



**Written Submission to the APPG on the (In)Adequacy of Social Security by: Dr Ciara Fitzpatrick (Lecturer in Law, Ulster University); Prof Gráinne McKeever (Professor of Law and Social Justice, Ulster University); Dr Jed Meers (Lecturer in Law, York University); Dr Mark Simpson (Senior Lecturer in Law, Ulster University)**

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In this submission we highlight that there are growing gaps in the mainstream safety net which are not reliably filled by the patchwork of discretionary welfare services and which are characterised by underfunding, rationing, and a failure to adhere to core standards on human dignity to protect against destitution.

- The decade from 2010 to 2020 was a period of unprecedented retrenchment for working age social security in the UK. Examples include a lower ceiling on housing benefit awards to private tenants, to cover at most the cheapest 30% of properties in an area, the reduction of housing benefit awards to under-occupying social tenants, introduction of a cap on household benefit entitlement, initially set with reference to average earnings and subsequently lowered, freezing of a range of social assistance awards for four years from 2016 and phased limitation of child-related awards to two children per household.<sup>1</sup>
- Promoting employment is often cited as a general justification for various curbs to the adequacy of social security since 2010. Additional measures have been adopted with the sole purpose of encouraging or enforcing transitions from out-of-work and low-income social security benefits to employment, and subsequently to better paid employment. Some of these have involved increases to in-work benefits or the reduction of the rate at which benefit payments are withdrawn in response to increases in earned income.
- These measures have come with increased conditionality and a rise in the level of sanctions applied for non-compliance with job-seeking conditions. While some measure of coercion is an accepted part of active labour market policies internationally, when jobseeking ‘incentives’ include sanctions that can reduce a childless claimant’s income after housing costs to zero (or even less), for up to 18 months in some scenarios, there is no plausible way of arguing that this conditionality regime complies with the right to social security or to an adequate standard of living, or protects human dignity.<sup>2</sup> Furthermore, there is strong evidence that, in some cases at least, this highly disciplinary approach to claimant activation can be ineffective, as caring responsibilities continue to act as a formidable barrier to employment,<sup>3</sup> or even self-defeating, as the impact of a sanction and the resulting destitution on mental and physical health prevent effective jobseeking.<sup>4</sup>
- Current benefit levels can be considered at an ‘all time low’ since their introduction in the National Assistance Act 1948. Then, unemployment benefit was equivalent to 20% of average weekly earnings; today’s equivalent (universal credit standard allowance) has fallen to 12.5%.<sup>5</sup>

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<sup>1</sup> Rent Officers (Housing Benefit Functions) Amendment Order 2010 SI No 2836; Welfare Reform Act 2012; Welfare Reform and Work Act 2016

<sup>2</sup> M Simpson, “‘Designed to reduce people... to complete destitution’: human dignity in the active welfare state” (2015) 1 European Human Rights Law Review 66 (open access version [here](#)); see also the judgment of the German constitutional court in BVerfG 1 BvL 7/16, Judgment of 5 November 2019.

<sup>3</sup> *R (on the application of SG) v Secretary of State for Work and Pensions* [2015] UKSC 16 at [229] (Lady Hale)

<sup>4</sup> G McKeever, M Simpson and C Fitzpatrick, *Destitution and paths to justice* (London: Legal Education Foundation/York: Joseph Rowntree Foundation, 2018)

<sup>5</sup> C McNeil, D Hochlaf, H Quilter-Pinner, *Social (in)security: Reforming the UK’s social safety net* (IPPR, 2019) 2

- The most recent uprating (and the uprating of 10.1% planned for April 2023) only means working age social protection is being maintained at the greatly diminished level of adequacy it had reached by the late 2010s. Benefits are not being restored to a level that even pre-2010 the European Committee of Social Rights deemed 'manifestly inadequate' to comply with the right to social security.<sup>6</sup>
- The trend of providing support outside the social security system, through a series of one-off payments in receipt to claimants of social assistance benefits and through discretionary payments (in cash or kind) provide some relief from immediate pressures but provide no long term protection against poverty
- The availability of Discretionary Housing Payment Scheme (DHPs) to meet the shortfall between benefit entitlement and rent has been cited in defence of various cuts to housing-related benefits.<sup>7</sup> However, DHPs are unable to adequately mitigate the cuts to housing benefit provision because:
  - Available DHP funds **pale in comparison to total deductions**. Even at its peak, these only accounted for 6% of total cuts to housing support.<sup>8</sup> The Government cut DHP funding in 2022-23 by 29% compared to 2021-22: a £40 million reduction in England and Wales.
  - There is **significant variation between Local Authorities** in how the scheme is administered. Application processes – such as the assessment of income/expenditure and the imposition of conditionality – and the amount of money allocated for additional support varies both by the political make-up and funding constraints faced by individual authorities.<sup>9</sup>
  - DHPs **are not a permanent solution** to insufficient housing support. Particularly for disabled people affected by benefit reforms, DHPs are an insecure means of addressing a long-term problem. As the Work & Pensions Committee noted, reliance on DHPs to mitigate the benefit cap means that “many families are not getting the consistent support they need”.<sup>10</sup>
- Discretionary payments providing support in a crisis have become the safety net of last resort for citizens whose ability to meet the basic material requirements of a life in dignity is in question. The UK-wide system of discretionary support under the statutory Social Fund has been replaced since 2012 with a mixture of local and national schemes. Coverage ranges from adequate to hopeless. The absence of any schemes in many parts of England, and the susceptibility of existing schemes to budgetary constraints, the lottery of access, the intrusive nature of some schemes, forced reliance on charity even for those able to access support and the lack of user insight into how schemes could be improved fails to meet basic needs.<sup>11</sup> The nationalised approach of the Welsh scheme provides consistency, but a lack of current data on its effectiveness means few firm conclusions can be drawn about its ability to meet income

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<sup>6</sup> See M Simpson, 'Assessing the compliance of the UK social security system with the state's obligations under the European Social Charter' (2018) 18(4) [Human Rights Law Review](#) 745 (open access version [here](#))

<sup>7</sup> J Meers, 'Panacean payments: the role of discretionary housing payments in the welfare reform agenda', (2015) 22(3) *Journal of Social Security Law* 115 (open access version [here](#))

<sup>8</sup> National Audit Office, 'Managing the impact of Housing Benefit reform' (2012) Available at: <https://www.nao.org.uk/reports/managing-the-impact-of-housing-benefit-reform/>

<sup>9</sup> See R Hick, 'Austerity, Localism, and the Possibility of Politics: Explaining Variation in Three Local Social Security Schemes Between Elected Councils in England' (2022) 27(2) *Sociological Research Online* 251–272 and J Meers, 'Awarding Discretionary Housing Payments: Constraints of time, conditionality and the assessment of income/expenditure' (2018) 25(2) *Journal of Social Security Law* 102 (open access version [here](#))

<sup>10</sup> Work and Pensions Committee, 'The benefit cap - Twenty-Fourth Report of Session 2017–19' (2019) Available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/1477/1477.pdf>

<sup>11</sup> Resolution Foundation, [Sticking Plasters: An assessment of discretionary welfare support](#) (2022)

shortfalls.<sup>12</sup> The Scottish scheme is embedded within a statutory commitment to dignity and respect, an important, albeit symbolic framework where the reality may not necessarily meet the aspiration.<sup>13</sup> The Scottish Parliament's Social Security Committee cautions against replacing rights with discretionary payments.<sup>14</sup> Northern Ireland offers supplementary social security payments to mitigate against some of the impacts of UK-wide policy, but the recent independent review is clear that essential needs still remain unmet.<sup>15</sup>

- The social security reforms that reduce their adequacy have been defended by government as increasing fairness in the social security system. That these are 'fair' is a subjective and political judgement with which we disagree. What can be more objectively stated is that the benefit cap and two-child limit break the longstanding, Beveridgean link between benefit awards and need, measured according to family size and housing costs,<sup>16</sup> in favour of an unjustified retrogression of rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR) which requires that assertions of fairness should not simply be taken at face value – and that in any event the minimum core obligations are being respected
- The questionable adequacy of working age social security creates a built-in vulnerability to destitution. The most prominent legal definition of destitution – which is by definition a failure of social security to provide adequate income to meet needs – is where someone does not have 'adequate accommodation' and has no means of obtaining adequate accommodation, or is unable to meet his or her other 'essential living needs'.<sup>17</sup>
- JRF research defines destitution as 'an enforced lack of the following minimum material necessities: shelter, food, heating, lighting, clothing and basic toiletries or [has] an income level so low that they are unable to provide these minimum material necessities for themselves'.<sup>18</sup> JRF estimates that at least 2.4 million people were destitute in 2019.
- JRF's definition overlaps to a considerable extent with the minimum core obligations under article 9 ICESCR (the right to social security). These are that people are able to access their subsistence needs, specifically 'essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education'.<sup>19</sup>
- Legal analysis reveals that, while a range of relevant sectoral legislation exists and establishes services (social security, asylum support and local government welfare functions) that can, and to a large extent do, protect against destitution, there is no overarching, enforceable legal duty on the state to do so. Consequently, there is little obstacle to a Government with a parliamentary majority cutting or withdrawing forms of support, excluding categories of people from support or imposing conditions that inevitably render some destitute.<sup>20</sup>
- In the most extreme cases, article 3 ECHR (the prohibition of inhuman or degrading treatment, article 8 ECHR (the right to respect for private and family life and the home) and the common law of humanity can offer a measure of protection against street homelessness and starvation.

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<sup>12</sup> Welsh Government, *Evaluation of the Discretionary Assistance Fund* (2015)

<sup>13</sup> See Scottish Government, *Experiences of the Scottish Welfare Fund* (2019)

<sup>14</sup> Social Security Committee, *The Social Security Response to Covid-19* (2021) SP Paper 992

<sup>15</sup> G McKeever, J Currie, C Fitzpatrick, K Higgins, G McConville, U O'Hare, M Simpson, '[Independent Review of Discretionary Support](#)' (Belfast: [Department for Communities](#), 2022) (open access)

<sup>16</sup> See W Beveridge, *Social insurance and allied services* (Cmd 6404, London: HMSO, 1942)

<sup>17</sup> Immigration and Asylum Act 1999 c33 s95(3)

<sup>18</sup> S Fitzpatrick, G Bramley, J Blenkinsopp, S Johnsen, M Littlewood, G Netto, F Sosenko and B Watts, *Destitution in the UK: an interim report* (York: Joseph Rowntree Foundation, 2015) 5

<sup>19</sup> Committee on Economic, Social and Cultural Rights, 'General Comment no 19: the Right to Social Security (art 9)' (39<sup>th</sup> session, 2007) (Geneva: United Nations, 2007)

<sup>20</sup> M Simpson, G McKeever and C Fitzpatrick, 'Legal protection against destitution in the UK: the case for a right to a subsistence minimum' (2022) *Modern Law Review* – [EarlyView article](#)

However, the standard of living they guarantee remains lower than the destitution threshold and their scope in this context is not necessarily universal.

- Article 8 ECHR does not often impose a positive obligation to provide material support, but can do so when necessary to enable family life to continue and secure the welfare of children.<sup>21</sup> This duty, though, can be a very limited one in practice. Considering the case of a destitute family housed by a local authority in an overcrowded and rodent-infested property, without support for pregnancy-related needs, toiletries, snacks or children's travel costs during school holidays, the High Court found that the support provided was 'regrettable' but not unlawful.<sup>22</sup>
- The UK currently recognises no absolute legal obligation to prevent destitution: neither the common law, the human rights framework nor sectoral welfare legislation provides effective protection against destitution and its effects of destitution, except in extreme circumstances.
- There is a need for a statutory right to protection against destitution to underpin the development of more effective social and legal protection against the worst forms of poverty and against which the adequacy of social security benefits can be benchmarked.
- There is historical precedent for a form of statutory protection against destitution in the UK. The historic duty to relieve destitution, flowing from the Poor Laws, was enshrined in 'modern' form in the National Assistance Act 1948. The statutory duty first began to be eroded through the exclusion of those on strike due to a trade dispute.<sup>23</sup> This was later extended to those subject to immigration control with No Recourse to Public Funds.<sup>24</sup>
- Definitively establishing the parameters of the duty and developing an initial draft Bill will be a significant piece of work in its own right, but it is necessary to reinstate in some form the last-resort protection against destitution formerly provided for in national systems for the relief of poverty for the UK to live up to at least the minimum core obligations of the human rights it has signed up to. In particular, it will be necessary to establish a definitive definition of destitution, identify a duty bearer and decide on the nature of the duty. At face value it seems likely that discretionary support must play some role in protection against destitution, but the extent and nature of this role also demands consideration.
- Our research offers an initial appraisal of the likely pros and cons of different approaches in drafting statutory protection against destitution that addresses whether destitution would be better defined by income- or deprivation-based models of destitution; the nature and location of the duty; whether it would be a negative duty (to avoid taking action that would result in destitution) or a positive duty (to take measures to relieve destitution); the role of discretion; and ultimately the role of social security, where the in/adequacy of benefits would be directly connected to protecting against destitution.<sup>25</sup>
- We see this measure as directly connected to the need to find better ways to set adequate levels of social security benefits in the UK.

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<sup>21</sup> *Anufrijeva v Southwark LBC* [2003] EWCA Civ 1406

<sup>22</sup> *R on the application of C, T, M, U v Southwark LBC* [2014] EWHC 3983 (Admin); upheld by the Court of Appeal in *R (C and Others) v Southwark LBC* [2016] EWCA Civ 707

<sup>23</sup> Ministry of Social Security Act 1966 c20 s10.

<sup>24</sup> Income Support (General) Regulations 1987, S.I. 1987 No. 1967 reg 21; sch 7 para 17; Asylum and Immigration Act 1996 c49 ss 8-11.

<sup>25</sup> M Simpson, G McKeever and C Fitzpatrick, 'Legal protection against destitution in the UK: the case for a right to a subsistence minimum' (2022) *Modern Law Review* – [EarlyView article](#)