerns were also emphasised by the JCHR in its legislative scrutiny of the Care Bill:[237]

> *....we note that the Government has not identified any provisions that might have an adverse effect on the right to independent living. For example, the new eligibility criteria for adult social care, provided for at Clause 13 of the Bill (and to be set out in further detail in regulations), could represent a potentially retrograde step in the promotion of the right to independent living under Article 19 if the national eligibility threshold is set so high as to exclude large numbers of adults from access to care and support.*

3.5.4.6 Conclusion and recommendations

The Care Act was passed at a time when many charities, local authorities and other organizations in the social care field were highlighting the serious impact of the current crisis in social care funding on disabled people's independence. While the Act contains many positive policies, it is disappointing that the Government failed to include independent living (as expressed in UNCRPD Article 19) as a high level outcome.

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[233] E Brawn et al, *The other care crisis: making social care funding work for disabled adults in England*.
[234] Eg, Age UK (2012) *Social care reform briefing,* June 2012.
[235] Department of Health (2013) *Draft national minimum eligibility threshold for adult care and support.*
[236] E Brawn et al, *The other care crisis: making social care funding work for disabled adults in England*.
[237] JCHR, *Legislative Scrutiny of the Care Bill*, para 30.

There are also major ongoing concerns about whether there will be sufficient funding to deliver the aims of the Care Act. There is particular concern that the proposal to set the national eligibility criteria at approximately the 'substantial' level of need under the current criteria will continue to deny many disabled people the support they need to live independently. Comments and recommendations made in relation to other developed countries by the UN Disability Committee indicate the importance of allocating sufficient funding to enable disabled people to live independently as envisaged by UNCRPD Article 19.

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. In addition to helping the UK to meet its obligations under UNCRPD, such investment has the potential to enable more disabled people to play a full part in their community, preventing avoidable deterioration in their well-being and, for many, undertaking paid work.

3.5.5 Cumulative impact of a number of policies and reforms

3.5.5.1 Independent living depends on a wide range of policies and services

Because independent living depends on many services and facilities, including social care, housing, transport and benefits, to name but a few, policy changes in any of these areas, and others, will have an impact on disabled people's enjoyment of the right to independent living. As the JCHR explains:[238]

> *...States Parties are obliged to ensure that disabled people have access to a range of support services that they may require in order to live freely in the community, and to avoid isolation and segregation from the community.*

[238] JCHR, *Implementation of disabled people's right to independent living*, ch 2, para 16.

It is axiomatic that, since most of the necessary support services to enable independent living need funding,[239] an overall reduction in available resources is likely to have an impact on independent living. However, the degree of impact depends on how and where budget reductions are made and how various policy changes and funding reductions interact in their impact on individual disabled people.

3.5.5.2 The cumulative impact of a range of reforms and budget reductions

Reflecting the submissions and evidence submitted to their inquiry, the JCHR expressed particular concern about the interaction of different policy proposals:[240]

> *…witnesses were particularly concerned that the overall cumulative impact of the reforms might lead to retrogression of the enjoyment of rights under Article 19. For example, the College of Occupational Therapists told us that current policy proposals "run the risk of substantially reducing the rights of disabled people to independent living through the possibility of unintended consequences of interacting cumulative impacts", while the Equality and Human Rights Commission said that "the cumulative—even if unintended—effects of DLA reform and cuts in local authority expenditure risk seriously eroding the enjoyment of Article 19 of the Convention".*

The JCHR expressed particular concern about the interaction between the four policy areas analysed above: housing benefit, DLA reform, closure of the ILF and social care,[241] but these represent only some of the changes that have the potential to interact negatively to undermine independent living.

The interaction of DLA reform and the benefit cap represents a simple example of the cumulative impact of the interaction of different policy changes: if a family member claims DLA, the family is exempt from the overall benefit cap, but if that family member loses entitlement following an assessment for PIP,

[239] For a more detailed explanation of the different types of rights included in Article 19, see JCHR, *Implementation of disabled people's right to independent living*, ch 2, paras 34-37.
[240] JCHR, *Implementation of disabled people's right to independent living*, para 126.
[241] JCHR, *Implementation of disabled people's right to independent living*, para 161.

the family's benefits will be reduced to the level of the cap, despite no other change in their circumstances; the loss of DLA (and carers' allowance, if anyone in the family claims that benefit) will also have an impact on their ability to meet disability-related expenses. This may mean the family has to move to a different area, separating them from the informal support of local friends and neighbours. The result may constitute impermissible retrogression in relation to the enjoyment of Article 19 rights as well as being more expensive in the long run, thus failing to maximise the use of available resources.

In the report of her visit to the UK in August/September 2013, the UN Special Rapporteur on Housing reinforced the JCHR's concerns about the cumulative impact of several aspects of welfare reform on disabled people's enjoyment of the right to independent living. She quoted from the JCHR's report in her own report: [242]

> *… Serious concerns about the direct impact of these reforms were already raised in 2012:[243] "The range of reforms proposed to housing benefit, Disability Living Allowance, the Independent Living Fund, and changes to eligibility criteria risk interacting in a particularly harmful way for disabled people… As a result, there seems to be a significant risk of retrogression of independent living and a breach of the UK's Article 19 [CRPD] obligations."….*

It is therefore impossible for the Government to meet its obligations to respect, protect and fulfil disabled people's Article 19 rights, and to avoid retrogression, without assessing how its various reforms and budget cuts interact in the lives of disabled people and making changes as necessary to minimise the impact.[244] However, the Government has consistently declined to

[242] Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, on her mission to the United Kingdom of Great Britain and Northern Ireland, Human Rights Council, 25th Session, Agenda Item 3, Promotion of the protection of all human rights, civil, political, social, economic and cultural including the right to development, (29 August–11 September 2013) HRC/25/54/Add 2, para 65.

[243] Quoting JCHR, *Implementation of disabled people's right to independent living*, para 161.

[244] JCHR, *Implementation of disabled people's right to independent living*, Conclusions and recommendations, para 21.

attempt an assessment of the cumulative impact of its policy changes as the JCHR advised was necessary.[245]

Various civil society groups have attempted to assess this cumulative impact, albeit on disabled people in general rather than specifically in relation to their enjoyment of the right to independent living. Some of these assessments focus on the total reduction in the amount of money spent supporting disabled people[246] or the percentage of the reduction they bear, as indicators of reduced support for individual disabled people.

In "Counting the Cuts", the fourth cumulative impact assessment carried out by the Centre for Welfare Reform on behalf of the Campaign for a Fair Society,[247] Dr Simon Duffy found that, using the Government's own data it seemed that there will be an effective annual cut of £7.5 billion to social care and of £15.8 billion in benefits by 2015-16. This means that cuts are disproportionately targeted on disabled people and people in poverty:

- People in poverty (20% of the population) bear 37% of all the cuts;
- Disabled people in poverty (4% of the population) bear 14% of all the cuts;
- People with severe disabilities needing social care (3% of the population) bear 14% of the cuts.

In their Destination Unknown project, Demos and Scope attempted to assess the practical impact of the accumulation of different changes and reforms on the lives of disabled people. The project tracked a few typical, but very different disabled families showing, through a series of reports,[248] how the changes to benefits and other relevant policies affect their lives. Since the last of these reports was published in June 2012, the impact of housing benefit reforms and the reform of DLA were not included, but the report nevertheless describes the following impacts on the families studied:[249]

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[245] Eg, Hansard, Mike Penning MP (Minister for Disabled People), HC deb, col 404, 13 March 2014.
[246] 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).
[247] Duffy, *Counting the Cuts* (Centre for Welfare Reform, Sheffield); all data is available online at http://bit.ly/cuts-data2
[248] Demos/Scope (2012) *Destination Unknown, final report*.
[249] Demos/Scope *Destination Unknown, final report*, pp 14-15.

- Decreased social engagement: reduction in social activity and increased isolation
- Loss of support services
- Deteriorating mental health
- Increasing physical and emotional toll on family members having to provide more informal care

The report goes on to explain: [250]

> *Disabled households are not benefits recipients – they are parents, employees, students, home owners, older people and citizens. They rely on the same diverse range of services as everyone else, but the Government's failure to grasp the whole picture beyond the welfare reform agenda can lead to an underestimation of the cumulative impact these hundreds of individual cuts can have on each multi-service-using household. Disabled people are most vulnerable to this accumulation of cuts simply because they are more likely to rely on several benefits and several public services.... It is clear the traditional impact assessment is only fit for purpose when one reform is being implemented at a time. It is wholly inappropriate when applied to a comprehensive agenda of reforms spanning welfare and local services.*

Many disabled people and people with long term health conditions have provided accounts of the cumulative impact of two or more policy changes; the following example is by no means unusual:

> **Case study (from online survey on the We are Spartacus website):**
> *I have been unable to sleep and have nightmares. I started to suffer from depression that I did not have before. I think about and have saved up drugs to commit suicide if I lose my ESA. I cannot work due to multiple physical problems and no amount of bullying and hatred will make that possible... I have to pay the bedroom tax, having been allocated this property as a single person because nobody else wanted it. If I fail the arbitrary Atos test [WCA], I will also lose my home. I have no family or friends who I could turn to for help. For over 3 years my life has been*

[250] Demos/Scope, *Destination Unknown, final report*, pages 17-18.

governed by fear... I survive day to day, living in fear of the brown envelope coming through the door that I have to be re-tested when there is no effective treatment or cure for my conditions. (Woman)

3.5.5.3 Conclusion and recommendations

Despite the complexity and limitations of cumulative impact assessments, the evidence does appear to show that the JCHR's concerns about the cumulative impact of a number of reforms and policy changes on independent living have been realised. If disabled people are hit by two, three, four or even more separate changes to benefits, social care and other services, they lose much of the support they need to live independently in the community in terms of UNCRPD Article 19.

We recommend that the Government commission rigorous qualitative research to ascertain how a range of policy changes, reforms and budget reductions interact in the lives of disabled people of different ages, in a variety of family situations and in different areas of the country. The research should focus in particular on the cumulative impact of the changes on the subjects' enjoyment of the UNCRPD Article 19 right to independent living and identify practical measures to mitigate the retrogressive impact.

3.6 Conclusion to Chapter 3

Under the UNCRPD, the UK is required to respect, protect and fulfil disabled people's right to independent living. There is a presumption against retrogression in terms of the realisation of the economic, social and cultural rights under that treaty and ICESCR, including during a time of economic crisis. Disabled people's enjoyment of their right to independent living is dependent on access to a range of inter-related services and support, cutting across all aspects of life. The above analysis demonstrates that those reforms and changes (such as the changes to housing benefit) that have been introduced are already resulting in backward steps in terms of the implementation of 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. The

measures resulting in retrogression do not satisfy the requirements under international human rights law and are therefore impermissible. They are not time-bound to the crisis, they are not necessary and proportionate and they do not ensure the satisfaction of the minimum core obligation imposed by Article 19.

Furthermore, 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 independent living, and of the way in which policy across all departments of Government has an impact on the ability of disabled people to enjoy their Article 19 rights. It is clear from the above analysis that at a time of far-reaching reform, in addition to undertaking rigorous equality and human rights impact assessments of individual policies, policymakers must assess how their proposals may interact with other policy areas to affect the extent to which disabled people can enjoy the right to independent living.

In addition, the importance of fulfilling 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 a duty to avoid retrogression, in all relevant policymaking. Such a move would have significant social and economic benefits, with disabled people empowered to play their part in society with the support they need to fulfil their potential.

4. Disabled people's rights to work, social security, social protection and an adequate standard of living

4.1 Introduction to Chapter 4

This part of the report focuses on an important, inter-linked set of economic, social and cultural rights enshrined in both ICESCR and UNCRPD. The specific rights examined are:

- Disabled people's right to work and to just and fair conditions of employment[251]
- Disabled people's rights to social protection,[252] social security,[253] and an adequate standard of living[254]

In the context of these rights, it is axiomatic that the enjoyment by disabled people of an adequate standard of living is dependent on both their ability to exercise their right to work, for sufficient remuneration to support themselves and their families, and their ability to exercise their right to social security at times when they are unable to work due to the impact of their impairment or health condition or because suitable work is not available. These rights are therefore inextricably linked, with the ability of disabled people to exercise one right having a direct impact on their ability to exercise others.

The preamble to UNCRPD makes reference to particular poverty-related risks faced by disabled people,[255] and disability-related poverty has also been documented in UK research:[256]

[251] ICESCR Articles 6 and 7; UNCRPD Article 27.
[252] UNCRPD Article 28.
[253] ICESCR Article 9.
[254] ICESCR Article 11; UNCRPD Article 28.
[255] Preamble to UNCRPD, para (t).
[256] S Bulloch and C Rogers (2014) *Better living, higher standards: improving the lives of disabled people by 2020* (Scope), p 6.

> *Disabled people are twice as likely to live in poverty as non-disabled people, and that's before the extra costs of disability are taken into account.*

The reasons for disability poverty are complex but include barriers and discrimination in relation to employment and services, the higher living costs incurred as a result of disability and, as explained in Chapter 3, charges levied by local authorities for social care services – a policy area highlighted in 2009 by a coalition of disability organisations that drew attention to the significant impact of care charges on disabled people's standard of living.[257] By definition, disabled people living in significant poverty are prevented from enjoying their ICESCR and UNCRPD right to an adequate standard of living.[258] In addition, the greater likelihood of disabled people to live in poverty, in contrast to the experience of non-disabled people, is in itself discriminatory, in violation of ICESCR Article 2 and UNCRPD Article 5 (see Section 2.3.4).

4.1.1 Structural changes in the labour market and social security policy

During the 1980s and early 1990s significant changes in the labour market, due in large part to the decline in mining and manufacturing industry, gave rise to a cohort of people of working age experiencing long term unemployment and claiming out of work benefits, including long term sickness benefits, for an extended period.[259] Against this backdrop, and especially since the start of the New Labour era in 1997, there has been a change in emphasis in relation to the purpose of social security, which may go some way towards explaining why recent social security policies have made it harder for disabled people to maintain an adequate standard of living.

[257] Coalition on Charging, *Charging into Poverty*.
[258] ICESCR Article 11; UNCRPD Article 28.
[259] C Beatty, S Fothergill and T Gore (2012) *The real level of unemployment 2012* (CRESR, Sheffield Hallam University).

In their analysis of the changes that took place under New Labour after 1997, Carmel and Papadopoulos describe this new vision of social security as follows:[260]

> *Social security-as-support is a "hollowed out" security; its essence - protection - has been changed. In this vision, social security is not primarily about protection from failures of socio-economic conditions and processes that State action can alter. Rather, it is a "helping hand" so that an individual can alter his/her own behaviour to match the demands arising from these conditions and processes. Indeed, in this paternalistic vision of "hollowed-out security", the emphasis on "help for self-help" implies that benefit recipients are themselves to a large degree responsible for their status; with some (conditional) help, they will be able to end their status as benefit claimants.*

Thus there is now less emphasis on social protection from the impact of changes in industry, the economy or the increasing globalisation of labour markets, and more emphasis on the relationship between an individual's behaviour and their employment status. However, despite the political consensus that work is the best route out of poverty,[261] the impact of inflation and recessionary pressures on earnings means that, for many, work no longer provides financial security.[262]

Recent welfare reforms under both New Labour and the Coalition Government have sought to encapsulate this new vision of social security policies that focuses strongly on the responsibility of benefit claimants to adjust their behaviour rather than on the responsibility of the State to adopt economic and social policies that maximise employment opportunities.[263] The re-organisation of Government departments and the naming of the Department for Work and Pensions (DWP) in 2001 emphasised the centrality of paid work to the Government's emerging welfare policies for people of working age.

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[260] 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).

[261] 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).

[262] Joseph Rowntree Foundation (2013) *Monitoring Poverty and Social Exclusion*.

[263] Dean and Patrick, 'A New Welfare Settlement? The Coalition Government and Welfare to Work'.

4.1.2 Impact of economic recession

Evidence from previous recessions[264] supports the likelihood that disabled people would be particularly badly affected by the global financial crisis in 2008 and the subsequent recession and squeeze on public expenditure in the UK. Since disabled people are much less likely to be in paid work than non-disabled people,[265] their living costs are higher[266] and they are more likely to be reliant on social security and public services, they are more likely to be adversely affected by a reduction in public expenditure in an economic downturn.

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

The right to work is safeguarded by Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), while ICESCR Article 7 secures the right of everyone to the enjoyment of just and favourable conditions of employment.

4.2.1 Recent assessments by UN committees

In 2009, the most recent report of the UN Committee on Economic, Social and Cultural Rights on the UK highlighted that progress was still needed in the area of work and employment:[267]

> *[The Committee] calls upon the State Party to reinforce its measures aimed at ensuring that persons with disabilities, including those with learning disabilities, have equal opportunities for productive and gainful employment, equal pay for work of equal value, and provide them with improved, expanded and equal opportunities to gain the necessary*

[264] Leonard Cheshire (2009) *Disability and the Downturn*.
[265] L Sayce and N Crowther (2013)*Taking control of employment support* (Disability Rights UK).
[266] Brawn, *Priced out: ending the financial penalty of disability by 2020*.
[267] 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.

> *qualifications, in line with its general comment no. 5 (1994) on persons with disabilities.*[268]

Then in 2013, the Committee examining the UK's progress under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by the UK in 1979, expressed its concern about the high rate of unemployment among disabled women and recommended the creation of more opportunities for employment.[269]

4.2.2 What the data shows

Recent statistics suggest that around 30% fewer disabled people than non-disabled people are in paid work.[270] Whilst for some disabled people and people with long term health conditions the impact of their impairment and symptoms may be too significant to allow them to engage in paid work, this still represents a considerable gap in the rate of employment among disabled people in comparison to non-disabled people. These figures compare badly with employment rates for disabled people in other European Union countries[271] and mask particularly low levels of employment among some groups, such as young disabled people and those with few qualifications, as well as people with learning disabilities or mental health problems.[272] This illustrates the gap between disabled people's rights under the UNCRPD and ICESCR and the reality of their enjoyment of those rights in the UK; it is now necessary to examine whether the UK is taking adequate steps towards progressively realising disabled people's right to work.

4.2.3 'Right to work' versus 'welfare to work'

Within the UN framework of economic, social and cultural rights, participation in paid work with fair conditions of employment is seen as a right that should be enjoyed by disabled people on equal terms with others. UNCRPD Article 27 makes it clear that work should be "freely chosen" and that the State is

[268] Bold in original text removed.
[269] Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of the UK, July 2013, paras 46 and 47.
[270] Sayce and Crowther, *Taking control of employment support*.
[271] European Union (2010) *Social Inclusion, Income and Living Conditions Survey*.
[272] Sayce and Crowther, *Taking control of employment support.*

expected to be pro-active in facilitating this right, for example by facilitating appropriate training, ensuring reasonable adjustments are available in the workplace and by encouraging and enabling employers to implement non-discriminatory recruitment and retention policies. It is implicit in this approach that disabled people's right to employment is seen as a benefit to disabled people, facilitated by the State, civil society organisations and employers, rather than an obligation imposed on disabled people.

Within the policy context of both the previous and current Governments, it is important to distinguish the concept of a right to paid work with fair conditions of employment - facilitated, at least in part, by the State - from the deliberate move towards 'welfare to work' policies, which in relation to the UK may be described as follows:[273]

> *Welfare-to-work concerns the policy mechanisms by which all those not currently working are encouraged, enabled and where deemed necessary, compelled to enter paid employment.*

The principal distinction between the concepts of 'right to work' and 'welfare to work' is the element of compulsion inherent in welfare to work, which has a range of impacts including the withholding of benefit for perceived non-compliance, and the denial of choice for disabled people to engage in work suited to their aptitudes and abilities.

4.2.4 The implementation of welfare to work policies

The main political arguments for welfare to work policies are that, in the past, disabled people (and other groups, such as lone parents) were left to live on benefits and not supported to get into or return to work, but that in an increasingly globalised economy this state of affairs is too expensive for the taxpayer and denies citizens of working age the advantages of working.[274] This has also been a primary focus of European Union policy for nearly 15 years.[275]

[273] Deacon and Patrick, 'A New Welfare Settlement? The Coalition Government and Welfare to Work', p 162.
[274] Department for Work and Pensions (2000) *A new deal for welfare: Empowering people to work* (Cm 6730).
[275] European Commission (2007) *Towards Common Principles of Flexicurity: More and better jobs through flexibility and security*, Communication from the Commission to the European Parliament,

In 1997 the Labour Government announced welfare to work policies as an essential element of their policy programme and stated that it planned to:[276]

> *rebuild the welfare state around work,*

adding that:

> *It is the Government's responsibility to promote work opportunities and to help people take advantage of them. It is the responsibility of those who can take them up to do so.*

During its 13 years in power, the Labour Government implemented its "New Deal" programmes to support various groups including disabled people;[277] in 2003, within the framework of the New Deal for Disabled People, Pathways to Work was piloted[278] for incapacity benefit claimants, but was later found by the National Audit Office to have delivered poor value for money.[279]

Under the Coalition Government, the existing welfare to work schemes were replaced by the Work Programme, for claimants who have been out of work for a long period of time, and Work Choice, for disabled claimants with the greatest barriers to work, although in practice it is clear that Work Choice is often not offered to disabled people with the greatest barriers to work.[280] These programmes are run by private providers who are, to an extent, paid by results, but the effectiveness of both these programmes has been relatively poor (see Section 4.2.7 below).

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the Council, the European Economic and Social Committee and the Committee of the Regions, Lisbon European Council 23 & 24 March 2000, European Parliament Presidency Conclusions.

[276] Department for Social Security (1998) *New ambitions for our country: A new contract for welfare*, (CM 3805), quoted in Dean and Patrick, 'A New Welfare Settlement? The Coalition Government and Welfare to Work', p 162.

[277] Department for Work and Pensions (2008) *Transforming Britain's Labour Market: Ten years of the New Deal.*

[278] DWP, *Transforming Britain's Labour Market: Ten years of the New Deal*.

[279] National Audit Office (2010) *Support to incapacity benefits claimants through Pathways to Work*.

[280] Department for Work and Pensions (2013) *Evaluation of the Work Choice Specialist Employment Programme*, referenced in Sayce and Crowther, *Taking Control of Employment Support*.

4.2.5 The need for a receptive labour market, free from discrimination

UNCRPD Article 27 makes it clear that a non-discriminatory labour market, receptive to the contribution of disabled people, is essential if disabled people are to enjoy a right to work. In discussing disabled people's right to work under Article 6, the UN Committee on Economic, Social and Cultural Rights emphasized that the integration of persons with disabilities into the regular labour market should be actively supported by States.[281] In its response to the Labour Government's proposals for ESA, the Social Security Advisory Committee made the following observation in relation to progress in opening up the labour market to disabled people and people with long term health conditions:[282]

> *We have observed that the process of getting employers – in particular those operating* [small and medium sized enterprises] – *actively engaged and committed to working within the Government's agenda, is lagging far behind what is needed to open the labour market to people with health conditions and/or disabilities (in particular those relating to mental health), and provide an environment in which such people can be supported in sustained employment.*

Under the Equality Act 2010 (and previously the Disability Discrimination Act 1995) it is unlawful for employers to discriminate against disabled people; they are obliged to make 'reasonable adjustments' to the working environment and conditions of employment to enable disabled people to compete on equal terms with non-disabled people. However, research suggests that equality legislation has not had the impact on work opportunities for disabled people that was intended:[283]

> *…. it is worth noting that, although the DDA came into force in 1996, the evidence does not suggest that disabled people's labour market*

[281] CESCR General Comment No 18, para 20.
[282] Social Security Advisory Committee (2006) *19th Report, August 2005-July 2006,* p 30.
[283] N Meager and T Higgins (2011) *Disability and skills in a changing economy* (UK Commission on Employment and Skills), p 6.

> *disadvantage has been significantly reduced as a result of the legislation….*
>
> *…. econometric analysis using a range of national survey data has concluded that there is "…no evidence of a positive employment effect of the introduction of the DDA",[284] and "the DDA has had no impact on the employment rate of disabled people or possibly worsened it."[285]*

If an employer discriminates against a disabled person during the recruitment process or during their employment, the disabled person can make an application to an Employment Tribunal for redress, although this is more difficult since the introduction of fees for the tribunal (albeit with a complex system of remissions for those with low savings and income). In practice, the majority of applications to the tribunal have focused on disabled people's treatment at work or cases of unfair dismissal; relatively few cases have been brought against employers who have discriminated in relation to their recruitment policies and practices.[286] This lack of effective enforcement via the judicial system has made it more difficult for this area of the law to be developed.

This concern is supported by recent research showing that disabled people still experience considerable external barriers to work in relation to employer attitudes and behaviour. In relation to attitudes, the authors of a 2013 report produced for the Equality and Human Rights Commission stated:[287]

> *Concerns among employers in relation to employing disabled people included perceived risks to productivity; concerns over the implications (financial and otherwise) of making workplace adjustments; confusion over legislation and required practices, and negative perceptions of legislation.*

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[284] M Jones (2009) 'The Employment Effect of the Disability Discrimination Act: Evidence from the Health Survey for England', *Labour* 23(2), 349-369.

[285] D Bell and A Heitmueller (2005) *The Disability Discrimination Act in the UK: Helping or Hindering Employment Amongst the Disabled?,* IZA Discussion Paper 1476 (Bonn: Institute for the Study of Labor (IZA)).

[286] Meager and Higgins, *Disability and skills in a changing economy*.

[287] 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), p xii.

Disabled people themselves also report that employer attitudes, along with difficulties relating to the accessibility of workplaces and facilities and unmet needs for support or adaptive equipment, constitute significant barriers to employment.[288]

> **Case study submitted to Just Fair in response to call for evidence:**
> *It was not until 2002, when I was made redundant* [from my position as a technical resource manager for a computer company] *because there had been a computer business crash and I had a manager who could not cope with my disability, that I experienced the misunderstanding of disability by all the business and charity sectors.*
>
> *I have 2 degrees yet cannot get into paid employment which uses my capability. Currently I work 1.5 days a week for a chemist (on minimum pay) – a job which I got by taking over my daughter's Saturday job when she went to university.*
>
> *The charity sector will use me as a volunteer but will not offer me a paid position. So I am stuck in the "hardly any cash sector".*

4.2.6 The need to incentivise employers

In a competitive, flexible and globalised labour market, in which the private sector is expected to provide the majority of employment opportunities, it is important for employers to have incentives to offer employment opportunities to disabled people, as required by UNCRPD Article 27(1)(h). The need for incentives is further underlined by evidence that employers with little or no experience of employing disabled people may perceive that disabled people are likely to be less productive or 'cost-effective' than their non-disabled peers.[289] In addition, there is evidence that employers have a need for ongoing support after recruiting disabled people:[290]

[288] Coleman, Sykes and Groom, *Barriers to employment and unfair treatment at work: a quantitative analysis of disabled people's experiences*.
[289] Meager and Higgins*, Disability and skills in a changing economy*; Coleman, Sykes and Groom, *Barriers to employment and unfair treatment at work: a quantitative analysis of disabled people's experiences*.
[290] Meager and Higgins, *Disability and skills in a changing economy*, p 38.

> *… the evaluation of the New Deal for Disabled People[291] suggests a demand from employers for ongoing in-work support (after the point of recruitment) from various intermediary agencies to facilitate workplace integration of disabled recruits, help employers deal with transitional difficulties, and improve retention.*

Against this background, several commentators have made the point that whilst a great deal of energy and resource is directed at disabled people, obliging them to comply with programmes of limited value in getting them into work, relatively little resource is directed towards encouraging and equipping employers to take a positive approach to employing disabled people and people with long term health conditions.[292] In its recent report 'Work in progress: Rethinking employment support for disabled people', a consortium of disability charities has suggested that an over-emphasis on the supply side of the labour market (disabled people themselves) and a lack of emphasis on the demand side (employers) is an important factor behind the poor success rate of Government employment policies:[293]

> [Supply side] *measures… fail to account for "demand-side" issues such as a lack of appropriate vacancies, or support for employers to better understand how to accommodate disabled people's needs. This has led to a reduced emphasis on other types of labour market policy that could benefit disabled people, such as a greater focus on job creation in local areas.*

The current Government's launch of its Disability Confident campaign was clearly an attempt to provide encouragement, at least, for employers, but it is too early to assess whether the campaign has provided tangible help for employers and businesses.

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[291] S Dewson et al (2005) *New Deal for Disabled People: Survey of Employers* (Department for Work and Pensions, Research Report no. 301); J Aston et al (2003) *Employers and the New Deal for Disabled People: Qualitative Research: First Wave* (Department for Work and Pensions, Research Report WAE14); J Aston et al (2005) *Employers and the New Deal for Disabled People: Qualitative Research: Second Wave* (Department for Work and Pensions, Research Report 231).

[292] Meager and Higgins, *Disability and skills in a changing economy*, ch 6.

[293] R Trotter et al (2013) *Work in progress: Rethinking employment support for disabled people* (published by a consortium of disability charities), p 17.

4.2.7 Support for individual disabled people

The principal Government-sponsored mechanisms to support disabled people to access employment are:

- the Work Programme,
- Work Choice,
- Access to Work, and
- Disability Employment Advisers

4.2.7.1 The effectiveness of the Work Programme and Work Choice

The Work Programme and Work Choice are specifically intended to enable disabled people to move off out-of-work social security benefits and into work, while Access to Work, which has been in existence much longer, is intended to provide support to disabled people to overcome the barriers they experience in accessing work – such as specialist equipment, help with travelling to work or a support worker to assist them in the workplace. Disability Employment Advisers (DEAs), employed by JobCentre Plus, are trained to provide specialist advice and help to disabled people seeking employment, including referring to suitable local services, but this role is seriously under-resourced.[294]

The Work Programme has not yet, at least, been very effective in helping disabled benefit claimants to get into work.[295] Against a target to secure sustained employment for 16.5% of Employment and Support Allowance (ESA) claimants (almost all in the Work Related Activity Group, see later sections for details) into work, statistics from July 2013 showed that only 5.3% of ESA claimants on the work programme were supported into work.[296]

Although the Government intended the 'prime' providers (mostly large corporations) to sub-contract to smaller, specialist voluntary sector providers, this hasn't been as successful as the Government hoped, partly as a result of

[294] Work and Pensions Select Committee, *The role of Jobcentre Plus in the reformed welfare system*.
[295] 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*.
[296] Department for Work and Pensions (2013) *Statistical Summary of Work Programme Official Statistics*, referenced in Sayce and Crowther, *Taking control of employment support*.

the payment structure of the Work Programme contract.[297] In addition, Work Programme providers have not felt able to buy in specialist support for individual claimants.[298] Concern has been expressed that the 'black box' approach, in which Work Programme providers are free to use whatever methods they choose to help people get into work, has not led to the innovation expected. Indeed, the Institute for Government has said:[299]

> *Although the intention of the "black box" approach was to encourage providers to innovate by, for example, joining up a wide range of specialist services around individual needs, the programme remains a relatively narrow job-focused programme. On one hand, providers seem reluctant to invest in costly, specialist support services that could address individual barriers to work (e.g. skills, counselling and drug addiction treatment). On the other, providers are willing, but unable to access relevant funding pots (e.g. the skills budget) or co-ordinate with parallel employment support initiatives at the local level. This limits their ability to offer a holistic package of services to individuals.*

The figures for Work Choice were somewhat better, with 31% of participants achieving paid work.[300] However, the majority of disabled people claiming Employment and Support Allowance are not referred to this specialist programme.[301] The structure of employment support pushes ESA claimants in the work related activity group towards the Work Programme rather than Work Choice,[302] and there are not enough Disability Employment Advisers to refer disabled people and people with long term health conditions who would benefit from the more specialist support offered by the Work Choice programme.[303]

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[297] House of Commons Work and Pensions Select Committee (2013) *Can the Work Programme work for all user groups?*, 1st report 2013-14.
[298] T Gash, N Panchamia, S Sims and L Hotson (2013) *Making public service models work* (Institute for Government).
[299] Gash, Panchamia, Sims and Hotson, *Making public service models work*, p 48.
[300] Department for Work and Pensions (2013) *Work Choice Statistics – Number of Starts and Referrals* referenced in Sayce and Crowther, *Taking control of employment support*.
[301] Oral evidence from Robert Trotter of Scope: see Work and Pensions Select Committee *The role of Jobcentre Plus in the reformed welfare system*.
[302] Work and Pensions Select Committee, *The role of Jobcentre Plus in the reformed welfare system*.
[303] Work and Pensions Select Committee, *The role of Jobcentre Plus in the reformed welfare system*.

For the period until March 2013, the total cost of the Work Programme was £736 million[304] and over the next five years, the programme is projected to cost £3-5 billion.[305] This huge cost calls into question whether the Government is using the maximum resources available (as required by Article 2(1) ICESCR and Article 4(2) UNCRPD) to realise disabled people's right to work. Some of the evidence analysed below suggests that better use of this funding (aka State resources) on initiatives proven to be effective in terms of advancing disabled people's right to work could enable a greater number of disabled people and people with a long term health condition to reap the benefits of good jobs or self-employment.

4.2.7.2 Employment support that works well

There is good evidence available that many local organisations – in either the statutory or voluntary sectors – have the experience and contacts to be much more successful than either the Work Programme or Work Choice in helping disabled people into employment. The value of skilled local support is illustrated by the following example relating to people with serious mental health conditions:[306]

> *Since 2011/12 [Work Choice] has helped only 58 people with serious mental health problems per year (on average) get jobs in the whole of Great Britain, whereas one NHS Trust in just one area of London helped more than three times as many people (201) with serious mental health problems (239 posts in one year) to get jobs.*[307]

Two particular models of local support have been shown to be particularly effective: Individual Placement and Support (IPS), used effectively to support people with mental health problems to retain or gain employment, and Supported Employment, used effectively to support people with learning

[304] Department for Work and Pensions (2013) *Work Programme – programme costs to 31 March 2013*.
[305] Sayce and Crowther, *Taking control of employment support*.
[306] Sayce and Crowther, *Taking control of employment support*, p 13.
[307] Central and North West London NHS Trust vocational employment results 2011/12.

disabilities into employment.[308] These models have been effectively used by local authorities and NHS trusts and are based on the following principles:

Individual Placement and Support:[309]

- *It aims to get people into competitive employment*
- *It is open to all those who want to work*
- *It tries to find jobs consistent with people's preferences*
- *It works quickly*
- *It brings employment specialists into clinical teams*
- *Employment specialists develop relationships with employers based upon a person's work preferences*
- *It provides time unlimited, individualised support for the person and their employer*
- *Benefits counselling is included.*

Supported Employment:[310]

- *Customer* [disabled jobseeker] *engagement*
- *Vocational profiling*
- *Employer engagement*
- *Job matching*
- *In-work support*
- *Career development*

Both these models entail highly personalised support for disabled people but their successful implementation by local authorities, NHS trusts and other organisations depends on strong leadership, changing the culture within local services and pro-actively engaging with and supporting local employers.[311] The evidence suggests that the implementation of these methods may offer better value for money than the Work Programme and represent a more efficent use

[308] 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).
[309] Centre for Mental Health: http://www.centreformentalhealth.org.uk/employment/ips.aspx.
[310] British Association for Supported Employment: http://base-uk.org/information-commissioners/what-supported-employment.
[311] Greig, Chapman, Eley, Watts, Love and Bourlet, *The Cost Effectiveness of Employment Support for People with Disabilities - Final Detailed Research Report*.

of resources in fulfilling disabled people's right to work, as required under Article 2(1) ICESCR and Article 4 UNCRPD.

4.2.7.3 The role of Access to Work

Access to Work is an enabling scheme, focused on providing direct, practical help to disabled people entering or already engaged in employment or self-employment. The scheme provides a range of support for disabled employees, such as specialist equipment, assistance with travel to work and the provision of support workers. Research undertaken for the DWP in 2009[312] showed generally high levels of satisfaction with Access to Work support among both disabled people and employers, but drew attention to a generally low level of awareness of the scheme among employers, disabled people and JobCentre Plus advisers.

There are certain restrictions on Access to Work provision,[313] including that it cannot be used to fund reasonable adjustments employers are expected to make under the Equality Act 2010. Some disabled people also experience difficulties with either the application/assessment process or the amount and quality of support, an issue highlighted by the British Deaf Association, many of whose members would be unable to work without adequate communication support funded by Access to Work.[314]

It is a positive development that Access to Work has recently become available for Youth Contract work experience, Traineeships, Sector-based Work Academies, Supported Internships and certain work trials. [315] In addition, disabled job seekers can download an 'eligibility letter' to take to interviews, to give potential employers confidence that their specific needs can be met in the workplace.

4.2.8 Support for employers

As explained above, concern has been expressed about the almost exclusive focus of employment support on individual disabled people rather than

[312] 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).
[313] Liz Sayce (2012) *Open letter to Minister for Disabled People* (Disability Rights UK).
[314] British Deaf Association/Inclusion London (2014) *Access to Work consultation and draft report*.
[315] Esther McVey MP (2013) Written Ministerial Statement on Access to Work, 16 July 2013.

employers. This is supported by research indicating that small and medium sized employers in particular feel the need for more information and support to enable them to feel confident to employ a disabled person.[316] This targeted research indicated that such businesses would appreciate more support in employing disabled people and in meeting their obligations under the Equality Act, for example:[317]

- Access to information and advice, via an online "toolkit" or from Disability Employment Advisers in JobCentre Plus, including information and advice about the impact of different impairments and health conditions on factors such as health and safety;
- Financial assistance towards adaptations and other additional costs that might arise from employing a disabled person (this is seen as especially important during a recession; the provision of financial support to employers is one of the recommendations recently made by the UN Disability Committee,[318] to improve employment opportunities for disabled people in Sweden);
- 'Job brokers' to 'match' disabled job seekers to employers' needs;
- Work trials, either supported or unsupported;
- Advertising and promotion of support available for employers (since they cannot access help if they are not aware it is available).

The integral support for employers provided through both Individual Placement and Support and Supported Employment is likely to be a key reason for the success of these particular programmes.

4.2.8.1 The Disability Confident campaign

Some employers' support needs may be met through the Government's Disability Confident campaign, launched in 2013, which provides information

[316] J Davidson (2011) *A qualitative study exploring employers' recruitment behaviour and decisions: small and medium enterprises* (Department for Work and Pensions research report 754).
[317] Davidson, *A qualitative study exploring employers' recruitment behaviour and decisions: small and medium enterprises*.
[318] Committee on the Rights of Persons with Disabilities, Concluding Observations on the initial report of Sweden, advance unedited version, April 2014.

and advice for employers on sources of support such as Access to Work and other support such as specific wage incentives for young disabled people on the Work Choice programme. Whilst the measures included in the campaign are welcome, some are restricted; for example, wage incentives could also be helpful to encourage businesses to employ older disabled people who have been out of the workplace for many years. It is too early to say whether Disability Confident has had a significant impact on meeting employers' needs for practical support.

4.2.8.2 Employers and the Work Programme

In theory, the Work Programme providers should act as effective job brokers, matching disabled job seekers with the needs of potential employers. However, the evidence indicates that whilst this approach is taken by some providers, especially the smaller sub-contractors, there is a tendency for prime providers to send poorly prepared candidates whose CVs are often not a good fit with the requirements of the vacancy, as explained by Susan Scott-Parker of the Business Disability Forum in her oral evidence to the Work and Pensions Select Committee:[319]

> *The providers do not help an individual to explain what they know and can contribute to the business, nor do the providers understand what the employer requires from the person as they are coming through... they are not expert on what stops a disabled person from getting a job, which is in the control of the employer or in the control of the person. They are still just assuming that, if they throw enough people at this world of work, magically some will get through.*

Some large employers, such as Transport for London, with the resources to nurture mutually beneficial relationships with prime Work Programme providers, have encouraged and supported those providers to act as effective job brokers.[320] However, if this initiative were to come from Work Programme providers themselves, this would be of particular benefit to employers who

[319] Work and Pensions Select Committee, *Can the Work Programme work for all user groups?,* Minutes of oral evidence taken on 13 March 2013, qu 432.
[320] Work and Pensions Select Committee, *Can the Work Programme work for all user groups?,* Minutes of oral evidence taken on 13 March 2013, qu 398.

need more support in employing disabled people and people with a long term health condition.

4.2.9 Opportunities for training, retraining and career development

The evidence shows a correlation between disability and educational attainment: disabled people (of all ages) are twice as likely to have no qualifications as non-disabled people, and are also less likely to have higher level qualifications. The correlation works both ways: disability may lead to lower educational attainment, but people who have experienced educational disadvantage are also more likely to become disabled later in life.[321]

The low skill profile of disabled people is a major barrier to employment,[322] making training, or retraining when an individual's impairment prevents them from continuing in their previous job, an important part of the mix of initiatives to help disabled people realise their right to work. The importance of skills training for disabled people is supported by a recommendation from the UN Disability Committee to Sweden to increase the provision of vocational training for disabled people.[323]

A consortium of disability charities, referring to the OECD's argument that developing skills is crucial for increasing disabled people's participation in the labour market, has emphasised that improving vocational skills must be a key element in developing employment support programmes.[324]

4.2.10 Do disabled employees enjoy fair and just conditions of employment?

In addition to the right to work, UNCRPD Article 27 and ICESCR Article 7 provide for a right to just and fair conditions of employment. It is therefore instructive to look at some of the evidence of disabled people's experiences in

[321] Meager and Higgins, *Disability and skills in a changing economy*.
[322] Trotter et al, *Work in progress: Rethinking employment support for disabled people*.
[323] Committee on the Rights of Persons with Disabilities, Concluding Observations on the initial report of Sweden, advance unedited version, April 2014.
[324] Trotter et al, *Work in progress: Rethinking employment support for disabled people*, p 23.

the workplace, especially insofar as they may differ from the experience of non-disabled workers.

Recent research indicates that disabled people and people with a long term health condition are far more likely to report harassment and unfair treatment at work – from employers, colleagues and clients/customers - than non-disabled workers.[325] And of disabled workers, those with mental health problems or learning difficulties are more likely to experience unfair treatment than those with physical impairments or long term health conditions.[326] Again, this raises issues of discrimination on the grounds of disability contrary to both ICESCR Article 2(2) and UNCRPD Article 4.

The types of unfair treatment and harassment reported by disabled workers include problems relating to workload, working hours, appraisals, not being given responsibility and treatment such as being ignored, shouted at, bullied or even physically attacked. Those with learning difficulties or mental health problems are particularly likely to experience being excluded, teased or shouted at.[327]

Disabled people perceive that much of the ill-treatment they experience is related to colleagues' and managers' reactions to their disability:[328]

> *The main reasons given by disabled people for unfair treatment at work were the attitudes or personalities of other people (52 per cent) or relationships at work (43 per cent); 30 per cent said that the unfair treatment they had experienced was because of their disability or condition.*

[325] '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*; Coleman, Sykes and Groom *Barriers to employment and unfair treatment at work: a quantitative analysis of disabled people's experiences*.

[326] '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 'The Ill-treatment of Disabled Employees in British Workplaces'.

[327] Coleman, Sykes and Groom, *Barriers to employment and unfair treatment at work: a quantitative analysis of disabled people's experiences.*

[328] Coleman, Sykes and Groom, *Barriers to employment and unfair treatment at work: a quantitative analysis of disabled people's experiences*, p x.

In relation to unfair treatment by managers, it is likely that issues relating to sickness management and the interpretation of equality legislation are a source of conflict and disagreement. In relation to ill-treatment by colleagues and clients or customers, discriminatory and negative attitudes may be a major factor.[329]

While any discriminatory or unfair treatment of employees for reasons relating to their impairment or health condition is unlawful, when employees are unable to resolve the situation informally within the workplace the only option to secure redress is to make an application to the Employment Tribunal. However, as explained in Section 4.2.5, disabled people face considerable barriers in making such an application.

4.2.11 Conclusion and recommendations

The above analysis shows that there continue to be significant barriers to disabled people's access to the labour market, compromising their enjoyment of the right to work (ICESCR Article 6 and UNCRPD Article 27) and the right to fair and just conditions of employment (ICESCR Article 7 and UNCRPD Article 27). These barriers include:

- A lack of understanding and enforcement of equality legislation;
- A lack of incentives, information and support for employers;
- The ineffectiveness of some aspects of employment support, notably the Work Programme, in supporting disabled people (and employers), despite consuming significant resources;
- A need for disabled people to have access and support to improve their education and skills;
- Unfair treatment of disabled employees in the workplace.

There are examples of good practice and effective support being implemented, but it is important that best practice is shared and supported by central and

[329] '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 'The Ill-treatment of Disabled Employees in British Workplaces'.

local Government and their partners. The Disability Confident campaign has the potential to make a difference, but it must be bold enough to promote policies that are proven to work.

In order to ensure that disabled people enjoy their right to work (set out in ICESCR Article 6 and UNCRPD Article 27), and 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 enjoyment of those rights, we recommend:

- **A change in the focus of employment policies, from imposing an obligation on disabled people to take 'any job' to facilitating their rights and aspirations to engage in work that is suitable for their aptitudes, interests and abilities;**
- **A reform of the assessment of work capability (see discussion of the Work Capability Assessment in Section 4.3.6 below) to align it much more closely with the world of work and the support disabled people actually need to engage in paid work;**
- **The use of an evidence-based approach to the development of policy and practice, drawing on examples of best practice ('what works'), such as Individual Placement and Support and Supported Employment;**
- **Engagement with employers and services at a local level, encouraging and supporting employers to take positive steps to employ disabled people;**
- **The placing of a greater emphasis on education and skills and making more use of workplace-based support, including work trials and in-work training such as apprenticeships;**
- **The adoption of a more personalised approach to employment support, giving disabled people and employers choice and control over the available resources with advice/brokerage where necessary;**
- **The merging of funding streams to provide 'whole person' support, including employment support, addressing the full range of disabled people's support needs.**

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

The original 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 in relation to disabled people.

4.3.1 Progress in realising disabled people's rights to an adequate standard of living and to social protection

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. For example, the Committee commended the UK for:

- the passing of the Human Rights Act 1998,[330]
- the establishment of the Disability Rights Commission[331] and subsequently the Equality and Human Rights Commission (and the equivalent bodies in Scotland and Northern Ireland),[332] and
- the introduction of the Equality Bill (now the Equality Act 2010).[333]

Disabled people's rights to social security have also been protected by specific policies, adopted by governments across the political spectrum, to refine the social security system so that it recognises the particular needs of disabled people. For example, disability living allowance[334] is specifically designed to help meet the greater costs incurred by disabled people. Working tax credits (which replaced disability working allowance) provide disabled adults with additional financial help in recognition of the disadvantages they face in the

[330] Committee on Economic, Social and Cultural Rights: Concluding observations on the fourth periodic report of the UK, June 2002, para 4.
[331] Committee on Economic, Social and Cultural Rights: Concluding observations on the third periodic report of the UK, December 1997, para 5(d).
[332] Committee on Economic, Social and Cultural Rights: Concluding observations on the combined fourth to fifth periodic report of the UK, June 2009, para 4.
[333] Committee on Economic, Social and Cultural Rights, Concluding observations on the combined fourth to fifth periodic report of the UK, June 2009, para 6.
[334] Introduced in 1992, now being replaced by PIP, as explained in Section 3.5.2.

labour market, and child tax credits provide additional help to families with disabled children in recognition of the particular pressures and costs they face.[335]

There is, therefore, clear evidence that in the recent past the UK has taken some very positive steps towards progressively realising disabled people's rights to an adequate standard of living, social protection and social security. However, it is important to examine the extent to which this progress is continuing and to identify risks of retrogression arising from changing economic and social factors, policy changes and administrative challenges in relation to social security.

4.3.2 The level of basic social security benefits

One of the most fundamental considerations in relation to the right to social security (and the right to an adequate standard of living) is the adequacy of social security benefits (see Section 2.2.2 for more details).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 of education.[336] In January 2014, the European Committee on Social Rights, which reports on the conformity of individual States with the European Social Charter, ratified by the UK in 1962), delivered the following conclusions in relation to the adequacy of social security benefits in Great Britain:[337]

> *The Committee concludes that the situation in United Kingdom is not in conformity with Article 12§1 of the Charter on the ground that:*
>
> - *the minimum levels [sic] of short-term and long-term incapacity benefit is manifestly inadequate;*
> - *the minimum level of state pension is manifestly inadequate;*

[335] Tax Credits Act 2002, as amended.
[336] CESCR, General Comment No 19, para 59(a).
[337] 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.

- *the minimum level of job seeker's allowance is manifestly inadequate.*

The adequacy of benefits may also be affected by policies that require disabled people to use income from out of work benefits or disability benefits to make up for the inadequacy of other benefits. Examples of this include the social sector size criteria for housing benefit claimants in social housing (analysed in Section 3.5.1.3 above) and the replacement of council tax benefit with council tax support, with the shortfall of funding from central Government leading many local authorities to levy council tax from residents who depend on means-tested benefit income.[338]

4.3.3 The impact of changes to social security policy

The last Labour Government's reforms to long term sickness benefits[339] formed the start of a period of ambitious reform of to social security benefits, the pace and breadth of which have increased under the current Government, for which reform has been a major legislative priority. The reforms facilitated by the Welfare Reform Act 2012 are far-reaching, impacting on almost every aspect of social security. Some of these reforms have already been discussed above, in relation to their impact on disabled people's enjoyment of the right to independent living. However, this section will examine their impact on disabled people's enjoyment of their ICESCR and UNCRPD rights to social protection, social security, and an adequate standard of living.[340]

4.3.4 The concerns of the Joint Committee on Human Rights in relation to the Welfare Reform Bill (now the Welfare Reform Act 2012)

In its report scrutinising the Welfare Reform Bill, the JCHR expressed numerous concerns about the impact of the Bill on disabled people's rights to social protection and to an adequate standard of living.[341] The Committee pointed out that even in a time of austerity, there is a strong presumption in the UN

[338] Joseph Rowntree Foundation (2013) *The impact of localising council tax benefit*.
[339] Welfare Reform Act 2007.
[340] ICESCR Articles 9 and 11; UNCRPD Article 28.
[341] JCHR, *Legislative Scrutiny: the Welfare Reform Bill*.

human rights framework against measures resulting in retrogression in the realisation of these rights (see Section 2.3.5).

The following specific concerns were raised by the JCHR:

- The lack of detailed assessment by the Government of the human rights implications of the Bill under the relevant UN treaties, including ICESCR and UNCRPD;[342]
- The risk of destitution as a result of conditionality (sanctions), in contravention of the European Convention on Human Rights (ECHR) Article 3;[343]
- The late publication of impact assessments and the failure to assess the cumulative impact of several changes affecting individual claimants;[344]
- The failure to publish draft regulations, with clear policy explanations, impact assessments and safeguards[345] at the same time as the publication of the Bill; the Committee pointed out that without draft regulations, human rights monitoring was very much more difficult;
- The lack of detail in relation to monitoring arrangements.[346]

The Committee also expressed considerable concern about the following specific issues:

- The one-year limitation period for claims for contributory Employment and Support Allowance (ESA), for claimants assigned to the work related activity group (WRAG), combined with emerging evidence of problems with the work capability assessment (WCA),

[342] JCHR, *Legislative Scrutiny: the Welfare Reform Bill*, para 1.35.
[343] JCHR, *Legislative Scrutiny: the Welfare Reform Bill*, para 1.45.
[344] JCHR, *Legislative Scrutiny: the Welfare Reform Bill*, para 1.15.
[345] JCHR, *Legislative Scrutiny: the Welfare Reform Bill*, para 1.17.
[346] JCHR, *Legislative Scrutiny: the Welfare Reform Bill*, para 1.19.

could result in a disparate impact on claimants, in breach of ECHR Article 14;[347]

- Disabled people who fail to qualify for DLA (or PIP) being adversely impacted by the benefit cap and forced to move despite having home adaptations and/or needing the support of their local community;[348]
- Disabled people being disproportionately affected by the under-occupation penalty for housing benefit claimants in social housing, specifically in relation to their need to remain close to support networks;[349] (see Section 3.5.1.3);
- DLA reform, by which DLA will be replaced by PIP with the intention of reducing the budget for the benefit by 20%, which will have a retrogressive impact on disabled people's enjoyment of the right to independent living;[350] (see Section 3.5.2);
- The retrogressive cumulative impact of the provisions in the Bill.[351]

4.3.5 In-depth examination of specific areas of concern

The following specific areas of concern in relation to disabled people's standard of living and access to social protection are examined below:

- The impact of Employment and Support Allowance (ESA), including the operation of the Work Capability Assessment (WCA), introduced under the last Labour Government,[352] and the time-limiting of contributory ESA for claimants put into the work-related activity group and mandatory reconsideration before appeal, introduced under the current Coalition Government;[353]

[347] JCHR, *Legislative Scrutiny: the Welfare Reform Bill*, para 1.52.
[348] JCHR, *Legislative Scrutiny: the Welfare Reform Bill*, para 1.61.
[349] JCHR, *Legislative Scrutiny: the Welfare Reform Bill*, para 1.65 and 1.66.
[350] JCHR, *Legislative Scrutiny: the Welfare Reform Bill*, para 1.71.
[351] JCHR, *Legislative Scrutiny: the Welfare Reform Bill*, para 1.82.
[352] Welfare Reform Act 2007.
[353] Social Security, Child Support, Vaccine Damage and Other Payments (Decisions and Appeals) (Amendment) Regulations 2013.

- Reduction in the availability of advice services, due to the withdrawal of legal aid[354] and other funding;
- The risk of destitution, for reasons including (but not confined to) conditionality (sanctions), poor administration of benefits, low wages and the high cost of living; the consequent need for short term help from non-Governmental agencies such as food banks.[355]

4.3.6 The impact of employment and support allowance and the work capability assessment

4.3.6.1 Introduction

As explained in Section 2.2.2, 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.[356] If there is a failure to ensure that income replacement benefits are provided in these circumstances, the UK would be failing to protect and 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 and UNCRPD, to ensure a level of benefits sufficient to provide basic food and shelter (for details see Section 2.3.6).

The current income-replacement benefit in the UK for those claimants who are too sick or disabled to work is employment and support allowance (ESA),[357] which has been progressively replacing incapacity benefit (IB) since it was first introduced in 2008[358] - initially for new claimants, but for existing incapacity

[354] Legal Aid, Sentencing and Punishing of Offenders Act 2012, Part 1.
[355] 'Numbers relying on food banks triple in a year', BBC News, 16 October 2013.
[356] CESCR, General Comment No 19, para 2.
[357] Department for Work and Pensions (2012) *Employment and Support Allowance: Help if you are ill or disabled.*
[358] Welfare Reform Act 2007.

benefit claimants from 2011 (with a pilot from 2010).[359] In the context of the right to social security it is important to note that if a claimant is unsuccessful in their ESA claim, they are not normally entitled to any other income-replacement benefit unless they sign on for Jobseeker's Allowance (JSA), the benefit intended for people who are unemployed but able to work (which is conditional on active job seeking and other work-related obligations).

4.3.6.2 The deficiencies of the Work Capability Assessment (WCA)

Since ESA was brought in for new claimants in 2008, there has been increasing concern expressed by claimants and benefit advisers[360] about the deficiencies of the WCA, which purports to assess whether claimants are fit for work, able to engage in work-related activity with a view to getting back to work in the future, or unable to work or undertake work-related activity at all.[361] The assessment itself is undertaken by a healthcare professional employed by a corporate contractor, Atos Healthcare, but the decision on entitlement to ESA is made by a Jobcentre Plus decision-maker, using all the evidence available, including the assessment report, medical evidence and information provided by the claimant.

The work capability assessment has three possible outcomes. Claimants who are found fit for work are not entitled to continue claiming ESA. Claimants who are assessed as being able to work in the foreseeable future are placed in the ESA work related activity group (WRAG), for which receipt of ESA is conditional on engagement in some form of work related activity to prepare for a return to work. Those who are assessed as unlikely to be able to work in the foreseeable future are placed in the support group (SG) and receipt of ESA is unconditional.[362]

[359] The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) Regulation 2010, SI No.1907; The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) (Amendment) Regulations 2010, SI No.2430.
[360] Eg, Citizens Advice Bureau (2012) *Right First Time*.
[361] DWP, *Employment and Support Allowance: Help if you are ill or disabled*.
[362] DWP, *Employment and Support Allowance: Help if you are ill or disabled*.

4.3.6.3 The problem of inaccurate assessments

It has been widely reported that, as a result of deficiencies in the way the WCA operates, many claimants who are seriously ill or severely disabled, and in need of an income-replacement benefit because they are unable to work, are found fit for work or placed in the WRAG when in reality they need unconditional support.[363] If claimants are found fit for work the only alternative income-replacement benefit normally available is JSA. However, JSA is only paid to claimants who are available for work, so those who are in fact too ill to work may be told by the Jobcentre that they are too ill to claim JSA or that they are unable to fulfil the conditions of JSA, imposed to demonstrate they are actively searching for and preparing for work, including keeping regular appointments at the Jobcentre.[364, 365]

Many commentators have pointed out that the WCA, including both the descriptors (criteria) against which claimants' needs are assessed and the operation of the assessment itself (including the use of medical evidence and the adequacy of the face to face assessment by the healthcare professional employed by Atos Healthcare),[366] does not take proper account of the nature and breadth of "real world" factors shaping whether a person can secure and maintain sustainable employment.[367] The impact of incorrect assessments is very often significant hardship and poverty due to the imposition of inappropriate conditions or sanctions (as discussed in Section 4.3.8.2), threatening the realisation of the right to social security and, for many, the right to an adequate standard of living.

> **Case study (comment on We are Spartacus website, November 2012)**
> *My mother has had all payments stopped, and it has been recommended that she goes on job seekers. Some days she would not be able to make it to the job centre at all. Because of this lack of money, she has had to*

[363] Eg, CAB, *Right First Time*.
[364] H Barnes, J Oakley, H Stevens and P Sissons (2011) *Unsuccessful Employment and Support Allowance claims* DWP Research report 762 (Inst for Employment Studies).
[365] National Association of Welfare Rights Advisers (2013) *Submission to the Independent review of the Work Capability Assessment – Year 4*.
[366] House of Commons Public Accounts Committee (2013) *Report on DWP: Contract Management of Medical Services.*
[367] S Benstead et al (2014) *Beyond the Barriers* (Spartacus Network).

move in with an abusive ex-partner, which makes her illnesses worse. Her only other option that she has been offered is to move to a hostel/refuge which is miles and miles away from her children. I personally only work part time and trying to help her support herself has also put me in debt.

4.3.6.4 The impact of 'mandatory reconsideration before appeal'

Inaccurate assessments and incorrect decisions on entitlement to ESA have resulted in a very high number of appeals and therefore a long wait to appeal against an inappropriate decision.[368] The introduction of a mandatory reconsideration stage before an appeal can be lodged with the tribunal service is likely to exacerbate this situation, especially since there is no requirement under the regulations for the DWP to comply with any time limit for undertaking a reconsideration.

Until October 2013 any claimant who appealed the outcome of their WCA continued to receive ESA at the assessment rate pending appeal, providing them with an income. However, new regulations[369] make reconsideration of the decision by DWP mandatory before an appeal can be lodged with the tribunal service, resulting in a gap in payment, since there is no right to payment of benefit pending reconsideration.[370] The Minister of State for Employment has explained[371] that claimants in this situation can apply for JSA but have their job-seeking obligations tailored to the limitations of their impairment or health condition.

Unhelpfully for claimants, there appears to be a lack of clarity in relation to the way in which a claim for an alternative benefit, such as JSA, during the reconsideration stage will work in practice. There is a very real risk that claimants who are found fit for work when assessed for ESA, but are in reality too ill or disabled to work, will have no income while their claim is being

[368] Ministry of Justice (2013) *Quarterly tribunal statistics April-June 2013*, including data from 2009/10.
[369] Social Security, Child Support, Vaccine Damage and Other Payments (Decisions and Appeals) (Amendment) Regulations 2013.
[370] 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.
[371] Hansard, Fourth Delegated Legislation Committee, col 9, 3 September 2013.

reconsidered, as illustrated by this case study from West Dumbartonshire Citizens Advice Bureau:[372]

> *A client was appealing an ESA decision which deemed him/her fit for work. Whilst awaiting the outcome of a Mandatory Reconsideration request, the only source of income s/he could claim was JSA. S/he advised JCP of potential restrictions in jobseeking caused by her physical and mental health. S/he was then told that these meant s/he was not fit for work under the JSA agreement. As a result, the client was left ineligible for payment of either sickness or jobseeking benefits.*

The way in which this policy operates in practice constitutes a failure to respect, protect and fulfil disabled people's rights to social security, set out in ICESCR Article 9 and UNCRPD Article 28, and where a claimant has no recourse to other funds to meet basic needs, their right to an adequate standard of living, set out in ICESCR Article 11 and UNCRPD Article 28.

4.3.6.5 The impact of multiple appeals and frequent assessments

Since the introduction of ESA there have been a large number of appeals, including a high proportion of successful appeals, against incorrect assessments. According to Ministry of Justice data, 647,527 appeals were heard between 2009 and June 2013, of which 40% were decided in favour of the claimant. [373] Figures for the proportion of successful appeals were also given in July 2013 in a written answer to a Parliamentary question.[374]

The sheer number of appeals lodged against ESA decisions is causing significant delays, which are extremely stressful for claimants. In addition, the fact that ESA is not paid during the reconsideration period means the frequency of assessments may also cause considerable financial hardship.

> **Case study (from online survey on the We are Spartacus website):**
> *I have worked all my life… but three years ago I became too ill to work, and had to claim benefits for the first time in my life...*

[372] West Dumbartonshire Citizens Advice Bureau (2014) *Unjust and Uncaring: A report on conditionality and benefits sanctions and their impact on clients*, p 29.
[373] Ministry of Justice, *Quarterly tribunal statistics April-June 2013* (including data from 2009/10)
[374] Hansard, HC Deb, Col 211W, 9 July 2013.

I've had three years of hell at the hands of the DWP, firstly waiting for over a year for my ESA appeal to be heard, an appeal I won, but which left me in severe pain for 4 months, as I had to struggle up three stairs, with the help of another disabled person as the appeal centre had no disability access. Even the disabled toilets were locked, when we finally got into the building. Incidentally, the DWP managed to lose 5 of my appeals which the CAB submitted, even faxed appeals which they verified they'd received.

During the year of waiting I was only able to eat as my 85 year old mother was sending me cash in the post every week, I amassed a huge amount of debts, with bank overdraft bank charges.

DWP systems do not appear to take account of the dates of appeal decisions when they trigger reassessments, meaning many claimants receive a new assessment form just weeks after winning an appeal,[375] repeating the process almost immediately due to incorrect decisions and short benefit awards. Many individual disabled people and people with long term health conditions have spoken about the stress and hardship of this 'revolving door' process:

Case study (comment on We are Spartacus website, November 2012)
I have a history of mental health problems way back to childhood; I worked very hard until my mid 30's. I rarely go out the door these days (there's a name for this condition I find hard to write). I was told 2 years ago I was HIV positive and I took an overdose of sleeping tabs and I was sectioned for a few weeks.

My last overdose was 3 weeks ago after having my 3rd round of ESA benefit forms arrive....

I first joined this merry-go-round of constant ESA forms 2 years ago; strangely I'm told stress is bad for my condition and so I just seem to get worse. Firstly I was placed into the work related group because I was unable to attend their interview even though my GP etc had written them in good time requesting they visit me at home. It was 8 months later my appeal was granted and [I was] placed the support group, and

[375] Hansard, Westminster Hall Deb, Col 346WH, 25 October 2012.

> *just a week later when the new ESA form dropped on my doormat, and so the process began again, and here I go 3rd time around living in fear...*
>
> *It's really not about the money for my needs are very few. I am careful not to have to heating on unless it's really needed etc. I live on basic food, life really is about getting by "one day at a time". Human rights? I'm bitter and angry and Atos/Government may get me on the slab yet.*

Specific concern has been expressed by disabled people about the impact on their health of frequent assessments, for example:

> **Case study (comment on We are Spartacus website, November 2012)**
> *I want to share my story but am too afraid to do so – I've had trouble passing WCA, had multiple (successful) tribunals but live in constant dread of the next time. I don't trust them to not connect the dots, identify me and use it against me, so my voice feels stolen.*
>
> *I am sick, I've been getting sicker since the process began. My doctors are no longer sure how to treat me since I can't escape from the persistent threat that they are coming for me and the never-ending acutely anxious state it creates. My condition has been getting worse and further co-morbidity diagnoses have been added. My life is in tatters, my treatment is compromised. I'm not getting better because the WCA is in the way.*
>
> *And I can't tell anyone because I'm sure they'll hold my ability to fight back as proof that I am able to function when I'm not.*

Parliamentarians have also expressed their concern about the cumulative impact of frequent assessments on the health and well-being of disabled people and people with long term health conditions; for example, in October 2012 Dame Anne Begg, Chair of the Work and Pensions Select Committee, said: [376]

> *The Government should not underestimate the cumulative impact on vulnerable people of frequent reassessments. There is ample evidence*

[376] Hansard: Westminster Hall Deb, Col 323WH, 25 October 2012.

> *that the WCA has been damaging individuals' health and may be a factor in some suicides.*

If disabled claimants feel unable to continue claiming sickness benefits due to the stress of frequent assessments and appeals, they are unable to enjoy their right to social security set out in ICESCR Article 9. However, it is encouraging to note that in the fourth annual review of the WCA, Dr Paul Litchfield recommended that the Government consider a minimum period (eg 6 months) between a successful appeal decision and a recall notice, unless there are good grounds for believing that an earlier review is indicated.[377]

4.3.6.6 The 365-day limit on contributory ESA for claimants in the WRAG

As noted above, the JCHR expressed particular concern about the impact of the 365-day time limit on the payment of contributory ESA to claimants in the work related activity group. Once eligibility to contributory ESA has ceased, income-related ESA cannot be paid to any claimant whose partner earns more than a low wage of around £150 per week.[378] During debate on this issue in the House of Lords, peers pointed out that the Government estimated that it took most (over 90%) disabled people and people with a long term health condition more than one year to get back into work.[379]

The Disability Benefits Consortium explained the hardship that would be caused if the time limited of contributory ESA was implemented, using a case study:[380]

> *I can't believe the Government is planning to take away all my ESA after just 12 months because my wife works more than 24 hours a week. I had renal cancer and have had a kidney removed. I'm still in a lot of pain, I need a stick to walk and get awful pins and needles down my legs. Without my ESA we would find it really difficult to get by. We have used up virtually all our savings already. I have worked all my life and paid into the system but this doesn't seem to mean anything.*

[377] Dr Paul Litchfield (2013) *An Independent Review of the Work Capability Assessment – year four*, Ch 4.
[378] Hansard, HL Deb, Lord Patel, col 150, 11 January 2012.
[379] Hansard, HL Deb, Lord Patel, col 150, 11 January 2012.
[380] Disability Benefits Consortium (2012) *Briefing for Peers on amendments to Clause 51: Employment and Support Allowance time-limiting.*

In written evidence to the Work and Pensions Select Committee, Sarah Hannan, who advises benefit claimants, reported the following experience with one of her clients:[381]

> *Two weeks after me telling a couple that they were not entitled to any means tested benefits because she worked, she kicked him out. He is now getting ESA means tested and will get housing benefit and council tax reduction when social services find him appropriate accommodation. The Work related activity group money was being used to pay their mortgage. The stress of your partner having a stroke in their 30s must be bad enough without being told that all the help you are going to get when you have a young family is DLA and child tax credits. The end of the 365 days often coincides with the end of the mortgage payments insurance.*

It is reasonable to conclude that low income families especially, where one partner loses entitlement to ESA after the arbitrary period of just one year, may struggle to maintain an adequate standard of living.

4.3.6.7 Conclusion and recommendations

The key concern in relation to employment and support allowance, and the operation of the work capability assessment, is that structure of the benefit and the frequency of inaccurate assessments leaves many people with long term health conditions in a no-man's land – neither eligible for out of work benefits nor able to undertake paid work. This failure to provide income replacement benefits to disabled people and people with long term health conditions when they are unable to work constitutes a failure to respect, protect and fulfil disabled people's right to social security set out in ICESCR Article 9 and UNCRPD Article 28 and, for many disabled people, their right to an adequate standard of living set out in ICESCR Article 11 and UNCRPD Article 28.

In response to the available evidence on the impact of ESA and the WCA on disabled people's rights to social protection, social security, and an adequate

[381] Written evidence submitted by Sarah Hannan; see Work and Pensions Select Committee inquiry into Employment and Support Allowance (2014).

standard of living, we recommend that ESA and the WCA should be fundamentally reformed, in line with the following principles:

- **The provision of a secure safety net to claimants whose ability to engage in paid work is compromised by their impairment or health condition;**
- **The removal or increase in the time-limit for claiming contributory ESA for those in the WRAG;**
- **An assessment that takes account of the real barriers to employment faced by disabled people and people with a long term health condition;**
- **A much stronger link between the assessment of work capability and the support available (such as through Access to Work) to enable disabled people and people with a long term condition to return to work;**
- **Proper consideration of medical evidence in all claims for ESA;**
- **Assessments undertaken no more frequently than is reasonably necessary (taking account of medical evidence) to check the claimant's continuing eligibility for ESA;**
- **A review and appeal process that does not deny social security income to a claimant who chooses to appeal a decision on eligibility.**

4.3.7 Reduced availability of advice services

4.3.7.1 Introduction

The processes involved in applying for social security benefits and appealing against adverse decisions are not always straightforward, so advice services run by charitable or statutory bodies are a vital source of support for disabled people and people with long term health conditions[382] to exercise their right to social security and social protection. For example, figures from Citizens' Advice have shown that representation at an employment support allowance appeal

[382] Work and Pensions Select Committee Session (2010) *Decision making and appeals in the benefits system*, 2nd report of session 2009-2010.

by a welfare rights adviser can increase the chances of success from around 30% or lower to around 80%.[383] However, such services have had their funding cut in recent years and struggle to provide the same level of service as previously, at a time when demand is at an all time high due to the extent and breadth of welfare reform.[384]

4.3.7.2 Reduction in funding for advice services

From April 2013, legal aid was removed from many areas of social welfare law.[385] In addition, reductions in local authority funding have forced councils to reduce funding of local advice charities,[386] including Citizens' Advice Bureaux. Many advice services have therefore been forced to downsize, laying off staff and reducing services at a time when increasing numbers of claimants need advice due to the impact of welfare reform.[387] The Low Commission, set up and chaired by Lord Low, has reported that:[388]

> *Citizens Advice's overall income is estimated to have fallen from £177m in 2010/11 to £144m in 2013/14, a reduction of £33m (over 18.5 per cent), of which £22m is accounted for by loss of legal aid in 2013/14 and most of the remainder is from cuts in local authority funding.*

4.3.7.3 The impact of reduced availability of advice services

In its response to the initial proposals to restrict legal aid in 2010, the Equality and Human Rights Commission[389] identified a number of human rights and equality-related difficulties with the measures that were eventually included in the Legal Aid, Sentencing and Punishing of Offenders Act 2012. It was clear that removing legal aid from most welfare benefits cases, and reducing the sustainability of advice services as a whole, was likely to have a

[383] 'Citizens Advice calls for financial penalties on Atos', Citizens Advice press release, August 2012.
[384] 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*.
[385] Legal Aid, Sentencing and Punishing of Offenders Act 2012, Part 1.
[386] 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.
[387] Morris and Barr, 'The impact of cuts in legal aid funding on charities'.
[388] The Low Commission, *Tackling the Advice Deficit: A strategy for access to advice and legal support on social welfare law in England and Wales*.
[389] Equality and Human Rights Commission (2010) *Response to the Consultation on reform of legal aid in England and Wales*.

disproportionate impact on disabled people, who are more likely to claim benefits.

In its publication, 'Out of Scope',[390] Citizens Advice gave examples of the types of cases, including those concerning social security benefits, with which it would no longer be able to assist without the financial and legal support provided by their legal aid contracts. More recently, the Low Commission recognized that the impact of reducing the availability of advice services would be greater on certain groups of people, including disabled people:[391]

> *…in a time of economic instability and austerity, anyone can be affected, whether they are a newly redundant worker, a highly skilled immigrant or a disabled person affected by changes to the provision of welfare support. Nonetheless, it is the most vulnerable or deprived people in society who are most likely to be affected, including many disabled people.*

In its survey findings, the Low Commission identified some significant difficulties in the areas surveyed, where legal aid restrictions and reduced local authority funding were contributing to existing difficulties. Some of these findings demonstrated significant difficulties in relation to the ICESCR/UNCRPD right to an adequate standard of living, for example:[392]

> *In Bristol, despite the fact that the City Council has continued to be very supportive of the advice sector, there has been an 18 per cent decrease in funding for the agencies surveyed. The majority of the decrease in funding has been at the Law Centre (over £100,000), which has had to make five staff redundant. The CAB reported that it is having to manage increasing numbers of general poverty queries and seeing increasing evidence of absolute poverty.*

[390] Citizens Advice Bureau (2012), *Out of scope, out of mind: Who really loses from legal aid reform*.
[391] The Low Commission, *Tackling the Advice Deficit: A strategy for access to advice and legal support on social welfare law in England and Wales*, para 1.4.
[392] The Low Commission, *Tackling the Advice Deficit: A strategy for access to advice and legal support on social welfare law in England and Wales*, Box 3.

4.3.7.4 Mitigating the impact of reduced funding of advice services

The Low Commission report[393] made a number of detailed recommendations for mitigating the impact of the legal aid reforms and the reduced funding of advice services. The Commission was particularly mindful, in making its recommendations, of the need for a range of solutions that are above all cost-effective[394] during a time of economic austerity. In particular, as part of a multi-faceted solution, it recommended that problems be addressed as early in the process as possible to avoid unnecessary costs when the situation has escalated; for example, in relation to social security, resources should be concentrated on making the correct decision on entitlement first time, thus reducing the need for support with appeals and thereby ensuring resources are used wisely. Importantly, the Commission recommended:[395]

> *The next UK Government should set out and publish a National Strategy for Advice and Legal Support in England and Wales...* [and] *The Ministry of Justice and the Welsh Government should consult the Equality and Human Rights Commission on the development and implementation of the national strategies for advice and legal support to ensure that the needs of disadvantaged and discriminated against groups are taken into account.*

4.3.7.5 Conclusion and recommendations

Applying for social security benefits, including presenting evidence and appealing against an adverse decision, can be a daunting and complex task for some disabled people, due to the complexity of the benefit system and the nature of the claim process. Since disabled people are particularly likely to need support from social security, because of the barriers to paid work and the additional costs of living with an impairment, they are disproportionately affected by the reduced availability of advice services, which has an impact on their enjoyment of their ICESCR and UNCRPD right to social security and, for many, an adequate standard of living.

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[393] The Low Commission, *Tackling the Advice Deficit: A strategy for access to advice and legal support on social welfare law in England and Wales*.
[394] ICESCR Article 2(1) and UNCRPD Article 4(2).
[395] The Low Commission, *Tackling the Advice Deficit: A strategy for access to advice and legal support on social welfare law in England and Wales*, para 2.12, recommendations R7 and R10.

We recommend that the Government implement the recommendations of the Low Commission's report, 'Tackling the Advice Deficit: A strategy for access to advice and legal support on social welfare law in England and Wales' (2014), paying particular attention to the specific needs of disabled people for advice and support to exercise their right to social security and maintain an adequate standard of living.

4.3.8 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.[396] If the Government of a State Party fails to intervene to ensure the minimum core obligations under ICESCR and UNCRPD[397] are met, those living in that State are at risk of destitution.

In 2012 the UN Special Rapporteur on the Right to Food reported on the problem of food insecurity in Canada.[398] It is instructive to examine the conclusions and recommendations of his report, which relate to the obligations under ICESCR and may be particularly relevant for the UK given certain similarities between the two countries. The report highlighted increasing economic inequality in Canada, with a growing number of people, especially those dependent on social assistance, unable to afford sufficient food and having to rely on food banks and other food aid. The report's recommendations included, among others, the implementation of a rights-based food strategy, setting a level of social security benefits sufficient to promote the enjoyment of the ICESCR right to an adequate standard of living, increasing the level of housing benefits (in recognition of the impact of the high cost of housing) and setting the minimum wage as a living wage.

[396] Eg, Institute for Fiscal Studies (2013) *Living Standards, Poverty and Inequality in the UK*.
[397] CESCR, General Comment No 3, para 10.
[398] Report of the Special Rapporteur on the right to food, Olivier de Schutter, Mission to Canada. Human Rights Council, Twenty-second session, Agenda item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 24 December 2012, A/HRC/22/50/Add.1.

4.3.8.1 Factors that influence the risk of destitution

There are several specific UK policies that may, at least partially, be to blame for the increasing risk of destitution for disabled people, including the abolition of the discretionary social fund[399] (by devolution of crisis support to local authorities,[400] and the removal of funding for local welfare provision),[401] delays in deciding eligibility and making benefit payments, unemployment, under-employment, low wages and rising prices.[402] To a certain extent, the risks to disabled people of destitution are mitigated by benefits such as DLA, higher rates of out of work benefits and disability premiums (for example, on tax credits), as well as by measures such as concessionary travel and free parking for disabled people. However, the far-reaching welfare reforms being implemented under the Welfare Reform Act 2012 will reduce the positive impact of some of the above measures – for example, as explained above (Section 3.5.2.3), disabled people with significant mobility impairments who are nevertheless able to walk more than 20 metres may lose the higher rate mobility allowance under PIP, forcing them to fund their own car or pay for taxis to get around.

However, the evidence shows that the extra costs faced by disabled people outweigh the benefit of measures designed to offset them; recent research by Scope indicates that, on average, disabled people face disability-related costs of around £550 per month.[403] Despite specific provision of benefits and services, it remains the case that disabled people are more likely (than non-disabled people) to live in poverty.[404]

In December 2013, the Disability Benefits Consortium, which includes more than 50 national charities whose clients rely on disability benefits, undertook a

[399] D Gibbons (2013) *Local welfare provision, low-income households, and third sector financial services provision* (Centre for Responsible Credit).
[400] Welfare Reform Act 2012, section 70.
[401] 'Government scraps fund for crisis loans', Inside Housing, 2 January 2014.
[402] Oxfam and Church Action on Poverty (2013) *Walking the Breadline: the scandal of food poverty in 21st century Britain*.
[403] S Bulloch and C Rogers (2014) *Better living, higher standards: improving the lives of disabled people by 2020* (Scope).
[404] Bulloch and Rogers, *Better living, higher standards: improving the lives of disabled people by 2020*; Leonard Cheshire, *Disability Poverty in the UK*.

survey of nearly 4,000 disabled people.[405] The consortium found that disabled people were having to rely on food banks and that the principal reasons were changes to housing benefit (discussed in Section 3.5.1) and reforms to council tax benefit, which mean many had to pay a proportion of council tax for the first time out of their existing benefit income. The consortium expressed concern that disabled people were already having to turn to food aid even before certain key reforms, such as the replacement of disability living allowance by personal independence payment, had been implemented.

When benefit claims are unsuccessful, or there are administrative errors in deciding or processing claims, disabled people without the support of family or friends are more vulnerable to the risk of destitution:

> **Case study (from the online survey on the We are Spartacus website):**
> *…. I will soon be destitute unless a miracle happens. I live alone, am unwell, have no family or friends. My money was stopped in July. I have about £15 left. After that I won't be able to get to food bank. Have said things over and over. Waste of time. There is NO help out there.*

4.3.8.2 The impact of benefit sanctions

In their report on the Welfare Reform Bill in 2011, the Joint Committee on Human Rights specifically expressed their concern about the impact of benefit sanctions on disabled people, saying:[406]

> *...there is a risk that the conditionality and sanction provisions in the Bill might in some circumstances lead to destitution...*

It is therefore worth investigating the extent to which this concern has been realised over the last couple of years.

Since the introduction of Jobseeker's Allowance (JSA) in 1996, there has been an increasing enthusiasm by governments across the political spectrum for receipt of out of work benefits to be conditional on the claimant fulfilling certain obligations, generally participation in activities relating to seeking or

[405] 'Food banks become lifeline for disabled people as benefit changes hit', Disability Benefits Consortium, 17 December 2013.
[406] JCHR, *Legislative Scrutiny: the Welfare Reform Bill*, para 1.45.

preparing for employment.[407] Governments of both the left and the right have used benefit sanctions – withholding benefit payments, or part payments, for a certain period of time - to reinforce this conditionality. The use of sanctions was extended to those claiming long term sickness benefits when incapacity benefit was replaced by employment support allowance (ESA) in 2008;[408] the regulations on sanctions for ESA claimants were amended in 2012.[409] In the year ending September 2013, 22,840 sanctions referrals were applied to ESA claimants,[410] but it is important to remember that many disabled people, some of whom will have been wrongly assessed as being fit for work, claim JSA.

In general, if a claimant fails to fulfil an obligation placed on them as a condition of their claim, they can be referred for sanction. Payment of benefit is stopped immediately a referral is made, so even claimants who are wrongly referred lose benefit immediately; if the referral does not lead to a decision to sanction, or the decision to sanction is overturned at reconsideration or appeal, the claimant receives back-payment of the withheld amount. However, the immediate stopping of benefits may mean claimants struggle to afford food, heating etc before the back payment is received.[411]

In recent months politicians and voluntary sector organisations have expressed considerable concern about the imposition and impact of sanctions, following reports that claimants have been sanctioned for minor or inappropriate reasons. For example, from their experience of advising claimants on a daily basis, the Citizens Advice Bureau in West Dunbartonshire (WDCAB) has concluded that:[412]

> *… conditionality appears to allow JCP to withhold financial support to people, including the most vulnerable and sick people in our society, on the flimsiest of grounds.*

[407] Walker and Wiseman (2003), 'Making welfare work: UK activation policies under New Labour' , *International Social Security Review*, vol 56: 1.
[408] Employment and Support Allowance Regulations 2008, SI No. 794.
[409] Employment and Support Allowance (Sanctions) (Amendment) Regulations 2012, SI No. 2756.
[410] Figure derived from, Department for Work and Pensions (2014) *Statistical release: Jobseeker's Allowance and Employment and Support Allowance Sanctions: decisions made to September 2013*.
[411] G Miscampbell (2014) *Smarter Sanctions: Sorting out the system* (Policy Exchange).
[412] West Dunbartonshire CAB, *Unjust and Uncaring: A report on conditionality and benefit sanctions and their impact on clients,* p 31.

In their report, West Dunbartonshire CAB includes a number of specific case studies of their clients' experience of sanctions, often where claimants have fallen foul of the system because their specific impairment-related needs have not been acknowledged or met by JobCentre Plus. In one example, a JCP adviser was providing a very high level of support to a client with severe dyslexia but the client was referred for sanction by a different adviser who would not accept that the client was unable to apply for jobs without that support. Similar issues have been reported by Citizens Advice Bureaux in Greater Manchester in their report, "Punishing Poverty",[413] on the impact of benefit sanctions.

The Social Security Advisory Committee (SSAC) reviewed the research evidence relating to the use of sanctions in 2012, in the context of the introduction of Universal Credit.[414] The report made specific recommendations for the implementation of conditionality and sanctions, to maximise the positive impact of stimulating behavioural change and minimise the negative impact of sanctions, including acute financial hardship. The SSAC specifically recommended that conditionality and sanctions should be based on the principles of communication, personalisation and fairness, and put particular emphasis on ensuring 'vulnerable' claimants understand what is required of them and are supported to meet their obligations, thus reducing the likelihood that they suffer disproportionately from conditionality and sanctions. However, in its report[415] Greater Manchester CAB pointed out that the experience of their clients indicated that the recommendations made by the SSAC were not being followed. For example, whilst the SSAC recommended that:[416]

> *"unintended consequences of applying a sanction should be monitored and hardship remedies need to be available",*

[413] Manchester Citizens Advice Bureau (2013) *Punishing Poverty? A review of benefits sanctions and their impacts on clients and claimants.*
[414] Social Security Advisory Committee (2012) *Universal Credit and Conditionality* Occasional Paper No 9.
[415] Manchester CAB, *Punishing Poverty? A review of benefits sanctions and their impacts on clients and claimants.*
[416] SSAC, *Universal Credit and Conditionality* Occasional Paper No 9, para 4.10.

Manchester CAB made the following points in their report:[417]

> *"...lack of money meant many respondents were unable to afford regular meals, with consequences for their health, particularly where there were pre-existing health conditions. Exacerbating physical health problems seems to be a perverse and presumably unintended effect of sanctions, given that the intention is to promote job search and employment. Other consequences, presumably also unintended, were severe anxiety and depression, and financial demands and stress on the wider family."*

and quoted this statement from one of their clients:[418]

> *"I can't work, I take 23 pills a day and I'm also diabetic, yet the group they put me on was for work? They have no right to take money away just like that. Totally unfair, I've lost half a stone as I can't buy enough food to eat and as a diabetic I'm supposed to eat 5 small meals a day. No chance. As I don't, I'm open to foot infection, eyesight problems, coma or death or amputation. I'm worried sick. Also stress brings on a relapse of* [my] *other condition."*

Manchester CAB also expressed concern about the lack of personalisation in the conditionality process and sanction decisions, explaining that Jobcentre Plus were imposing obligations that were impossible or difficult for their clients to meet, due to their health conditions or impairments. For example one client reported:[419]

> *I am epileptic and can't apply for certain jobs that's why I am limited, I apply for 5-10 jobs that I can do, but it's not enough.*

[417] Manchester CAB, *Punishing Poverty? A review of benefits sanctions and their impacts on clients and claimants*, p 23.
[418] Manchester CAB, *Punishing Poverty? A review of benefits sanctions and their impacts on clients and claimants*, p 19.
[419] Manchester CAB, *Punishing Poverty? A review of benefits sanctions and their impacts on clients and claimants*, p 19.

This lack of personalisation of approach also extended to a failure to take account of the impact of sanctions on claimants with particular impairments, for example:[420]

> *Stopped disabled wife's money as well. Had to survive on £8.77 army pension for 18 weeks could not attend job centre appointment as live in a village with no bus service and can't drive due to epilepsy and not owning a car. There isn't a post office phone box or internet where I live and they have closed the only jobcentre in the county of Rutland, leaving us to travel 30 odd miles into a neighbouring county for appointments.*

The Public Accounts Committee recently highlighted the fact that the effectiveness of JobCentre Plus offices is measured in terms of the number of people who stop claiming benefits, rather than the number who achieve sustainable employment.[421] In its summary, the Committee said:[422]

> *The focus on how many people stop claiming benefits... raises the risk that jobcentres may unfairly apply sanctions to encourage claimants off the register. Citizens Advice has seen a sharp rise in enquiries from people needing advice about sanctions applied by their jobcentres, particularly from vulnerable claimants.*

Whilst the imposition of benefit sanctions, intended to enforce conditionality (but frequently, it seems, imposed without adequate reason), has the potential to cause hardship and the risk of destitution for any claimant, both common sense and the examples quoted above suggest strongly that this likelihood is increased for claimants with additional health or impairment-related difficulties. In terms of ICESCR and 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.

[420] Manchester CAB, *Punishing Poverty? A review of benefits sanctions and their impacts on clients and claimants*, p 20.
[421] Public Accounts Committee (2013) *Department for Work and Pensions: Responding to change in Jobcentres,* 5th report 2013-14.
[422] PAC, *DWP: Responding to change in Jobcentres,* Summary, p 3.

4.3.8.3 Conclusion and recommendations

There are a number of factors that increase the risk of disabled people becoming destitute, which reflect a failure to comply with the minimum core obligations under ICESCR and UNCRPD and to guarantee their rights to social security, social protection and an adequate standard of living. These factors include problems with the timely payment of the correct benefits, the monetary level of benefits, pay levels in the labour market and the increasing cost of many essential commodities such as food and heating. Most of these issues also affect non-disabled people, but disabled people are generally less able to find ways to avoid the consequences, for example by working, heating their homes less or moving to a less expensive home. Such benefits that exist to help offset these extra costs are insufficient and, for some disabled people, are affected by the far-reaching welfare reforms currently being implemented.

Given the broad range of reasons behind the inability of individuals and families to meet their basic needs, it is challenging to formulate recommendations that will ensure compliance with the UK's minimum core obligations[423] and avoid impermissible retrogression in respect of the rights to an adequate standard of living, social security and social protection.

However, appropriate recommendations include refocusing the ethos and performance management of DWP and JobCentre Plus so that their primary responsibility is to ensure claimants are able to support themselves and their families – by being supported to enjoy their rights to work, to social security and to an adequate standard of living under ICESCR Articles 6, 7, 9 and 11 and UNCRPD Articles 27 and 28.

The Government should implement the following recommendations in relation to conditionality and sanctions. These recommendations are based on those made by the Social Security Advisory Committee in 2012:[424]

- **Communication – ensure full information about expectations and the circumstances in which sanctions may be applied are properly explained and understood by the claimant. This must include taking**

[423] See explanation provided in Section 2.3.6.

[424] Social Security Advisory Committee Occasional Paper No. 9: Universal Credit and Conditionality, 2012

account of the claimant's specific communication needs, such as alternative formats or for communication in writing rather than by phone.

- **Personalisation – conditions attached to benefit payment should be tailored to the needs and abilities of the claimant. Support should be provided to encourage and facilitate compliance, with sanctions used only as a last resort.**
- **Fairness – when sanctions are needed, they should be proportionate and reasonable. Unintended consequences should be monitored and support should always be available in cases of hardship. The claimant should be encouraged and enabled to avoid further sanction.**
- **Evaluation – the impact of conditionality and sanctions on disabled people should be carefully evaluated, with evaluation continuing so that the long term impacts on individuals and families can be properly understood.**

4.4 Conclusion to Chapter 4

Employment and social security policies implemented by current and recent Governments have entailed significant expenditure on frequent assessments, multiple appeals and a failing Work Programme. However, there is no evidence that such policies are framed to fulfil the obligations under ICESCR and UNCRPD, which require States Parties to make concrete progress towards realising disabled people's economic, social and cultural rights to the maximum extent of their available resources.

Current policies fail to appreciate the nature and breadth of 'real world' factors that affect disabled people's ability to secure and maintain sustainable employment. Evidence of hardship reported by voluntary sector organisations and other service providers shows retrogression in relation to disabled people's rights to social security and social protection (ICESCR Article 9 and UNCRPD Article 28) and, for some, the right to an adequate standard of living (ICESCR Article 11 and UNCRPD Article 28). In addition, the failure to implement effective employment strategies, based on proven methods that

provide effective support to both disabled people and employers, is also leading to retrogression in relation to disabled people's right to work (ICESCR Article 6 and UNCRPD Article 27). **There is a clear need to refocus policy and expenditure towards evidence-based approaches that progressively realise the rights of disabled people to work, social protection, social security and an adequate standard of living.**

Appendix:
Full texts of UNCRPD and ICESCR Articles

The full wording of the principal Articles discussed in this report is given below, for reference.

United Nations Convention on the Rights of People with Disabilities

Article 19:

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

Article 27

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work,

including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
g) Employ persons with disabilities in the public sector;
h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

Article 28

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
d) To ensure access by persons with disabilities to public housing programmes;
e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

International Covenant on Economic, Social and Cultural Rights

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

> (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
>
> (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions...

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Additional evidence

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

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

Just Fair. Online Survey of Disabled People and allies. Excel Version.

Just Fair. Online survey of disabled people and their allies. Part 1. (docx)

Just Fair. Online survey of disabled people and their allies. Part 2. (docx)

Just Fair. Emailed case-studies from disabled people and their allies. (docx)

Video - United Nations announcement that they have started an investigation against the United Kingdom Government regarding grave and systemic abuse of its disabled citizens.

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Dignity and opportunity for all: securing the rights of disabled people in the austerity era

An organisation called **Just Fair** works to make things fairer for everyone in the UK.

The UK Government has signed up to promises along with other Governments around the world to make sure everybody has rights.

Just Fair makes sure the UK keeps its promise to look after people. This includes looking after people with disabilities.

Every year Just Fair writes a report to say how the Government is doing. This report looks at what the Government is doing to help disabled people.

Introduction

Even though the Government is spending less money it must still look after disabled people.

The Government must make sure things for disabled people get better and not worse in their daily lives.

1. The Government has promised that disabled people have the right to choose where they live and who they live with

2. The Government has promised that disabled people have the right to work and be treated well at work

3. The Government has promised that disabled people have the right to have enough money for important things like food and clothes

4. The Government has promised that disabled people have the right to benefits to help them pay for what they need

The report will look at these in more detail.

Some people have said they are worried the Government is not keeping its promises.

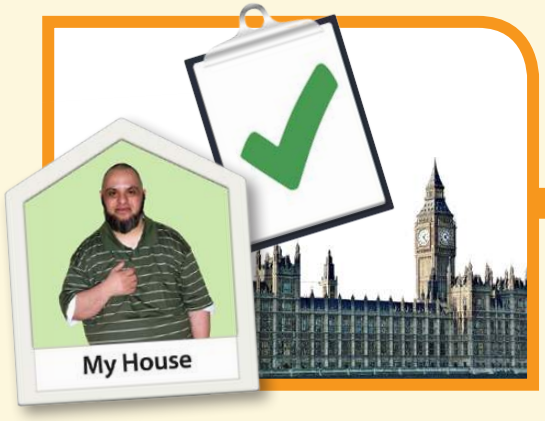
A survey by Just Fair asked disabled people about their lives. The results of the survey showed disabled people are worried mainly about 3 things:

1. They are worried about Employment and Support Allowance (ESA), which helps people who cannot work, and the Work Capability Assessment.

2. They are worried about Personal Independence Payment (PIP) which helps with disabled people's costs.

3. They are worried about people losing some of their benefit because the Government says they have too many bedrooms. Some call this the 'bedroom tax'.

1. The right to choose where you live and who you live with



In 2012 a group of MPs and people from the House of Lords wrote about disabled people's right to choose where they live and who they live with. It said that the Government has got better at helping people do this.

But some of the changes made by the Government have made it harder for disabled people to live where they want to live.

Changes to Housing Benefit

Changes to housing benefits could mean disabled people cannot afford houses that are right for their needs. Disabled people often need extra space for equipment or a carer.

The ‘bedroom tax’ could mean disabled people have to pay more money or move to a smaller house. It could be hard to move to somewhere smaller or to have someone rent the other room.

We think the Government should think again about these changes. The changes break some of their promises. They make things more difficult for disabled people.

Changes to Disability Living Allowance [DLA]

Disability Living Allowance [DLA] helps disabled people live an independent life. The Government said it would get rid of DLA and replace it with Personal Independence Payment [PIP].

The group of MPs and people from the House of Lords were worried because the Government said there would be less money for PIP.

Some disabled people will get more money. But for lots of disabled people it will be harder to get PIP. This could make it harder for disabled people to get benefits to help them at home or to travel around.

We think the Government should think again at how changes to benefits have affected disabled people.

Closing Independent Living Fund [ILF]

The Independent Living Fund [ILF] helps people employ assistants and live an independent life.

The Government said it would close the ILF and give the money to local councils instead.

The group of MPs and people from the House of Lords were worried because research has shown disabled people will get less money once ILF closes.

The Government will close the ILF in 2015.

We think it is important that local councils are given enough money to make sure disabled people can choose where they live and who they live with.

Less money for social care

More people need care and support but the Government is spending less money on social care.

This means some disabled people do not get the support they need or only get basic care and support.

There will be a new set of laws called the Care Act. MPs and people from the House of Lords hope this will give disabled people the care and support they need.

We think the Government should provide enough care and support to help disabled people live where they want to live.

All the changes together

Lots of disabled people need support from health, care and benefits. The Government has made big changes to all of them.

We think the Government needs to do research on how all these changes affect disabled people. They need to make sure things do not get worse for disabled people.

Our research shows it is harder for disabled people to live independent lives.

We want the promises the UK has made with the rest of the world to be a part of UK law. That way the Government would have to keep their promise of making sure disabled people can choose where they live and who they live with.

2. The right to work and be treated well at work

Disabled people should be able to work. If they cannot work they should be able to rely on benefits.

Work benefits have changed a lot. To get benefits, some disabled people have to look for work and take any job even if it isn't the right job for them.

The United Nations [UN] has said the UK should do more to help people with learning disabilities and disabled women get jobs.

The Government is spending a lot of money on Welfare to Work Programmes. The 'Work Programme' has not helped many disabled people get jobs.

Some people think the Government should spend their money on other things.

The Work Choice Programme has helped more disabled people but not all can get on it. Access to Work has helped lots of disabled people but not all know about it.

Supported Employment is really good at helping people with learning disabilities into jobs. Individual Placement and Support is really good at helping people with mental health needs into jobs. The report says the Government should spend money on these programmes instead of the Work Programme

The UK needs to be better at helping disabled people gain skills and get qualifications.

Research shows people with disabilities are often treated badly at work.

The Government needs to help more disabled people find jobs. They need to make sure disabled people are not discriminated against or treated badly.

3. The right to a good life

The promises the UK Government have made say disabled people have the right to a good life. They also say disabled people have the right to be as healthy and safe as everyone else.

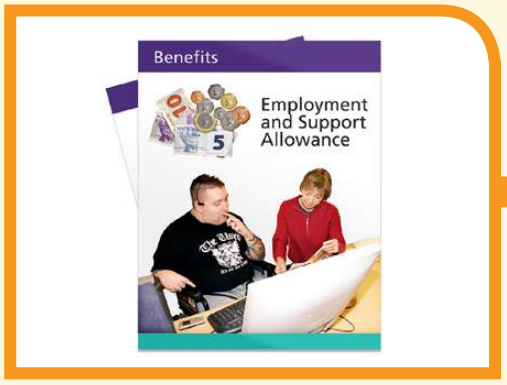
The United Nations [UN] has said the UK is good at trying to stop discrimination against disabled people.

It is good that the Government gives disabled people extra benefits. But it is getting harder for disabled people to get these benefits.

Some organisations in Europe have said the amount of money the UK Government gives disabled people is very low.

Employment Support Allowance [ESA] and Work Capability Assessment [WCA]

If the UK Government does not help disabled people who cannot work, it is not keeping its promises to help disabled people.



If people are too disabled or too sick to work they get Employment Support Allowance [ESA]. People have to have a Work Capability Assessment [WCA] to see if they can get ESA.

Lots of people are worried that disabled people have been assessed wrongly and told they can work when they cannot.

Some disabled people only get ESA if they do a 'work-related activity'. If they do not do some things they may have their benefit stopped.

This may mean they will not be able to afford basic things. We think this breaks the UK's promises.

Lots of people have appealed. There are long waits to find out if they have won. This is all very stressful and costs the Government a lot of money.

Some people think the Government should spend their money on other things.

We think ESA and WCA should be changed. They should be better at supporting disabled people.

Less advice services

Cuts have meant there is less money for advice services. It is now harder to get help and advice about benefits.

This will affect disabled people more than non-disabled people. It could mean disabled people have a worse life.

We think the Government should have a national plan for advice and support. We think disabled people should get more support to apply for benefits.

Risk of being poor

Research shows that more adults and families are becoming poor.

Research shows that disabled people are really struggling. Some cannot even afford basic things such as food and heat.

Some people's benefits are being stopped because they do not understand what they need to do. This is not fair.

We think the Government should keep its promises and support disabled people.

The Government has spent a lot of money on benefits. We think the money has been spent on the wrong things.

Too much money has been spent on assessments, on wrong decisions and on support that does not work.

The Government should change the way it spends its money to make sure it keeps its promises to disabled people.

Disabled people should have the same choices and chances in life as everyone else.

We have not told you everything in the report. This is only the main points.

This report was authored by Jane Young. Aoife Nolan authored Chapter 2 and provided input throughout the report. Neil Crowther provided advice and 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.

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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

Dignity and Opportunity for All

Securing the rights of disabled people in the austerity era

(summary report)

Contents

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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