justfair

Updated submission to the UN Committee on Economic, Social and Cultural Rights in advance of the public examination of the UK's implementation of ICESCR

May 2016

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ABBREVIATIONS

CEDAW – Convention on the Elimination of all forms of Discrimination Against Women
CESCR – Committee on Economic, Social and Cultural Rights
CPA - Child Poverty Act (2010)
CPI - Consumer Price Index
CRC- Convention on the Rights of the Child (1989)
CRPD - Convention on the Rights of Persons with Disabilities (2007)
DCLG – Department for Communities and Local Government
DEFRA – Department for Environment, Food and Rural Affairs
DLA - Disability Living Allowance
DWP – Department for Work and Pensions
ECAT - Council of Europe Convention on Action Against Trafficking in Human Beings
ECHR- European Convention on Human Rights (1950)
ESA – Employment Support Allowance
ESC - European Social Charter
FAO - Food and Agriculture Organisation
FGC – Female Genital Cutting
GRETA -Group of Experts on Action Against Trafficking in Human Beings
HRA - Human Rights Act (1998)
ICESCR - International Covenant on Economic, Social and Cultural Rights (1966)
JSA - Job Seekers Allowance
IFS - Institute for Fiscal Studies
IMF - International Monetary Fund
JCHR – Joint Committee on Human Rights
MIS – Minimum Income Standard
OHCHR - Office of the High Commissioner for Human Rights
ONS – Office for National Statistics
PIP – Personal Independence Payment
PRS – Private Rented Sector
RPI - Retail Price Index
PAC - Public Accounts Select Committee
SPERI - Sheffield Political Economy Research Institute
UNCRPD – UN Convention on the Rights of Persons with Disabilities

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- Anna Miller, Doctors of the World (**LOI 26** and **27**)
- Dr Jessie Hohmann , Queen Mary University (**LOI 23** and **24**)
- Professor Rory O'Connell, Ulster University (**Taxation and choices** and **LOI 4** and **10**)
- Radhika Handa, Southall Black Sisters (**LOI 17, 18** and **29**)
- Jane Young, Consultant on Human Rights and Disability (**LOI 4, 5** and **9**)
- Catherine Meredith of Doughty Street Chambers (**LOI 19** and **20**)

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Lastly, we would like to express warm thanks to our Patrons for their continuing support for the work of Just Fair: Baroness Jane Campbell of Surbiton DBE, Kate Green MP and Baroness Ruth Lister of Burtersett.

Jamie Burton
Chair, Just Fair

THE JUST FAIR CONSORTIUM

Just Fair is grateful for the assistance of members of the Just Fair Consortium in the preparation of this submission and/or the Parallel Report submitted to the CESCR in October 2015.

The organisations that form part of the Consortium on 17 May 2015 are listed below:

1. Article 12
2. ATD Fourth World
3. Black Environment Network
4. Amnesty International UK
5. Anti-Bedroom Tax and Benefit Justice Federation
6. Brap
7. Cambridge Ethnic Community Forum
8. Campaign for a Fairer Society
9. Centre for Economic and Social Inclusion
10. Centre for Secular Space
11. Centre for Welfare Reform
12. Child Poverty Action Group
13. Church Action on Poverty
14. Children's Rights Alliance England
15. Compass
16. Community Food Enterprise
17. Consortia of Ethnic Minority Organisations (COEMO)
18. Crisis
19. Dalit Solidarity Network
20. Design Charity
21. DIAL Peterborough
22. Disability Law Service
23. Disability Rights UK
24. Discrimination Law Association
25. Doctors of the World
26. Disabled People Against Cuts
27. Eaves
28. Employability Forum
29. English Regions Equality and Human Rights Network (EREN)

30. Equal Rights Trust
31. Equality and Diversity Forum
32. Esther Community Enterprise
33. Fareshare
34. Fatherhood Institute
35. Fawcett Society
36. Food Cycle
37. Freedom from Torture
38. Friends, Families and Travellers
39. Galop
40. High Pay Centre
41. Housing Justice
42. Howard League for Penal Reform
43. Inclusion London
44. JUST West Yorkshire
45. Kirkby Unemployment Centre
46. Law Centres Network
47. Lesbian and Gay Foundation
48. LGBT Consortium
49. Luton Foodbank
50. Mencap
51. Merseyside & Cheshire Unemployed Workers Centre Co-ordinating Committee
52. Migrants Rights Network
53. National Council for Voluntary Youth Services (NCVYS)
54. The Pavement
55. Public and Commercial Services Union
56. Reconnect
57. Refugee Council
58. Refugee Youth
59. Refugees in Effective and Active Partnership (REAP)
60. Right to Education Project (Action Aid)
61. Race on the Agenda (ROTA)
62. Runnymede Trust
63. Save the Children
64. Southall Black Sisters
65. SWAN (Social Work Action Network)

66. TACT (The Adolescent and Children's Trust)
67. Taxpayers Against Poverty
68. Trade Union Congress
69. Trussell Trust
70. Vegan Society
71. Unison
72. West London Churches Homeless Concern
73. Women in Prison
74. Women's Budget Group
75. Women's Resource Centre
76. Zacchaeus 2000 Trust (Z2K)

Consortium Observers

1. Equality and Human Rights Commission
2. London School of Economics (Human Rights Futures Project)
3. British Institute of International and Comparative Law

INTRODUCTION

This submission contains Just Fair's response to some of the issues raised by the Committee on Economic Social and Cultural Rights (CESCR) in its 'List of Issues on the United Kingdom of Great Britain and Northern Ireland', which was published in November 2015.[1] It should be read in conjunction with Just Fair's parallel report to the Committee in October 2015, to which this submission cross-refers throughout.[2]

Just Fair is alarmed by the paucity of the State Party's response to the List of Issues and has therefore sought to address the Committee's questions in detail.[3] The need to focus on reforms to social security arises from the evidence that they have had a **retrogressive impact** on the enjoyment of many of the rights in the Covenant, particularly for people with disabilities and children, and cannot be justified by reasons of economic necessity. Indeed, the former Secretary of State for Work and Pensions, Iain Duncan Smith, resigned in protest in March 2016 at cuts to disability benefits which he described as 'not defensible' in a budget that benefited higher earners and as 'political rather than in the national economic interest' (see para. 43). Importantly, as set out in paragraph 29 below, **the worst affected by the combination of changes in social security and tax reforms are those in the lowest five decile groups, with working age persons with children the most significantly affected**.

Symptomatic of the rise in poverty, the UK continues to see year on year **increases in the numbers of people using food banks**, with real concerns that in practice they are becoming a substitute for proper food security (see **LOI 22**).

The UK **housing crisis** also merits special attention due to its complexity and pervasiveness, adversely affecting as it does many people on middle as well as low incomes.

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[1] CESCR, 'List of issues in relation to the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland', E/C.12/GBR/Q/6, 3 November 2015.

[2] Just Fair, *Implementation of the International Covenant on Economic, Social and Cultural Rights in the United Kingdom of Great Britain and Northern Ireland: Parallel Report - Submission to the Committee on Economic, Social and Cultural Rights* (2015) (hereafter, 'Parallel Report'); http://media.wix.com/ugd/8a2436_a57c9af036814ee08dbe49947be0eabe.pdf.

[3] List of issues in relation to the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, Addendum: Replies of the United, Kingdom of Great Britain and Northern Ireland to the list of issues, E/C.12/GBR/Q/6/Add.1, received: 4 April 2016 (hereafter, 'UK response to CESCR List of Issues').

The principal aims of this submission are therefore threefold:

(i) to update the Committee in respect of both key developments that have occurred and new evidence that has become available since Just Fair submitted its Parallel Report to the pre-sessional working group in October 2015;

(ii) to answer the particular questions in the List of Issues ('LOI') in which members of the Just Fair Consortium have the necessary knowledge and expertise; and

(iii) to provide more comprehensive information than was included in the Parallel Report on challenges to the realisation of the rights contained in the Covenant in the context of reforms to the social security system, which have had a disproportionately adverse impact on marginalised groups and those covered by equality legislation. This information is contained in the section "Article 2 (1) – Maximum available resources" and the responses to **LOI 4** and **15**, and is referred to throughout the submission.

Deprivation, Poverty and Inequality in the UK

The UK's record in complying with the International Covenant on Economic, Social and Cultural Rights (ICESCR) should be considered in the context of increasing concern over the levels of deprivation, poverty and inequality in the UK. Key developments and new evidence since the submission of Just Fair's Parallel Report include the following:

- The **Welfare Reform and Work Act 2016** (WRWA) gives rise to concerns including: inadequate assessment of the impacts that its provisions may have on economic, social and cultural rights (ESCR), and various reductions in benefit levels and restrictions on entitlement for out-of-work families and families with more than two children. In many cases, the design of these reforms will lead to families receiving benefit levels which fall below their level of need as previously assessed by Parliament and according to independent estimates of the minimum income required for an **adequate standard of living** (**LOI 15** and **21-24**). In addition, Just Fair's submission raises serious concerns as to the impact of the WRWA 2016 on the rights of right of **persons with disabilities** to an adequate standard of living (**LOI 15**)

- There has been a further documented increase in the number of people using **foodbanks** (over 1 million a year)[4] (**LOI 22**). The Food Foundation estimates that **8.4**

[4] The Trussell Trust, Latest Stats, 2016; https://www.trusselltrust.org/news-and-blog/latest-stats/.

million people in the UK were living in severely food insecure homes in the UK.[5]

- New evidence has been published as the extent of **destitution** in the UK: the Joseph Rowntree Foundation conservatively estimates that in 2015 **1,252,000** individuals, including 312,000 children were destitute and in contact with voluntary crisis services[6] (**LOI 4**)

- According to an Institute for Fiscal Studies (IFS) report in 2016, while absolute poverty across the population is unlikely to change over the next five years, and absolute pensioner poverty is expected to fall, **absolute child poverty** is expected to increase from 15.1% in 2015-16 to 18.3% in 2020-21, 'driven entirely by a sharp rise in poverty among families with three or more children, which is itself the result of planned tax and benefit reforms'.[7]

- The IFS predicts that **relative child poverty** will 'rise from 17.8% in 2015–16 to 25.7% by 2020–21, a **50% increase** that risks undoing the falls achieved since 1997–98'. [8]

- The IFS predicts that both **relative poverty and household income inequality** in the UK will increase over the next five years.[9]

- This submission presents further evidence as to the impact of housing policies and social security reform in England in worsening the housing deficit, making it more difficult for individuals to access housing and increasing levels of **homelessness** (**LOI 23** and **24**)

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[5] Anna Taylor and Rachel Loopstra, *Too Poor to Eat: Food insecurity in the UK* (Food Foundation, 2016); http://foodfoundation.org.uk/wp-content/uploads/2016/05/FoodInsecurityBriefing-May-2016-FINAL-3.pdf. The authors used a method of data collection developed by the Food and Agriculture Organisation.

[6] Suzanne Fitzpatrick, Glen Bramley, Sarah Johnsen, Janice Blenkinsopp, Gina Netto, Mandy Littlewood, Filip Sosenko and Beth Watts, *Destitution in the UK: Final Report* (Joseph Rowntree Foundation, 2016), p. 2.

[7] James Browne and Andrew Hood, *Living standards, poverty and inequality in the UK: 2015-16 to 2020-21* (IFS, 2016) p 2.

[8] Browne and Hood (n 7) p. 2.

[9] Browne and Hood (n 7) p. 2.

About Just Fair

Just Fair aims to ensure that UK law, policy and practice complies with its international human rights obligations. It does so by working with allies and partners to monitor compliance with international human rights treaties, through litigation, budgetary analysis, public education and the empowering of groups and individuals whose rights are being denied.

This submission is made on behalf of the 'Just Fair Consortium' – a network of almost 80 national and local charities and community groups committed to realising a fairer and more just society for everyone in England. We achieve this by monitoring and securing the fundamental human rights to food, housing, social security, education, equality, employment and health. It includes large and small organisations and many who work very closely with some of the least well off and vulnerable in society. A list of the Consortium Members is included above.

Methodology

The methodology used to prepare this submission continues the approach taken to the preparation of the Parallel Report. Just Fair worked with its Consortium members to identify and research common or serious concerns that are affecting people in the UK. A particular emphasis was placed on relatively recent Government policies and reforms and areas where it appeared retrogression may have occurred since the Committee's last review of the United Kingdom in 2009. For this reason, the submission does not address the List of Issues comprehensively, but rather focuses on those that were identified by Consortium members as being of most pressing concern and/or on which they were well-placed to offer evidence and analysis.

Just Fair bases its analysis on the relevant law as set out in particular by the CESCR in its General Comments and other statements made in the course of the Committee's work. Wherever possible, Just Fair uses the Government's own data in its analysis. Using this approach Just Fair has identified instances where economic and social rights are not being respected, protected or fulfilled to the extent required by international law and made appropriate recommendations accordingly.

The analysis included in the reports was conducted with the assistance of experts in international law and in particular in economic and social rights. All those involved in the composition of the Report are listed in the acknowledgements section.

A set of recommendations is included as an appendix to this report and provides a statement of the priority issues identified by Just Fair and its Consortium members in relation to the implementation of ESCR in the UK since the State Party was last reviewed by the CESCR in 2009.

LIST OF ISSUES IN RELATION TO THE SIXTH PERIODIC REPORT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

I. General information

LOI 1. In the light of paragraph 15 of the State party's report, please further explain to what extent the rights contained in the Covenant have been incorporated in the domestic legislation of the State party, including its overseas territories and Crown dependencies. Please provide additional information on the new bill of rights intended to replace the Human Rights Act 1998 and whether it will provide adequate protection of all the rights enshrined in the Covenant. Please also provide examples of cases in which Covenant rights have been invoked before, and/or applied by, domestic courts.

1. In contrast with an increasing number of other states, the UK **does not afford domestic recognition to the rights contained in the Covenant**, which means that neither its general principles nor its substantive provisions are directly enforceable in UK courts.[10] This is despite the fact that the UK has ratified the majority of the relevant international conventions, including not only ICESCR but also the Convention on the Rights of the Child and the 1961 European Social Charter. Each of these instruments imposes a range of legal obligations of both an immediate and progressive nature, including a general umbrella requirement that states progressively realise ESCR using the maximum available resources.

2. The UK appears reluctant to be held to account for any failures to give effect to ESCR. It has **not signed or ratified the Optional Protocol** to the ICESCR, the Revised ESC (1996) or the Additional Protocol to the ESC (1995), which provides for a collective complaints mechanism. The State Party, in its response to the Committee's List of Issues, states that 'the UK's method of implementation, via appropriate legislation and administrative measures, ensures the fulfilment of the UK's obligations under the Covenant'.[11] There are currently several ways in which ESCR may be enforced through domestic law in the UK:

   a. the judicial enforcement of statutory ESCR-related entitlements;

[10] It should be noted, however, that UK courts increasingly recognise and refer to the UK's international legal obligations to adhere to ESCR; see, e.g., *R(JS) v. Ministry of Justice* [2015] UKSC 16.

[11] UK response to CESCR List of Issues (n 3) para. 1.

b. the employment of the public sector equality duty in the Equality Act 2010; and

c. traditional judicial review influenced by the Human Rights Act (HRA) 1998.

3. Even if many ESCR are currently adequately respected, they are no less worthy of legal protection; the UK has long since legislated against arbitrary detention but it does not follow that it should dispose with the right not be imprisoned without trial.

4. Moreover, even with these mechanisms, the enforceability of ESCR in the UK is very limited in scope. The UK differs greatly from other European countries where ESCR are much more embedded than in the UK and enforced through a range of administrative and legal structures (for instance, Scandinavia or Germany). The UK also differs from countries which explicitly enshrine ESCR in domestic law, whether in legislation or constitutional instruments (e.g., South Africa, Brazil, Kenya, Finland, Argentina, Ecuador and a number of United States state constitutions). In states where ESCR have been incorporated, the 'safety net' of enforceability has meant – and, in the UK, would mean - that where legislators fail to foresee every eventuality, the courts can ensure no individual suffers whilst waiting for necessary statutory amendments to close the gaps. Furthermore, where Government ministers or local Governments get their decision-making wrong, they can be held to meaningful account before the courts.

5. It should also be noted that some of the existing mechanisms for upholding ESCR in the UK have been significantly weakened by recent reforms; notably, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 drastically reduced the scope of civil and family legal aid in England and Wales, denying access to justice for individuals in vulnerable circumstances who lack other avenues to resolve their legal issues (including on matters relating to asylum support, immigration, housing and social security).[12]

6. As noted in Just Fair's Parallel Report submitted to the Committee in September 2015, the State Party **has repeatedly failed properly to evaluate and examine the human rights implications of its acts or omissions** for people living in the UK (Parallel Report, pp.9-10). For example, the human rights memorandum prepared by the Department for Work and pensions for the Welfare Reform and Work Bill 2015-16 failed to consider its potentially adverse impacts on the enjoyment of Articles 9 and 11

[12] See, e.g., The Bar Council, *The Legal Aid, Sentencing and Punishment of Offenders Act 2012: One Year On* (2014).

ICESCR in respect of the rights to social security and an adequate standard of living,[13] whereas there is a statutory requirement under the HRA to consider the impact of any Bill on the civil and political rights protected by it.

7. For these reasons, Just Fair advocates for the inclusion of justiciable ESCR in the UK. We consider that this model would have the beneficial effects of:

   a. imposing broad obligations on all branches of Government to give effect to ESCR in law-, policy- and budget-making;

   b. providing access to a domestic remedy for individuals who claim that their ESCR have been violated; and

   c. making it clear that ESCR and civil and political rights are of equal status and importance.

8. The State Party has stated its intention to replace the Human Rights Act 1998 with a new Bill of Rights which 'will continue to protect fundamental human rights whilst restoring a more appropriate constitutional balance', and pledges to 'fully consult' on such proposals before legislating.[14] Just Fair welcomes any opportunity to debate options for stronger protection of ESCR in the UK. At the same time, Just Fair is **extremely concerned** at the prevailing hostile political climate towards the HRA and the European Convention on Human Rights (ECHR) in particular,[15] and the apparent weakening of respect for the obligation to comply with international human rights obligations in general.[16]

[13] Department for Work and Pensions, Equality impact assessments for the Welfare Reform and Work Bill, July and September 2015.

[14] UK response to CESCR List of Issues (n 3) para. 4.

[15] In October 2014, the Conservative Party issued a document proposing fundamental reform of UK human rights law, including making judgments of the European Court of Human Rights merely advisory in respect of the UK and breaking the formal link between domestic courts and the Court created by the HRA; Conservative Party, *Protecting Human Rights in the UK: the Conservatives' Proposals for Changing Britain's Human Rights Laws* (2014).

[16] For example, in October 2015, the Government amended the Ministerial Code to remove the express reference to the overarching duty on ministers to comply with international law, including the UK's treaty obligations.

9. Just Fair strongly submits that the HRA plays a fundamental role in ensuring the protection of human rights in the UK and that there is no case for weakening the enforcement mechanisms in the Act. The HRA preserves parliamentary sovereignty, helps to create a culture of respect for human rights in public services, and is embedded into the devolution settlements for Scotland, Wales and Northern Ireland.

10. Any consultation on reform of the UK's human rights laws should therefore be **non-regressive**: it should expressly exclude the possibility of undermining existing protection provided by the HRA, either in relation to the specific rights protected, or by weakening the existing machinery for the protection of ECHR rights. Moreover, it should be **participatory and inclusive**: it should elicit the views and experiences of groups whose human rights are most vulnerable to being breached, and should give those voices due weight in the assessment of responses and in any final proposals. The consultation should also be **educative**: the public should be informed to the greatest extent possible about existing human rights protections and options for building on them, on the basis of accurate, accessible and impartial information.[17]

Recommendation 1 – Bill of Rights

Just Fair recommends that the State Party:

a. Ensures that the forthcoming consultation on a Bill of Rights has terms of reference that are expressly non-regressive, and is inclusive, participatory and based on accurate, accessible and impartial information;

b. Uses the forthcoming consultation on a Bill of Rights to publish options for enhancing the status of ICESCR in domestic law, with a view to taking steps to the maximum of the State's available resources to progressively realise the rights enshrined in the Covenant, in line with Article 2(1).

[17] These and other principles are elaborated in Alice Donald, *Developing a Bill of Rights for the UK* (Equality and Human Rights Commission, 2010).

II. Issues relating to general provisions of the Covenant (arts. 1-5)

Article 2 (1) – Maximum available resources

Taxation and the choices that have been made

11. Increasingly, academics and activists are considering the human rights implications of budgets[18] and human rights bodies are elaborating a position that, in the words of the Special Rapporteur on Extreme Poverty, 'Tax Policy is Human Rights Policy'.[19]

12. The General Comment on the Right to Social Security identifies the principles dealing with retrogressive measures in the context of social security:

> *"There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. 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 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 realization 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."*[20]

13. The 2012 Letter from the Chair of the ICESCR committee outlines the principles governing responses to the financial crises:

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[18] See the essays in Aoife Nolan, Rory O'Connell and Colin Harvey, *Human Rights and Public Finance* (Hart 2013) and Rory O'Connell, Aoife Nolan, Colin Harvey, Mira Dutschke and Eoin Rooney, *Applying an International Human Rights Framework to State Budget Allocations: Rights and Resources* (Routledge, 2014).

[19] Special Rapporteur on Extreme Poverty Philip Alston 'Tax Policy is Human Rights Policy: The Irish Debate', Keynote Address at Christian Aid conference on The Human Rights Impact of Tax and Fiscal Policy, Dublin, 12 February 2015.

[20] General Comment 19 on Social Security (Article 9) E/C.12/GC/19 2007, para. 42..

"First, the policy must be a temporary measure covering only the period of crisis. Second, the policy must be necessary and proportionate, in the sense that the adoption of any other policy, or a failure to act, would be more detrimental to economic, social and cultural rights. Third, the policy 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 the disadvantaged and marginalized individuals and groups are not disproportionately affected. Fourth, the policy must identify the minimum core content of rights or a social protection floor, as developed by the International Labour Organization, and ensure the protection of this core content at all times."[21]

14. The 2014 report of the Special Rapporteur on Extreme Poverty and Human Rights examines fiscal policy and taxation.[22] The report details the links between fiscal policy and human rights and summarises why taxation policy is important for human rights: it provides the resources for tackling poverty and realising human rights; it helps address concerns about inequality; and it contributes to governance objectives.

15. This report highlights that the burden of proof is on States to demonstrate that resources constrain them. They must show that they are unable and not merely unwilling to meet their obligations. States must show that they have 'carefully considered all alternatives, including revenue raising ones' before adopting retrogressive measures.[23]

16. The report recommends widening the tax base and improving the efficiency of the tax system, tackling various forms of tax abuse, reassessing corporation tax contributions, broadening the contributions of the financial sector, ensuring sustainable use of natural resources and enhancing international cooperation.

The UK and maximum available resources

17. The Committee is referred to the ***'Just Fair's Findings in Context – policy background'*** in its Parallel Report (pp. 5-9). The Committee is also referred to the

[21] CESCR, *Letter from the Chairperson of the Committee to State Representatives, Reference CESCR/48th/SP/MAB/SW* (United Nations, 2012).

[22] Special Rapporteur on Extreme Poverty, Magdalena Sepúlveda Carmona, *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, on Taxation and Human Rights* (UN, 2014) A/HRC/26/28.

[23] Special Rapporteur on Extreme Poverty, A/HRC/26/28 (n 22) para. 28.

short update provided in the Introduction to this submission: "**Deprivation, Poverty and Inequality in the UK**".

18. As previously mentioned, since 2010 successive UK Governments have sought to reduce a budget deficit by making very large cuts to public spending. These have principally been achieved through 'welfare reforms' that have targeted both in work and out of work social security schemes. These reforms and their impacts are addressed below in response to **LOI 4** and **LOI 15** in particular.

19. Given the reductions to the social security budget, the Government's policy raises interrelated questions of the justification for retrogressive measures and whether the Government is using the maximum of available resources to progressively realise economic and social rights.

Mitigation

20. One issue to consider in deciding the compatibility of these policies with human rights standards is whether there are measures to mitigate the effects of the cuts especially on the most disadvantaged. In this context there is the 'National Living Wage' for the over-25s, which came into effect on 1 April 2016. The Government plans that this should be gradually increased over the next few years until it is over £9 per hour by 2020.

21. While at first glance this might appear to be a compensatory measure, it won't mitigate to any significant extent the cuts to social security for the four reasons set out in response to **LOI 10** below.

Reduce Expenditure or Raise Revenue?

22. A Government seeking to address a debt crisis can reduce its expenditure or increase its revenue or a blend of the two. How a Government chooses to do this is fundamental to understanding its commitment to human rights, because these are matters of choice and priorities.

23. For this reason, as noted above, the UN Special Rapporteur on Extreme Poverty has stressed the importance of budgets, and in particular tax policy, as the clearest indication of compliance with human rights.

24. The State Party's intention to run a budget surplus is potentially defensible in human rights terms and desirable if it strengthens the resources available to avoid potential

rights violations. However, the State Party's methods for achieving this are matters of concern.

25. The 2015-16 budget demonstrates a clear choice. It focuses on achieving fiscal consolidation by further £12 billion in annual savings in welfare (on top of £21 billion under the 2010-15 Coalition Government), £20 billion in reductions in "efficiency savings" in public services and only £5 billion in receipts form tackling tax evasion and avoidance.

26. As set out below, the cuts to social security include a series of measures that will injure the disadvantaged, again.

27. There are other choices.

28. The 2015 and 2016 Budgets deliberately reduce Government revenues in a number of areas:

    a. It **increases the tax free personal allowance** to £11,000 in 2016-2017.[24] This is on top of significant increases in the personal allowance under the 2010-2015 Coalition Government (6,475 in 2010-11, to 10,600 in 2015-16). A tax free personal allowance could, in principle, be welcome from a human rights perspective as it ensures persons with an income do not have to pay any tax unless they have enough money to cover their own basic needs.[25] The increase in tax free allowance benefits all persons with incomes over the limit. The benefit to high-earners though is gradually withdrawn for persons earning over £100,000 a year.

    Budget 2015 increased the threshold for paying the higher rate of tax to £43,000 and promises to raise this to £50,000 by 2020. Budget 2016 continues this direction of travel, raising the tax free personal allowance to £11,500 and the higher rate threshold to £45,000; these are of course above inflation increases.[26]

    According to a Budget 2016 briefing by the Institute for Fiscal Studies the effect of the above increases in the tax free allowance and the higher rate threshold represents a

[24] Section 3.3, 2015 Budget

[25] Special Rapporteur on Extreme Poverty, A/HRC/26/28 (n 22) para. 48

[26] 2016 Budget at https://www.gov.uk/Government /publications/budget-2016-documents/budget-2016.

cost of **£15 billion since 2010**, with a further £5 billion due to planned changes up to 2020/21.[27]

b. **Increasing the inheritance tax limits** so that 'only the very wealthiest in our society should be asked to pay tax on the assets built over their lifetime'. The effect of this will be to reduce the number of estates facing inheritance tax from about 63,000 (forecast for 2020-2021) to 37,000 (around the same number as in 2014-15).[28]

c. **Cutting corporation tax** to 19% in 2017 and to 18% in 2020. The 2016 Budget announces a target of 17% by 2020. This comes on the back of earlier cuts to corporation tax from 28% which reduced revenue by £10 billion a year. The UK corporation tax rate is already low by OECD and EU standards and the Government is committed to reducing it to the lowest in the G20.[29] According to the 2016 Budget this cut since 2010 will be saving business **£15 billion a year by 2020**. The aim is to attract inward investment.

d. The Special Rapporteur has drawn attention to the unfairness involved in low taxes for business which frequently owe their success to the public funding of public goods such as education and health.[30] **The Special Rapporteur has indicated that there is some doubt as to whether reducing corporation tax actually achieves this aim of stimulating inward investment**, describing the evidence as 'weak'.[31] She warns that there are risks involved in the use of incentives to encourage inward investment; any use of incentives should be accompanied by a 'clear description of deliberate, concrete and targeted advances towards the fulfilment of human rights'.[32]

e. A recent report by the Institute for Fiscal Studies summarises changes to corporation tax as '**Corporation tax giveaway is the main story'**.[33] The report estimates that

[27] Stuart Adam, *Budget 2016: Personal Income Taxes and Benefits* (Institute for Fiscal Studies, London 2016).

[28] Section 3.10, 2015 Budget

[29] Section 4, 2015 Budget

[30] Special Rapporteur on Extreme Poverty Magdalena Sepúlveda Carmona, *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, on Taxation and Human Rights Corrigendum* A/HRC/26/28/Corr.1 (UN, 2014) para. 63.

[31] Special Rapporteur on Extreme Poverty, A/HRC/26/28 (n 22) para. 65

[32] Ibid, para. 67.

[33] Helen Miller and Thomas Pope, *The changing composition of UK tax revenues* IFS Briefing Note BN182 (Institute for Fiscal Studies, 2016) p. 18.

the combined effect of multiple changes (mainly the change to the corporation tax rate) to corporation tax over the period 2010 to the end of the current Parliament is £10.8 billion a year.[34]

29. These deliberate reductions in revenue demonstrate that there were choices to be made. Three criticisms of these choices can be made from a human rights perspective:

    a. Forgoing those reductions in revenue could have enabled the cuts in social security to be **less severe**.

    b. The combined effect of the reductions in revenue and the changes to social security **disproportionately hit the income of the lowest decile groups**. The Institute for Fiscal Studies produces reports on the effect of each Budget including a distributional analysis of the cumulative effects of changes to income tax, benefits, national insurance contributions on the different income decile groups in the UK. The report on Budget 2016 indicates clearly that the cumulative effect of these changes between now and 2019 is projected to hurt the lowest income decile groups more both in terms of both cash amounts and percentage of income.[35]

    The worst affected decile groups in terms of percentage of income are the lowest five groups. **Within these decile groups, working-age persons with children are the most significantly affected**. The cumulative impact for working age persons with children in the **second poorest decile group is a cut of approximately 12% of income**; among the top four decile groups the effect for working age persons with children is a cut of less than 2% (or even a slight increase).[36]

    c. **The reductions do not include clear evidence as to how they will generate specific benefits that would enable a better realisation of rights**. For instance, the cuts to the corporation tax rate since 2010 could, according to Budget 2015, increase GDP by between 0.6 and 1 % 'in the long run'.[37] This does not provide a clear explanation as to whether the increase in GDP will increase revenues available

[34] Ibid.

[35] William Elming and Andrew Hood, *Budget 2016: Distributional Analysis* (Institute for Fiscal Studies, London 2016); http://www.ifs.org.uk/uploads/budgets/budget2016/budget2016_weah.pdf.

[36] Elming and Hood (n 35).

[37] Section 4.1, Budget 2015.

to Government notwithstanding the lowering of the tax rates; the 'long run' is vague and there is no clear commitment, or even link, to the realisation of rights.

Raising revenue

30. There are also areas where the Government has sought to increase the revenues available to it.

31. In 2010 the State raised Value Added Tax, an indirect tax on goods from 17.5% to 20%.[38] This was a regressive revenue raising measure as it consumed a higher percentage of the income of the least well off.[39]

32. One of the paradoxes of the 2015 Budget is that despite the focus on cuts to social security spending, and cuts to certain taxes, overall the Budget increased taxes. According to the IFS, the Budget included £8 billion of tax cuts but £14 billion of tax increases.[40]

33. The Government announced a target in the 2015 Budget to address issues of tax evasion, avoidance, tax planning and to increase tax compliance and so to resource some £5 billion a year. The 2016 Budget introduced a number of welcome initiatives to tackle tax evasion by multinationals and property developers, for instance.[41] At the same time the Budget may enable other forms of tax avoidance and has been criticised accordingly.[42]

34. Tackling **tax evasion and avoidance** is very welcome but the target of £**5 billion a year is very modest**: the UK tax authorities estimate that the gap between tax owed and tax collected is actually **£34 billion** or 6.4 % of tax liabilities. According to Tax Research UK, this is likely to be a significant underestimate: in 2010, Tax Research UK estimated the tax gap at **£120 billion**.[43]

[38] Budget 2010; http://webarchive.nationalarchives.gov.uk/20130129110402/http:/cdn.hm-treasury.gov.uk/junebudget_complete.pdf.

[39] Special Rapporteur on Extreme Poverty, A/HRC/26/28/Corr.1 (n 30) para. 46.

[40] Paul Johnson, *Opening Remarks: Budget 2015* (IFS, 2015) p. 3.

[41] Sections 4.23, 4.25 and 4.26, Budget 2016.

[42] Richard Murphy 'A budget for the UK's tax avoiders' (2016); http://www.taxresearch.org.uk/Blog/2016/03/16/a-budget-for-the-uks-tax-avoiders/.

[43] Tax Research UK, *Why HM Revenue & Customs have got the Tax Gap wrong* (TRUK, 2010);

35. Even the Government's more conservative estimate of the tax gap - £34 billion[44] – **dwarfs the amount lost through benefit fraud**. This is estimated at £1.2 billion, or less than 1% of benefit payments. This figure of £1.2 billion is also less than the amount of benefit which is unclaimed or not paid out to people entitled to it (£1.5 billion).[45]

36. The 2015 Budget included a promise to invest in the work of the tax authorities.[46] This is welcome as there have been significant reductions in the staffing of the tax authorities (HMRC) since 2010. A 2014 report by Tax Research UK noted that the staff numbers in **HMRC had dropped from 92,000 in 2005 to 62,000 in 2014**.[47] This sharp decrease contradicts the advice offered by the Special Rapporteur who warns that 'lack of investment in tax authorities is therefore a short-term false economy, with negative implications for the enjoyment of human rights'.[48]

The UK in a wider context

37. The Government in its 2015 budget described its approach as one of moving 'from a low wage, high tax, high welfare society to a higher wage, lower tax, lower welfare society' (emphasis added).[49] This is most clearly the case for the reduction in corporation tax where the Government plans to have the lowest rate in the G20 nations by 2020.[50]

38. Describing the UK as a **high tax country is debateable**.

39. Eurostat publishes analysis of taxation trends across European Union countries; the most recent report looks at figures from 2013.[51] According to this report, the total receipts from taxes and compulsory social contributions in the UK are worth 33.7% of

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http://www.taxresearch.org.uk/Documents/TaxGapResponse.pdf.

[44] Her Majesty's Revenue and Customs, *Measuring tax gaps 2015 edition: Tax gap estimates for 2013-14* (2015) p. 4.

[45] Channel 4 Fact Check http://blogs.channel4.com/factcheck/factcheck-benefits-fraud-tax-evasion/20139.

[46] Section 3.6, 2015 Budget.

[47] Richard Murphy, *Tax evasion in 2014 and what can be done about it* (TRUK 2014) p. 10; http://www.taxresearch.org.uk/Documents/PCSTaxGap2014Full.pdf

[48] Special Rapporteur on Extreme Poverty, A/HRC/26/28/Corr.1 (n 30) para. 57.

[49] Section 3.1, 2015 Budget.

[50] Section 4.4, 2016 Budget.

[51] Eurostat, *Taxation trends in the European Union* (2015); http://ec.europa.eu/taxation_customs/taxation/gen_info/economic_analysis/tax_structures/index_en.htm.

GDP.[52] Among the 28 EU states, the UK is ranked 17th. This is above Ireland at 24th but below most of the other major EU economies, e.g. Germany (38.1%), France (45.3%), and Italy (43.1%). According to Eurostat, UK receipts in 2013 were approximately £605 billion; on this basis 1% of GDP in 2013 represents £17.9 billion.[53]

40. The UK's taxation receipts as a percentage of its national income fell after the economic crisis; the IFS predicts that this figure will return to its pre-crisis level in 2020.[54]

Conclusion

41. Undoubtedly the economic crisis caused difficulties for the management of the UK economy. Successive Governments have not, however, adopted the recommendation of the Special Rapporteur and **used the crisis as an opportunity to reform the financial system in order to improve human rights.** The emphasis has been on reducing Government expenditure through social security reform even though the economic crisis and subsequent debt was caused by problems in the financial sector and subsequent banking bail out, not the social security bill.

42. Notwithstanding the difficult economic context **other choices were possible**. The UK saw a sharp reduction in its taxation and social contributions receipts as a percentage of GDP; avoiding this would have retained considerable resources to cushion the effect of the crisis on the disadvantaged. The Government has chosen to reduce revenues in a number of ways – through changes to personal income tax but even more dramatically through changes to corporation tax.

43. As this submission sets out, these choices have had a **disproportionately adverse impact on marginalised and disadvantaged individuals and groups**. Indeed, the architect of the social security reforms enacted since 2010, Iain Duncan Smith, who was Secretary of State for Work and Pensions from 2010 to 2016, acknowledged this impact **when he resigned from the Cabinet in March 2016**. He stated (emphasis added):

*"I have for some time and rather reluctantly come to believe that the latest changes to benefits to the disabled and the context in which they've been made are **a compromise too far**. While they are defensible in narrow terms, given the continuing deficit, they are **not defensible** in the way they were placed within a Budget that benefits higher earning*

[52] Ibid, p. 125.

[53] Calculations based on figures at http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do

[54] Miller and Pope (n 33) p. 2.

taxpayers. They should have instead been part of a wider process to engage others in finding the ***best way to better focus resources on those most in need****.*

I am unable to watch passively whilst certain policies are enacted in order to meet the fiscal self imposed restraints that I believe are more and more perceived as distinctly ***political rather than in the national economic interest****."*[55]

44. It is critical to recognise that these decisions have been made without any cumulative impact assessment having been undertaken which identifies the impact the State Party's choices on the enjoyment of economic, social and cultural rights and in the absence of any national human rights plan of action or strategy for the implementation of these rights.

45. This is despite the Committee's previous recommendations that "the State party should adopt a national strategy for the implementation of the Covenant" and "a national human rights plan of action which includes specific programmes regarding the realization of economic, social, and cultural rights".[56]

Recommendation 2 – Issues relating to general provisions of the Covenant: National Strategy and Action Plan

Just Fair recommends that the State Party:

a. Adopts a National Strategy and Action Plan to realise economic, social and cultural rights in the UK. In accordance with the standards set out by the CESCR,[57] the National Strategy and Action Plan should:

- **contain specific steps to implement the recommendations of UN treaty bodies and human rights mechanisms, including the Concluding Observations of the UN Committee on Economic, Social and Cultural Rights;**

[55] Iain Duncan Smith resignation letter, 18 March 2016; http://www.bbc.co.uk/news/uk-politics-35848891.

[56] E/C.12/GBR/CO/5, para.12 & 14

[57] See, inter alia, CESCR, General Comment No 19 on the Right to Social Security, UN Doc E/C 12/GC/19 (2008); General Comment 12 on the Right to Adequate Food, E/C.12/1999/5 (1999); Vienna Declaration and Programme of Action of 1993.

- **set targets to be achieved and the time-frame for their achievement, together with corresponding indicators, against which they should be continuously monitored;**
- **contain concrete proposals to reduce and eliminate absolute and relative rates of poverty**
- **take into account the equal rights of the most disadvantaged and marginalised groups and respect people's participation;**
- **guarantee that the rights are enjoyed without discrimination and equally by men and women.**
- **be informed by wide consultation with civil society and national human rights institutions.**

LOI 4. Please provide information on the steps taken by the State party to ensure that austerity measures introduced through the Welfare Reform Act of 2012 do not disproportionately affect the enjoyment of economic, social and cultural rights, in particular by disadvantaged and marginalized individuals and groups.

The Welfare Reform Act 2012 and cumulative impact

46. The Welfare Reform Act 2012 (WRA 2012) introduced the bulk of the £22 billion cuts in the annual social security budget despite clear warnings from the Joint Committee on Human Rights (JCHR)[58] that "the cumulative impact of the Bill's provisions may lead to retrogression".[59]

47. Whilst there is evidence that the reforms introduced by the WRA have had a disproportionate impact on disadvantaged and marginalised individuals and groups (as set out below) the extent of the cumulative impact is not known because current and

[58] The JCHR is a select committee of both the House of Commons and House of Lords which is charged with considering human rights issues in the UK. See also Parallel Report at 2.2.3.

[59] JCHR, Twenty-first Report of Session 2010–12, *Legislative Scrutiny: Welfare Reform Bill* (2011), HL Paper 233, HC 1704, p. 24; http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/233/233.pdf.

previous Governments have maintained that such an exercise would be too complex to carry out.[60]

48. However, both the Institute of Fiscal Studies[61] and the Equality and Human Rights Commission argue that such an assessment is technically feasible. The Equality and Human Rights Commission (EHRC) has published research which makes recommendations with regard to data collection and statistical modelling by Government which would allow for more accurate identification of any disproportionate impact of combined changes in tax, benefits and public spending on protected groups, including disabled people.[62]

49. Furthermore, the JCHR raised concerns including inter alia:

    a. 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;[63]

    b. The risk of destitution as a result of conditionality (sanctions), in contravention of Article 3 ECHR;[64]

50. Therefore, the Government failed in its obligations to have due regard to the impact of measures in the Welfare Reform Act 2012 (and more widely) on the enjoyment of economic, social and cultural rights.

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[60] For example, in response to the report by the parliamentary Joint Committee on Human Rights on the rights of persons with disabilities to independent living the Government claimed 'The ability to undertake cumulative analysis is limited because of the complexity of the modelling required and the amount of detailed information on individuals and families that is required to estimate the interactions of a large number of different policy changes.' See Joint Committee on Human Rights), Second Report of Session 2012–13, *Implementation of the Right of Disabled People to Independent Living: Government Response to the Committee's Twenty–third Report of Session 2010–12*, HL Paper 23 HC 429 (2012).

[61] David Phillips (Institute for Fiscal Studies), *The distributional effects of the State Party's tax and welfare reforms in Wales: an update*, IFS Briefing Note BN150 (2014).

[62] Howard Reed and Jonathan Portes, *Cumulative Impact Assessment: A Research Report by Landman Economics and the National Institute of Economic and Social Research (NIESR) for the Equality and Human Rights Commission* (EHRC, Research report 94, 2014).

[63] JCHR, Twenty-first Report of Session 2010–12 (n 59) para. 1.35.

[64] JCHR, Twenty-first Report of Session 2010–12 (n 59) para. 1.45.

51. Significantly, it has nevertheless been demonstrated that in many cases the WRA cost-cutting measures have combined to reduce income for vulnerable individuals and households reliant on multiple benefits to supplement poverty wages.[65] As pointed above (para. 29) the cumulative impact for working age persons with children in the **second poorest decile group is a cut of approximately 12% of income.**

52. Similarly, the aforementioned research commissioned by the EHRC into the cumulative impact of tax, benefit and public spending decisions on households including individuals with one or more protected characteristics shows that households including one or more disabled people have been more adversely affected by reductions to benefits and public expenditure than households with no disabled people.[66] It also finds that households including one or more disabled children have been more adversely affected than those including one or more disabled adults.[67] The Commission has recently announced its plan to conduct a detailed assessment concerning the impact of welfare reforms on the human rights of persons with disabilities.[68]

53. As Just Fair's Parallel Report sets out, and as noted below, the reforms contained in the WRA have had a significant impact on the enjoyment of specific rights under ICESCR, including Articles 9 and 11 in particular, and in most cases that impact has fallen disproportionately on the women, children and people with disabilities.

54. The Government has confirmed that **these are not short-term emergency measures**, but are intended to represent long-term changes to the welfare system and "culture" in the UK.[69] Indeed, as is discussed in **LOI 15**, the Welfare Reform and Work Act 2016 (WRWA) has made further cuts to social security.

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[65] Anne Daguerre and David Etherington, *Welfare Reform, Work First Policies and Benefit Conditionality*: *Reinforcing Poverty and Social Exclusion?* (The Centre for Enterprise and Economic Development Research (CEDDR) University of Middlesex, ESRC Report (2015); http://www.mdx.ac.uk/__data/assets/pdf_file/0015/211209/Welfare-and-benefit-conditionality-report-January-2015.pdf.

[66] Reed and Portes (n 62) p. 48.

[67] Ibid.

[68] As included in the Equality and Human Rights Commission Business Plan 2016-17.

[69] David Cameron, *Why the Archbishop of Westminster is wrong about welfare*, 19 February 2014,: http://www.telegraph.co.uk/news/politics/david-cameron/10646421/David-Cameron-Why-the-Archbishop-of-Westminster-is-wrong-about-welfare.html. See also Parallel Report 2.5.1.

The specific reforms in the WRA 2012

55. The measures in the WRA 2012 include:

    a. Greater conditionality, more rigorous and frequent medical tests for those on disability benefits and harsher sanctions;

    b. The introduction of Universal Credit, a new combined benefit to replace existing work-age means-tested benefits and tax credits;

    c. The replacement of disability living allowance with a new personal independence payment, with more restrictive eligibility criteria;

    d. Size restrictions on housing benefit paid to tenants in the social rented sector (variously called the 'bedroom tax' or the 'removal of the spare room subsidy');

    e. The introduction of a household benefit cap of £500 per week for families with children and £350 for single claimants who are unemployed; and

    f. The abolition of the discretionary social fund, which provided social assistance to people in crisis and hardship, and its replacement with local authority discretionary provision; and

    g. The abolition of council tax reduction and its replacement with local authority schemes.[70]

Sanctions

56. The WRA 2012 provides for harsher sanctions - for a larger number of offences and an increased maximum length, from six months to three years.[71] These have been heavily criticised amid concerns that they are unfair, punitive and ineffective.[72]

57. The Joseph Rowntree Foundation (JRF) cites sanctions as a major cause of rising destitution in the UK.[73] Sanctions and benefit delays affected over 50% of the UK-born

[70] DWP, *Universal credit: welfare that works,* p. 2, https://www.gov.uk/Government /uploads/system/uploads/attachment_data/file/48897/universal-credit-full-document.pdf

[71] Welfare Reform Act 2012, S.19 (4)(b)

[72] Patrick Butler, 'Benefit sanctions: they're absurd and don't work very well, experts tell MPs', *The Guardian*, 8 January 2015; http://www.theguardian.com/society/patrick-butler-cuts-blog/2015/jan/08/benefit-sanctions-absurd-and-dont-work-mps-told-welfare

respondents in the research.[74] The report also found that the move out of destitution usually coincided with the resolution of a benefit issue, or the end of a benefit sanction or delay.[75]

58. Sanctions are also a major contributor to the increase of foodbank use in the UK. In response to a survey, 20-30% of foodbank users said that their benefits had either stopped or been reduced because of a sanction.[76] Casework from the foodbanks included sanctions made in error or affecting vulnerable people with health problems, along with the impact of sanctions on housing benefit.[77]

59. Claimants who are sanctioned can apply for a discretionary hardship payment of 60% of their applicable amount or 80% if they are classed as "vulnerable". However, this payment is only available where the claimant is at risk of "severe hardship" and will not be paid until the 15th day of the sanction. A recent report by the Parliamentary Work and Pensions Committee recognised that:

> *"[T]here is widespread concern that DWP's system of discretionary hardship payments does not prevent severe financial hardship in all cases, often because JSA hardship payments are not typically available until the 15th day of a sanction period. We believe that changes to the system are required to ensure that the risks of severe financial hardship are more comprehensively mitigated*.[78]

60. Notably, the Social Security Advisory Committee, a Parliamentary Committee, made up of politicians, academics and business professionals, said in its report to the Government in July 2015 that there was no evidence that sanctions were effective in getting people into work.[79]

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[73] Fitzpatrick et al (n 6) *passim*.

[74] Ibid, p. 31,

[75] Ibid, p. 5.

[76] Ibid, p. 11.

[77] CPAG et al., *Emergency Use Only: Understanding and reducing the use of food banks in the UK* (2014) p. 10, http://www.cpag.org.uk/sites/default/files/Foodbank%20Report_web.pdf

[78] Work and Pensions Committee, Fifth Report of Session 2014/15, *Benefit sanctions policy beyond the Oakley Review*, HC 814 (2015); http://www.publications.parliament.uk/pa/cm201415/cmselect/cmworpen/814/814.pdf

[79] Social Security Advisory Committee, *Universal Credit: priorities for action*, SSAC Occasional Paper 15 (2015) pp. 14-15.

61. Furthermore, the Government has also started a trial of "in-work conditionality" whereby claimants who are in work can be sanctioned for failing to work longer hours or find better paid work. This will affect around one million in-work claimants.[80]

Universal credit

62. The WRA 2012 introduced a new benefit, Universal Credit (UC), which will replace a number of means-tested working-age benefits including income support, jobseekers' allowance, employment and support allowance, housing benefit and tax credits. To date, UC has been introduced for some new claimants who satisfy 'gateway' conditions and only applied in a few areas. Full roll-out of the UC service to all new claimants nationally is scheduled to be fully implemented by June 2018.[81]

63. While some groups (for example single claimants in work) will benefit from UC, others, particularly vulnerable groups, will lose out. As set out below **people with disabilities, families with carers, lone parents and children will lose out the most**.

64. Those with severe disabilities will be affected by the abolition of the disability premiums.[82] Disability groups estimate that 100,000 disabled children could lose up to £28 a week; 230,000 severely disabled people who do not have another adult to assist them could receive between £28 and £58 a week less than currently; and up to 116,000 disabled people who work could be at risk of losing around £40 per week.[83] Any claimant who has a disability and is also a carer for another person with a disability will be prevented under UC from claiming the disability element and a carer's element at the same time.

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[80] Work and Pensions Committee, *Oral evidence: In-work progression in Universal Credit*, HC 549 – iii, 7 March 2016;
http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/universal-credit-inwork-progression/oral/30357.html

[81] House of Commons Hansard*, Universal credit and Local Authorities*, 10 December 2015,
http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-12-10/HCWS377/

[82] Work and Pensions Committee, Third Report of Session 2012–13, *Universal Credit implementation: meeting the needs of vulnerable claimants*, HC 576 (2012);
http://www.publications.parliament.uk/pa/cm201213/cmselect/cmworpen/576/576.pdf

[83] Disability Rights UK et al., *Holes in the Safety Net: The impact of universal credit on disabled people and their families* (2012) p. 3;
http://www.disabilityrightsuk.org/sites/default/files/pdf/holesinthesafetynet.pdff

65. It is estimated that 200,000 more single parent families will lose out under Universal Credit, than will gain.[84] Some 25,000 single parents will be doubly affected by the loss of the severe disability premium and risk losing up to £3,035 per year.[85] Changes to the personal allowances will also leave young parents under the age of 25 with £14.75 less per week. Single parents with severe disability needs where the child is the carer, they could lose up to £73 per week from their income.[86]

66. In its summer 2015 Budget, the Government announced cuts to work allowances for Universal Credit. As a result, some claimants will need to work at least 3-4 hours extra a week to make up for these cuts.[87]

67. The Government has partly mitigated these costs by increasing the contributions in UC to childcare costs from 70% to 85%. However, overall, the loss of the housing benefit and council tax disregards (that is, individuals in a household who are not counted for the purposes of paying council tax) will reduce the amount of childcare support available for low income working families, in particular single parent families, eradicating the mitigation. It has been estimated that around 100,000 families will lose up to £4,000 per year in entitlement.[88]

68. The intention is for UC to be a fully digital benefit with no face-to-face or telephone contact. In the context of widespread problems with benefit delays and maladministration this presents a risk for vulnerable claimants or those who are unable to access or use the internet.[89]

Introduction of Personal Independence Payments

[84] Gingerbread and Children's Society, *Single parents and universal credit: singled out* (2013) p. 1, https://www.childrenssociety.org.uk/sites/default/files/tcs/u56/single_parents_and_universal_credit_singled_out_final_0.pdf

[85] Ibid, p. 1.

[86] Ibid, p. 5.

[87] DWP, *Government response to SSAC Occasional Paper 15: Universal Credit: priorities for action*, (undated) p.5; https://www.gov.uk/Government /uploads/system/uploads/attachment_data/file/487394/Government -response-to-universal-credit-occasional-paper-15.pdf

[88] Work and Pensions Committee, Third Report of Session 2012–13 (n 82).

[89] Child Poverty Action Group, *Universal credit: full steam ahead*, Welfare Rights Bulletin 251, April 2016, p..4.

69. The Government continues to roll-out Personal Independence Payments (PIP) to approximately 1.5 million recipients of disability living allowance (DLA). The move includes the effective abolition of the lower rate of care component for DLA, which will affect 643,000 disabled people with care needs.[90]

70. A further 548,000 disabled people will lose entitlement to the higher rate of the mobility component as a result of the reduction of the mobility test from 50 metres to 20 metres.[91]

71. It is estimated that 400,000 will have £1,400 per year cut from their benefits when they move from enhanced disability benefit of £82 per week to £55 per week.[92] These people will cease to be eligible for the Motability scheme.[93]

72. With a higher threshold for disability benefits, welfare reform is introducing more regular and rigorous assessments for applicants of PIP. Thousands of PIP claimants have encountered delays leaving them with financial insecurity. [94] This issue was addressed in the High Court, which held that the delays to PIP claims were unacceptable.[95]

'Bedroom tax'

73. The introduction of size criteria in the social rented sector (variously called the 'removal of the spare room subsidy' or the 'bedroom tax') in April 2013 saw households' housing benefit entitlement reduced by 14% for one spare bedroom and 25% for two or more additional bedrooms. The DWP estimated that the size criteria would affect 660,000 claimants, approximately 31% of all working age housing benefit claimants living in

[90] Work and Pensions Joint Committee, Written evidence submitted by Carers UK (PIP 12), endnote 7; http://www.publications.parliament.uk/pa/cm201012/cmselect/cmworpen/writev/1493/pip12.htm

[91] DWP, *The Government 's response to the consultation on the PIP assessment Moving around activity* (2013), p. 48; https://www.gov.uk/Government /uploads/system/uploads/attachment_data/file/251631/pip-mobility-consultation-Government - response.pdf

[92] 'Cuts will see 200,000 disabled people lose £3,000 a year', *The Guardian*, 13 March 2016; http://www.theguardian.com/society/2016/mar/13/cuts-will-see-200000-disabled-people-lose-3000-a-year

[93] Hansard, Baroness Hollis, HL Deb, col 940, 25 February 2013.

[94] Paul Gray, *An Independent Review of the Personal Independence Payment Assessment* (2014) p. 7.

[95] *R (C & W) v SSWP [*2015] EWHC 1607.

social housing.[96] Of those households affected, most have not moved and half have rent arrears as a result of the size criteria.[97]

74. The DWP's Interim Report evaluating the impact of the policy reveals that 20% of affected households have been unable to pay the increased cost of their housing, and indicated that where payments were being made, in more than 50% of cases, households were forced to make cuts to other household essentials or incur debts in order to pay the rent.[98] These essentials included energy for heating and lighting and adequate food.[99] Some households report having skipped meals to pay rent since the policy came into effect.[100]

75. The size criteria do not adequately meet the needs of people living in poverty, particularly those of disabled people. Legal challenges have been brought by disabled children who need overnight care, disabled couples who cannot share a room, disabled people who have made adaptations to their properties, victims of domestic violence in the Government sanctuary scheme and separated adults with shared care of children. These are awaiting the outcome of a case heard in the Supreme Court in March 2016.[101]

76. In mitigation, the Government has increased funding for discretionary housing payments (DHPs), which can be paid by local authorities to tenants to top up shortfalls in rent.[102] However, there is no assurance that a DHP will be granted. DHPs are not designed to be a long term solution and cannot be relied on to cover the size criteria shortfall. Research conducted by Shelter, highlighted the inadequacies of the DHP application

[96] DWP, *Housing Benefit: Size criteria for people renting in the social rented sector*, June 2012; https://www.gov.uk/Government /uploads/system/uploads/attachment_data/file/220154/eia-social-sector-housing-under-occupation-wr2011.pdf.

[97] Joseph Rowntree Foundation, *Housing benefit size criteria: impacts for social sector tenants and options for reform*, June 2014, p. 4; https://www.jrf.org.uk/report/housing-benefit-size-criteria-impacts-social-sector-tenants-and-options-reform#jl_downloads_ .

[98] Department for Work and Pensions, *Evaluation of Removal of the Spare Room Subsidy: Final Report* (2015) pp. 17 and 69–72.

[99] Ibid, pp. 70–71.

[100] Ibid.

[101] See *R (on the application of Rutherford and another) v Secretary of State for Work and Pensions* UKSC 2016/0029.

[102] DWP, *Housing Benefit Circular*, HB S1/2016, 4 February 2016; https://www.gov.uk/Government /uploads/system/uploads/attachment_data/file/497986/s1-2016.pdf

process with claimants not being informed of the DHP or how to apply with over half of applicants being refused 'despite facing hardship and imminent destitution'.[103]

Household benefit cap

77. The benefit cap was first introduced in the Welfare Reform Act 2012, capping the total amount of benefits that a workless family could receive at £26,000 per annum (£18,200 for households without dependent children).

78. The benefit cap breaks the link between assessed need and entitlement, as 'capped' families will receive less than Parliament – in setting benefit levels for the individual benefits to which the family is entitled – has otherwise decided is essential to meet their subsistence needs (for example, it makes no reference to the number of children in a household). To date, the cap has had a disproportionate impact on lone parents, children, and Black and Minority Ethnic (BME) groups.[104]

79. Families can only escape the cap by entering work, yet a significant proportion of those capped would otherwise not be expected to find work in order to receive benefits, due to disability or caring responsibilities.

80. Evaluations of the current benefit cap found that 35% of affected households spent less on essentials as a result of the cap, and that 42% of households with a limiting health problem or disability cut back on essentials.[105] In-depth interviews with a sample of affected families found that the majority had cut back on spending on food, children's

[103] Shelter, *DHP (Dysfunctional Housing Payments)*, April 2016, http://blog.shelter.org.uk/2016/04/dhp-dysfunctional-housing-payments/

[104] DWP, Benefit cap: number of households capped to February 2016, 5 May 2016; https://www.gov.uk/Government /statistics/benefit-cap-number-of-households-capped-to-february-2016 ; and DWP, Welfare Reform and Work Bill: Impact Assessment for the benefit Cap, July 2015; http://www.parliament.uk/documents/impact-assessments/IA15-006.pdf.

[105] DWP, Post-implementation effects of the Benefit Cap (wave2) survey, December 2014; https://www.gov.uk/Government /uploads/system/uploads/attachment_data/file/386198/rr894-post-implementation-effects-of-benefit-cap-wave-2.pdf.

activities, replacing household items, communication and socialising. Some had missed meals, been unable to heat their home adequately or pay rent and household bills.[106]

81. Comparison of the cap with the UK Minimum Income Standard (MIS)[107] shows that a couple with three children, renting a three-bedroom house for £300 per week in London, will receive benefits estimated at between 20 and 30% of their actual needs under the reduced cap. A similar family renting a property for £150 a week outside London will receive benefits worth only around 40% of their needs. Even without the cap, these families would only receive benefits meeting between 50 and 60% of their needs: out-of-work benefits are already set at subsistence levels, and reducing them further risks **severe impacts on living standards**.[108]

82. Using the Government's own figures, the respected Institute for Fiscal Studies concluded in 2014 that "the large majority of affected claimants responded neither by moving into work nor by moving house."[109]

83. In March 2015, UK Supreme Court judges criticised the Government's benefit cap for breaching the UN Convention on the Rights of the Child. However, the Court declined to overturn the controversial policy, leaving the issue to be settled "in the political, rather than the legal arena".[110]

84. The Government has responded by using Welfare Reform and Work Act 2016 (WRWA) to reduce the cap further (see below in response to **LOI 15**)

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[106] DWP, In-depth interviews with people affected by the Benefit Cap, December 2014; https://www.gov.uk/Government /uploads/system/uploads/attachment_data/file/385901/rr895-benefit-cap-indepth-interviews.pdf.

[107] The 'Minimum Income Standard' (MIS) was developed by a team at the Universities of Loughborough and York and is based on a minimum 'basket' of goods and services, which members of the public believe should be covered by a household budget to achieve a minimum socially acceptable standard of living. The MIS is updated each year for price inflation, and the contents of the basket are updated periodically. MIS is adjusted for different household types (e.g. with or without children, children of different ages) and sizes. http://www.lboro.ac.uk/research/crsp/mis/.

[108] Donald Hirsch, *The Cost of a Child in 2015* (CPAG, 2015); http://www.cpag.org.uk/sites/default/files/CostOfAChild_2015.pdf.

[109] Carl Emmerson and Robert Joyce, *Coping with the Cap* (IFS, December 2014); http://www.ifs.org.uk/publications/7482.

[110] *R (on the application of SG and others (previously JS and others) v Secretary of State for Work and Pensions* [2015] UKSC 16.

Council tax benefit

85. The WRA 2012 abolished council tax benefit, which has been replaced with local authority-run schemes for council tax reduction. This was accompanied by a 10% cut in central Government funding. The Government's stated objective for the policy was to "reinforce local control over council tax while, at the same time, saving £480 million a year".

86. The legislation allowed local setting of priorities but fully protected qualifying pensioners, which means working-age taxpayers in poverty shoulder a greater proportion of the funding shortfall. Subsequently, 71% of local authorities in England have introduced minimum payments for households that were previously 100% exempt from the tax - namely the poorest households. Subsistence benefits do not incorporate the need to pay council tax. Council tax arrears, court summonses and referrals to bailiffs have increased over the same period.[111]

Localisation of crisis provision

87. The WRA 2012 abolished crisis loans and community care grants. These were loans and payments, made by the DWP as part of the Social Fund, in order to help people on low incomes deal with emergencies, support vulnerable people to resettle or remain in the community, and ease exceptional pressures on families.

88. In their place, in 2013-14 the Government provided funding of £171 million to local authorities in England to deliver local welfare assistance schemes. This funding was cut to £74 million 2015-16 and no further funding has been announced for the 2016-17 local Government settlement.[112]

89. There is no statutory duty on local authorities to introduce a local welfare scheme or guidance on how the schemes should be operated and there is no ring fencing. An increasing number of local authorities have responded to the cut in funding by abolishing their schemes entirely or provide it support in kind rather than cash. Some local authorities will only provide support to those who have lived in their area for a number of years which can restrict availability for women fleeing domestic violence, and

[111] Sam Ashton, *A new poll tax? The Impact of the Abolition of Council Tax Benefit in London*, (CPAG, July 2014); http://www.cpag.org.uk/sites/default/files/A%20new%20poll%20tax_0.pdf .

[112] House of Commons Work and Pensions Committee, Fifth Report of Session 2015–16, *The Local Welfare Safety Net*, HC373 (2016) pp. 30-31.

other geographically mobile people such as gypsies and travellers, people leaving care and prison leavers.[113]

Recommendation 3 – Article 2(1): Impact of "welfare reform" - impact assessment and strategy to eradicate destitution and food insecurity

Just Fair recommends that the State Party:

a. Commissions and publishes an independent cumulative impact assessment regarding the impact of policies and spending decisions introduced since 2010 on the rights to social security and to an adequate standard of living;

b. Commits to monitoring and publishing key data on living standards, including the prevalence of income poverty and food insecurity.

c. Develops and implements a strategy to eradicate destitution and food insecurity.

Recommendation 4 – Article 2(1): Impact of "welfare reform" - sanctions, delays and errors

Just Fair recommends that the State Party:

a. Establishes a broad, independent review into delays, errors and the use of sanctions in the social security system;

b. Affirms that sanctions must not be so severe, or access to hardship payments so inadequate, as to push claimants or their children into destitution or food insecurity;

c. Commits to ensuring adequate funding and universal access to emergency hardship provision, local welfare provision and benefit advances, for those who face errors or delays in benefit payments;

d. Places safeguards for lone parents, claimants with mental health difficulties and other marginalised or disadvantaged groups on a statutory footing.

Recommendation 5 – Article 2(1): Impact of "welfare reform" - Universal Credit

Just Fair recommends that the State Party:

[113] House of Commons Work and Pensions Committee, Fifth Report of Session 2015–16 (n 112) p. 19.

a. Updates the impact assessment of Universal Credit in the light of substantial cuts and changes to the programme;

b. Reverses recent cuts to Universal Credit (work allowance cuts, removal of the first child premium, increased minimum income floor) to restore the poverty-reducing potential of Universal Credit.

Recommendation 6 – Article 2(1): Impact of "welfare reform" - rights of persons with disabilities

Just Fair recommends that the State Party:

a. Raises the level of support for disabled children in Universal Credit to a level comparable with that provided under tax credits;

b. Sets out how it will mitigate any negative impact on the rights of persons with disabilities of policies and spending decisions introduced since 2010 and its plans to progressively realise the economic, social and cultural rights of persons with disabilities.

Recommendation 7 – Article 2(1): Impact of "welfare reform" - child poverty

Just Fair recommends that the State Party:

a. Develops and implements a long-term national plan to end child poverty

b. Restores benefit levels, in particular children's benefits, to a level which provides for a minimum acceptable standard of living.

c. Ensures that the level of (children's) social security benefits is sufficient to meet the cost of living and commit to annual review and uprating at least in line with inflation. End the policy of multi-year freezes and below-inflation uprating.

d. Affirms the right of every child to social security and an adequate standard of living regardless of family size and the circumstances of their parents.

e. End all child benefit caps and limits which deny children this entitlement (i.e. the benefit cap and the two-child rule).

Article 2 (2) – Non-discrimination

LOI 5. Please explain whether the different anti-discrimination legal frameworks available in the State party, including the Equality Act 2010, provide an equal level of protection and access to an independent equality body with regard to all grounds of discrimination, as provided for in article 2 (2) of the Covenant. Please indicate whether the State party envisages adopting comprehensive and harmonized non-discrimination legislation with applicability in all jurisdictions of the State party.

90. See response to **LOI 6** below.

LOI 6. Please explain to what extent the measures taken to combat discrimination in all jurisdictions of the State party, including its overseas territories and Crown dependencies, have improved the enjoyment of economic, social and cultural rights, by marginalized and disadvantaged individuals and groups.

91. The United Kingdom enjoys some of the most comprehensive and far-reaching anti-discrimination and equality law in the world. However, a growing 'implementation gap' has emerged since the Equality Act 2010 came into force, with particular ramifications for the rights of persons with disabilities and women. This section focuses on the rights of persons with disabilities; in respect of the impact on women see response to **LOI 17** below.

Persons with disabilities

92. In March 2016, the House of Lords Select Committee on the Equality Act 2010 and Disability published the findings of its extensive and detailed inquiry 'The Equality Act 2010: impact on disabled people'.[114] Its key findings are that:

a. Despite the Equality Act service providers and those designing buildings are failing to anticipate the reasonable adjustments that persons with disabilities might require.

b. Duty-bearers largely take a reactive approach, striving only to remedy problems once they arise. The Committee advocates a more proactive approach to compliance with the letter and spirit of the Act.

[114] Select Committee on the Equality Act 2010 and Disability, Report of Session 2015–16, *The Equality Act 2010 – the impact on disabled people*, HL Paper 117 (2016).

c. Persons with disabilities are often unaware of their rights under the Act and duty bearers rarely listen to disabled people or take account of their views.;

d. Persons with disabilities face significant barriers in accessing the justice system to enforce their rights, including financial barriers, and there is an absence of alternative dispute resolution.

e. The Westminster Government is not organized to promote the rights of persons with disabilities.

f. In relation to employment discrimination, the Select Committee's findings echo those of Just Fair.

93. The introduction in 2012-13 by the last Government of **fees** for individuals wishing to bring claims before Employment Tribunals has led to a **dramatic decline in the number of disability discrimination claims**. In 2011-12, 7,676 disability discrimination cases were received by Employment Tribunals. In 2014-15 this had declined by 60% to 3,090.[115]

94. **Resources devoted to the promotion and enforcement of equality legislation have declined sharply**. The House of Lords Select Committee on the impact of the Equality Act 2010 on persons with disabilities noted that:

"The budget of the EHRC has dropped by 75% since 2010, first as a result of the 2010 comprehensive spending review, then following a comprehensive budget review in 2012."[116]

Recommendations 8 – Article 2(2): discrimination against persons with disabilities

Just Fair recommends that the State Party:

a. Eliminates or significantly reduces Employment Tribunal Fees which evidence shows have created significant barriers to persons with disabilities and others experiencing discrimination from accessing an effective remedy; and

[115] Ministry of Justice Tribunal and Gender Recognition Statistics January-March 2015.

[116] House of Lords Select Committee on the Equality Act 2010 and Disability, Report of Session 2015–16, *The Equality Act 2010: the impact on disabled people*, HL117 (2016), para 133.

b. Increases the resources invested in the promotion of anti-discrimination and equality measures to duty-bearers and rights-holders and ensures an effective and robust scheme of enforcement.

III. Issues relating to the specific provisions of the Covenant (arts. 6-15)

Article 6 – The right to work

LOI 9. In the light of the Committee's previous recommendations (see E/C.12/GBR/CO/5, para. 20), please provide information on the impact of the measures adopted to address unemployment and how they have improved access to work opportunities among the most disadvantaged and marginalized individuals and groups, including persons with disabilities and ethnic minorities, as well as young people. Please also provide comprehensive data on access to employment, disaggregated by age, sex, ethnic group and region, including in the overseas territories and Crown dependencies.

Persons with disabilities

95. 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 for people with disabilities;[117]

96. Although there has been growth in the numbers of persons with disabilities in employment there are around 30% fewer disabled people than non-disabled people in paid work.[118] 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. These figures compare badly with employment rates for disabled people

[117] Committee on Economic, Social and Cultural Rights, Concluding Observations of the CESCR: United Kingdom of Great Britain and Northern Ireland, the Crown Dependencies and the Overseas Dependent Territories, June 2009 (E/C 12/GBR/CO/5), para. 20. "[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 qualifications, in line with its general comment no. 5 (1994) on persons with disabilities."

[118] Neil Crowther and Liz Sayce, *Taking control of employment support* (Disability Rights UK, 2013)

in other European Union countries,[119] 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.[120]

97. The Government's recent commitment to halve the 30% gap between the employment rate of persons with disabilities and those without is therefore welcome. Equally welcome is the decision of the Government to scrap the poorly performing Work Programme and Work Choice schemes of employment support while increasing investment in the successful Access to Work scheme. The Government has established a new 'Employment, Disability and Health Unit' and is expected to bring forward proposals for a new approach in a White Paper later in 2016.

98. Of concern is the limited budget available for such work, which at £150 million is much less than the potential spend under the Work Programme, and the Government's increasing focus on changing the attitudes and behaviour of disabled people rather than addressing the substantive barriers to employment and the need to engage and support employers.

99. Policy and programmes regarding the employment of persons with disabilities have focused overwhelmingly on 'removing disincentives' to paid employment by reducing the level of benefit payments and on compelling individuals to participate in programmes of activity to prepare them for work and in support of their seeking work. Little attention has been devoted to addressing structural barriers in the labour market that place persons with disabilities at a disadvantage.[121] This includes discrimination as well as workplace harassment.[122]

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[119] European Union, Social Inclusion, Income and Living Conditions Survey (2010).

[120] Crowther and Sayce (n 118).

[121] In 2006, the Government 's Social Security Advisory Committee noted: "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' (Social Security Advisory Committee, 19th Report, August 2005-July 2006 (2006), p 30.)

[122] Cardiff University School of Social Sciences, 'Disabled employees more likely to experience ill-treatment at work', 5 March 2013, reporting on Fevre, Robinson, Jones and Lewis, 'The Ill-treatment of Disabled Employees in British Workplaces', *Work, Employment and Society* 27(2) (2013); Nick

100. In 2013, the Government launched 'Disability Confident' to promote the value of employing persons with disabilities to employers. It is unclear what the precise aims of the programme are or what the programme itself has achieved. A Freedom of Information request in September 2015 established that the scheme enjoyed only 68 active 'partners', the majority of which are large, well-resourced employers, suggesting that the scheme is failing to reach small and medium–sized employers who not only provide the majority of jobs, but who also require the greatest support in meeting their legal obligations and being encouraged to adopt good practices.[123]

101. Although Employment Support Allowance claimants are now subject to strict conditionality regimes and sanctions, there is concern that such claimants are given conditions with which they cannot comply due to their impairment or lack of effective support or meaningful employment opportunities and that it is this lack of compliance that is leading to many having part of their benefit sanctioned.[124] The consequences of such sanctions, which involve benefit payments being withheld, are increased reliance on foodbanks and risk of extreme poverty and destitution (see above at **LOI 4**).

102. The Government's successful Access to Work scheme, which provides support to persons with disabilities and employers with workplace adjustments, equipment and support, has been shown to yield £1.48 in tax revenues to the Treasury for every £1 invested.[125] However, it was reported in February 2015 than most recipients of Access to Work were losing support when their cases were reviewed.[126] In addition, while the Government has announced its intention to introduce a range of welcome measures to enhance the effectiveness of the scheme, including increasing overall spending, it also plans to restrict the value of any award for ongoing support to the equivalent of one and a half times the average salary, or £40,800 per year in October 2015.[127] This restriction

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Coleman, Wendy Sykes and Carola Groom, *Barriers to employment and unfair treatment at work: a quantitative analysis of disabled people's experiences* (EHRC, 2013).

[123] Disability News Service 'DWP exposes IDS 'lies' about success of Disability Confident campaign' (September 2015).

[124] See, for example, Manchester Citizens Advice Bureau, *Punishing Poverty? A review of benefits sanctions and their impacts on clients and claimants* (2013).

[125] Liz Sayce, *Getting in, staying in and getting on: Disability employment support fit for the future* (TSO, 2011).

[126] Disability News Service, 'Most Access to Work recipients "have their support cut after reviews"', 2 February 2015.

[127] Mark Harper MP (2015) Written Ministerial Statement on Access to Work, 12 March 2015.

is likely to have the most significant impact on Deaf users of British Sign Language, who need support from freelance British Sign Language interpreters to enable them to do their jobs.

103. 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.[128]

104. The low skill profile of disabled people is a major barrier to employment,[129] 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. Yet action to improve formal skills and qualifications among persons with disabilities continues to be largely absent from policy and programmes to improve the employment opportunities of persons with disabilities.

Recommendation 9 – Article 6: rights of persons with disabilities

Just Fair recommends that the State Party:

a. Outlines its plans to address the shortcomings of the Work Programme with respect to supporting persons with disabilities to secure sustainable employment.

b. Outlines its plans to engage and support small to medium size employers to employ persons with disabilities

c. Clarifies the intended success measures of Disability Confident in reaching, influencing the behaviour and actions of employers, and to provide details of the impact of the programme to date on enhancing the employment prospects of persons with disabilities.

[128] Nigel Meager and Tom Higgins, *Disability and skills in a changing economy* (UK Commission for Equality and Skills, 2011).

[129] Robert Trotter et al, *Work in progress: Rethinking employment support for disabled people* (Action on Hearing Loss, Mencap, Mind, RNIB, Scope, 2013).

d. Outlines how promotion and enforcement of the disability provisions of the Equality Act fits into its vision for halving the disability employment gap.

e. Explains the steps it will take to mitigate the impact on the jobs and employment prospects of persons with disabilities for whom the cost of support exceeds the upper-limit on Access to Work awards.

f. Outlines its plans to increase the vocational skills and qualifications of persons with disabilities.

Article 7 – The right to just and favourable conditions of work

LOI 10: Please indicate whether the national minimum wage that has been introduced in the State party provides workers and their families a decent living.

105. The 'National Living Wage' for the over-25s, came into effect on 1 April 2016. The Government plans that this should be gradually increased over the next few years until it is over £9 per hour by 2020.

106. There are four features of the National Living Wage that need to be understood.

107. First, the term is **misleading**: despite the title, the measure is a higher minimum wage, rather than a living wage, as it is not set according to estimates of what is required to cover basic costs of living unlike the levels recommended by the Living Wage Foundation.[130] This is contrary to the recognition by the UN Special Rapporteur on the Right to Food,[131] that Articles 6 and 7[132] of the Covenant require that the

[130] The rate was set at £7.20 per hour, which is 50 pence more an hour than under the old National Minimum Wage. This is still well below the figure that Living Wage Foundation, an independent NGO, argues is necessary to cover the basic costs of living, which it sets at £9.40 per hour in London and £8.25 per hour outside of London. These figures are calculated by the Greater London Authority and the Centre for Research in Social Policy at Loughborough University respectively: http://www.livingwage.org.uk/calculation. See also Just Fair Parallel Report, p. 101.

[131] UN Special Rapporteur on the Right to Food, *Mission to Canada* (2012) p. 20 and Parallel Report Section II The Right to Food 2.4.4.

[132] ICESCR, 1966, Art 6 and 7 and Parallel Report Section II The Right to Food 2.4.4.

minimum wage set in legislation should be, at least, a "living wage," that "provides an income allowing workers to support themselves and their families".[133]

108. Secondly, it does **not apply to workers under the age of 25**.

109. Thirdly, the amount that the National Living Wage will add to the pockets of workers **does not match the amounts removed by the cuts to the welfare budget**.[134]

110. Fourthly, crucially, the people who will benefit from the National Living Wage **are not the same people who will lose by reason of the cuts to the welfare bill**.[135] An estimated 4.5 million low-paid employees will see their pay increase. However, after accounting for tax and benefits less than half (45%) of the net income gains from the new wage will flow to households in the bottom half of the income distribution, because many low-paid workers are second earners in middle- or higher-income households.[136]

Recommendation 10 – Article 7: National Living Wage

Just Fair recommends that the State Party:

a. Sets the National Living Wage to a level which adequately reflects the basic cost of living in all parts of the UK, as assessed by the Living Wage Foundation, and enables all individuals to support themselves and their families;

b. Considers extending the protection of the National Living Wage to those under the age of 25 and outlines steps which it intends to take to protect workers against age discrimination that might arise as the result of the existence of different rules for under- and over-25s;

c. Monitors the impact of the National Living Wage on the proportion of women in low-paid work and the gender pay gap, and takes steps to mitigate any adverse impacts identified.

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[133] CESCR, *General comment No. 18 on the right to work* (2005), para. 7 and Parallel Report Section II The Right to Food 2.4.4.

[134] Johnson (n 40) p. 3.

[135] Browne and Hood (n 7) p. 2.

[136] Resolution Foundation, *Higher ground: who gains from the National Living Wage?* (2015); http://www.resolutionfoundation.org/publications/higher-ground-who-gains-from-the-national-living-wage/.

Article 9 – The right to social security

LOI 14. Please clarify what social assistance schemes are available for persons working in the informal economy, as well as for non-nationals, including asylum seekers, refugees and migrants. Please also provide information on whether essential services for rejected asylum seekers are available throughout the State party.

111. There is only limited social assistance available to unregularised migrants living in the UK and access has been further restricted in recent years. Migrants who do not have leave to remain (which includes asylum seekers and refused asylum seekers) are excluded from main-stream social security benefits.[137] Unregularised migrants and asylum seekers **are not permitted to work** and are therefore **entirely dependent** on state benefits to survive

112. For those with leave to remain, a series of habitual residence, past presence and right to reside tests restrict entitlement. Local authorities have limited powers to provide support to vulnerable migrants who have an obstacle to leaving the UK.

113. This leaves the UK in breach of its obligations under Article 9 ICESCR, Article 2(2) requiring equal enjoyment of the right to social security "without discrimination of any kind as to race, colour, nationality or social origin, birth or other status."

Asylum seekers

114. Asylum seekers are entitled to accommodation and basic cash support under s95 of the Immigration and Asylum Act 1999.

115. The rates were initially set at 70% of the rate of Income Support (the main subsistence benefit), with higher rates for children and young people, but have been progressively reduced over time as the link with Income Support has been broken. Rates were frozen between 2011 and 2015. In April 2014, the High Court ruled that the Home Secretary had failed to comply with her duty to meet asylum seekers' essential living needs in setting the rate of support.[138] The Home Secretary subsequently reconsidered the level of support, but decided it should remain unchanged.

[137] S115 Immigration and Asylum Act 1999.

[138] *R (Refugee Action) v SSHD* [2014] EWHC 1033.

116. The current rate of asylum support is £36.95 per person regardless of age. This works out at just over **£5 a day** to pay for food, clothing, toiletries, transport and other essential living needs.

117. A 2013 cross-Parliamentary inquiry into asylum support rates concluded that "the levels of support for asylum seeking families are meeting neither children's essential living needs nor their wider need to learn and develop".[139]

118. Despite these findings In August 2015, the rate for children under 16 was reduced from £52.96 to £36.95. The current rate of £36.95 is the equivalent of around 50% of Income Support or 52.9% of the expenditure level of individuals from households within the lowest decile of income, as compiled by the ONS.[140]

119. These rates are **grossly inadequate** and are plainly incompatible with Article 9 and Article 11.

Refugees

120. Asylum seekers granted refugee status are usually granted leave to remain with entitlement to housing and social security benefits as provided to nationals (such as jobseeker's allowance, child benefit and tax credits).

121. However, those who are disabled and carers are barred from claiming disability-related benefits (i.e. disability living allowance, personal independence payment, attendance allowance and carers allowance) until they have been present in the UK for at least two years.[141] In March 2016, the Upper Tribunal found that this rule discriminates unlawfully against refugees contrary to the EU Qualification Directive and Article 14 of the European Convention on Human Rights.[142] The Government has not yet indicated whether it intends to appeal this decision.

Refused asylum seekers

[139] Children's Society, Report of the Parliamentary Inquiry into asylum support for children and young people (January 2013) pp. 24-25.

[140] Zoe Charlesworth, *An analysis of asylum support rates in respect of children*, report by Zoe Charlesworth, Senior Consultant, (Welfare Reform Club, 2016).

[141] Regulation 2 of the Social Security (Disability Living Allowance) Regulations 1991.

[142] *MM and SI v Secretary of State for Work and Pensions* (DLA)(European Union law: other) [2016] UKUT 149 (AAC)

122. Most asylum seekers whose claims and appeals have been refused are not entitled to any accommodation or support and are at risk of becoming street homeless. The British Red Cross estimates that it assists around 10,000 asylum seekers each year who are in this situation.

123. Asylum seekers with children at the time their asylum claim is refused can currently continue to receive asylum support until the children turn 18.

124. Destitute refused asylum seekers who face a genuine obstacle to return (e.g. they are too sick to travel or are waiting for travel documents to be issued by their own Government s) can claim support under Section 4 of the Immigration and Asylum Act 1999. This takes the form of accommodation provided on a no-choice basis and an "Azure" payment card - many find the stigma of using the Azure card and restrictions on authorised purchases difficult. A report by the Red Cross concluded that the "Azure payment card and section 4 support do not allow refused asylum seekers to meet their basic needs and live with dignity".[143]

125. The Immigration Act 2016 **will substantially restrict** even this limited provision.[144] The Act removes entitlement to continued support for refused asylum-seeking families with children. Section 4 support will also be abolished. Only asylum seekers who present a "genuine obstacle" preventing return will continue to receive asylum support following refusal.[145] The Bill also severely curtails appeal rights against decisions refusing support.

Other migrants

126. Local authorities have a duty to provide accommodation to children under s.20 of the Children Act 1989 where the person responsible for the child is unable to provide the child with suitable accommodation or care. This duty extends to all children regardless of their immigration status. In certain circumstances, local authorities have the power to provide accommodation and basic living needs to destitute children and their families under s.17 and Schedule 2 to the Children Act 1989 and to disabled adults with care

[143] Pauline Carnet, Catherine Blanchard and Jonathan Ellis, *The Azure Payment Card System: the Humanitarian Cost of a Cashless System*, (British Red Cross, 2014) p 8.

[144] Royal assent on 12 May 2016

[145] Schedule 8 to the Immigration Bill as amended in Public Committee if enacted will insert s.95A into the Immigration and Asylum Act 1999; http://www.parliament.uk/documents/commons-public-bill-office/2015-16/compared-bills/Immigration-bill-151118.pdf.

needs under the Care Act 2016. Most migrants are statutorily excluded from claiming this support, unless support is necessary to avoid a breach of human rights or EU law, which generally means they must be destitute and have an obstacle to leaving the UK.[146] The rate and quality of this support varies considerably. A report into accommodation provided to migrant families in London under the Children Act found that "**local authorities are regularly providing accommodation that has a detrimental impact on their physical, psychological and personal development, with long term effects on their life chances**".[147]

Recommendation 11 – Article 9: rights of asylum seekers, refugees and migrants

Just Fair recommends that the State Party:

a. Ensures full protection from destitution for asylum seekers and migrants regardless of status and uprate support for these groups in line with inflation.

b. Ensures equal treatment of the right to an adequate standard of living and health for migrants and asylum seekers.

c. Ends the Azure card payment system because it does not allow refused asylum seekers to meet their basic needs and live with dignity.

LOI 15. Please indicate whether the new proposed reforms to the social security system in the Full Employment and Welfare Benefits Bill will ensure a minimum amount of social assistance benefits that provides an adequate standard of living for the system's beneficiaries and their families.

Context

127. The Full Employment and Welfare Benefits Bill became the Welfare Reform and Work Act 2016 (WRWA).

128. WRWA introduced various reductions in benefit levels and restricts entitlement for out-of-work families and families with two or more children.

[146] Schedule 2 of the Nationality, Immigration and Asylum Act 2002.

[147] Charlotte Threipland, *A place to call home: A report into the standard of housing provided to children in need in London* (Hackney Community Law Centre, December 2015).

129. This legislation follows **five years of actual and real-terms cuts to benefit levels**. For example, child benefit lost 15% of its value between 2010 and 2015 compared to uprating using the Retail Price Index. Furthermore, a couple with two children, earning £600 per week from work and claiming child tax credit, were £513 a year worse off in 2015 than in 2012 due to uprating decisions. [148]

130. Prior to these reforms, the **State Party had already been the subject of criticism by the European Committee on Social Rights** regarding the inadequacy of social security benefits. Reporting in 2014 the Committee declared the United Kingdom not to be in conformity with Article 12.1 of the European Social Charter on the grounds that:

a. the minimum levels of short-term and long-term incapacity benefit is **manifestly inadequate**;

b. the minimum level of state pension is **manifestly inadequate**;

c. the minimum level of job seeker's allowance is **manifestly inadequate**.[149]

131. A report published in April 2016 by the Joseph Rowntree Foundation (JRF), found that **unemployment benefits for the under-25s are substantially below the level required to avoid destitution** whereas the basic rate for those over 25 is **only marginally above it**.[150]

132. As set out above **LOL 4** & **15** (and in the Parallel Report) previous 'austerity' measures have also had a disproportionate impact on the living standards of families with children and on disabled people. In 2014, referring to tax and benefit measures adopted before the introduction of the Welfare Reform and Work Bill, a report published by the Office of the Children's Commissioner in England warned that:

"Children in low income families are at highest risk of not enjoying the right to an adequate standard of living and the cumulative impact of the measures on family income is proportionately greater for lower income families than for higher income

[148] End Child Poverty, *Short Changed: the true cost of cuts to children's benefits* (2015).

[149] 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.

[150] Fitzpatrick et al (n 6). The current rate of JSA is £73.10 for those over 25 and £57.90 for those aged between 18 and 24, see: https://www.gov.uk/jobseekers-allowance. See also Parallel Report Section II The Right to Food 2.5.2.

families', and further that 'the higher proportionate loss of income for households with disabled children calls into question the rights of children to enjoy an adequate standard of living without discrimination on grounds of disability."[151]

133. In many cases, families will fall significantly below their level of need based independent estimates of the minimum income required for an adequate standard of living in the UK.

134. As referred to above, the former Secretary of State for Work and Pensions resigned in March 2016 having concluded that the latest cuts to state benefits are a **"*compromise too far*"** and based on political objectives rather than the national interest.

WRWA reforms

The household benefit cap

135. As set out above in paras. 78-85, the benefit cap was first introduced in the Welfare Reform Act 2012 and capped the total amount of benefits that a workless family could receive at £26,000 pa (£18,200 for households without dependent children). The cap has had a disproportionate impact on lone parents, children, and Black and Minority Ethnic (BME) groups and has resulted in considerable hardship.

136. The 2016 Act lowers the cap to £20,000 pa (£13,400 for households without dependent children), except in Greater London where the cap will be £23,000 pa (or £15,410).

137. Under the reduced cap, around **92,000 more households are expected to be affected** and those already capped will see their income reduced further.[152]

138. Analysis also shows that even a cap of £23,000 would be **insufficient to meet housing costs**, for the majority of families with three or more children, anywhere in the

[151] Howard Reed and Diane Elson, Landman Economics, *An adequate standard of living A child-rights-based quantitative analysis of tax and social security policy changes in the Autumn Statement 2013 and the Budget 2014* (Office of the Children's Commissioner, 2014); https://www.childrenscommissioner.gov.uk/sites/default/files/publications/An%20adequate%20standard%20of%20living.pdf.

[152] DWP, Welfare Reform and Work Bill: Impact Assessment for the benefit cap (n 104).

country. [153] With a £20,000 cap the effect will be worse. Concerns have been raised that even **families with just one child could struggle to find housing** within the cap in parts of the country, including traditionally inexpensive parts of London.[154]

139. Households struggling to meet housing costs are able to apply for Discretionary Housing Payments (DHPs) – DHPS are paid from a limited fund and on a discretionary basis for a short period only.[155]

140. Finally the Act allows Secretary of State to review the cap in the future without further reference to Parliament, and to adjust the level as s/he sees fit, with no reference to living standards but only to 'the national economic situation and 'any other matters that the Secretary of State considers relevant'.

Freeze of certain social security benefits and tax credit amounts for four years

141. The Act freezes most working-age benefits for four years from April 2017. This breaks the link between benefit rates and both prices and earnings, and ensures that the lowest-income households will continue to be impoverished and drift away from the living standards of the mainstream of society.

142. Benefits have always been set at subsistence levels, and a further four year freeze will quickly mean that households are **unable to afford the essentials**. Again families with **children are particularly affected**, as the cost of a child has risen faster than inflation since 2012.

143. The Institute for Fiscal Studies has already observed that 'real cuts to working-age benefits are a key reason behind rising child poverty' in the UK.[156] **It now projects that**

[153] Citizens Advice, *Citizens Impact Assessment: lowering the benefit cap* (2015)

[154] Shelter policy blog, 'The benefit cap: who and where?', 26 May 2015; http://blog.shelter.org.uk/2015/05/the-benefit-cap-who-and-where/.

[155] Sophie Earnshaw, 'Supreme Court to decide on 'unlawful' bedroom tax', Child Poverty Action Group blog, 23 February 2016; http://www.cpag.org.uk/content/supreme-court-decide-unlawful-bedroom-tax.

[156] Institute for Fiscal Studies, *Child and Working-age Poverty in Northern Ireland Over the Next Decade: an update*, September 2014.

child poverty will rise by 50% by 2020 as a result of tax and benefit changes including the freeze.[157]

Changes to child tax credit and the child element of universal credit

144. The Act removes entitlement for third or subsequent children in a family, if born after 6 April 2017, to child tax credits, and regardless of birth date for new universal credit claims. Exceptions only exist for multiple births and children conceived as a result of rape.

145. Evidence shows that many families with three or more children are already struggling to meet their children's most basic needs at current levels of tax credit entitlement. Child benefit and child tax credit between them cover only between 73% and 84% of the cost to a family of a child.[158] **These reforms will mean that a family receives £3,670 less each year for every child after the first two, while their costs will increase by £7-8,000 a year for third and subsequent children**.[159] Poverty rates are already higher among children in larger families (35% of children with two or more siblings, after housing costs, compared with 25% of those with just one sibling, live in poverty).[160]

Changes to Employment and Support Allowance and the limited capability for work element of Universal credit

146. These sections reduce payments to those who are deemed **unfit to work** for health reasons **but who are deemed able to undertake work-related activity** (such as attending training or preparing a CV) to the same level as the benefit paid to jobseekers deemed able to work, representing **a loss of about £30 per week** for almost **500,000 people**.

147. Research has found that the **current level** of benefit for this group is **already failing to meet disabled people's living needs**, which are often higher than for the able-bodied, for reasons including the costs of equipment, higher costs of transport, increased heating needs, the need to wash clothes more frequently, as well as costs of care. A survey of 500 people in the affected group found that 28% had already been unable to afford to eat at some stage while in receipt of the benefit, and 38% had been

[157] Browne and Hood (n 7).

[158] Hirsch (n 108).

[159] Hirsch (n 108).

[160] DWP, Households below average income 1994/1995 to 2013/2014, 25 June 2015, Table 4.5db.

unable to heat their homes. 69% believed that the cut would cause their health to suffer.[161]

148. When this measure was announced in the summer 2015 Budget, the rationale was explained as improving **"work incentives**".[162] However, as explained above, within the structure of ESA, those affected are not deemed "fit for work"; rather, they have been found to have "limited capability for work". They have **greater barriers to work** than those on Jobseekers' Allowance (JSA) and it generally takes them longer to find work than JSA claimants. Justifying the change as designed to improve work incentives implies that the main barrier to employment for these claimants is one of **motivation**, although much research suggests that for most claimants in the WRAG the **main barrier** to employment is their **impairment or health condition**[163] (and employers' unwillingness to employ disabled people and people with serious long term health conditions).

Work-related requirements under universal credit

149. The Act increases **conditionality for lone parents** (and main carers in couples) of children under five. Parents of three and four year olds will be expected to be available for and actively seeking work in order to claim universal credit, and parents of **one and two-year-olds** will have to attend **work-related interviews** and undertake work preparation, respectively.

150. This will put the parents of very young children at risk of sanctioning (reduction of benefits for a period from a few days to over 1,000 days in the most extreme cases) for failing to meet conditions. There have been **many instances of sanctions** being applied either erroneously or for trivial reasons, such as being ten minutes late for an appointment due to transport problems (see above, paras 56-61).

Recommendation 12 - Article 9: adequacy of social assistance benefits

[161] Disability Benefits Consortium, 'Almost 70% of disabled people say cuts to ESA will cause their health to suffer and half may return to work later',27 October 2015; https://disabilitybenefitsconsortium.wordpress.com/2015/10/27/almost-70-of-disabled-people-say-cuts-to-esa-will-cause-their-health-to-suffer-and-half-may-return-to-work-later/.

[162] Summer Budget 2015, HC 264 2015-16, para 41.

[163] Mind, 'Budget benefit cut "insulting and misguided"', 8 July 2015; Catherine Hale, *Fulfilling Potential? ESA and the Fate of the Work-related Activity Group* (Mind and the Centre for Welfare Reform, 2014).

Just Fair recommends that the State Party:

a. Restores the link between the rates of state benefits and the costs of living.

b. Ensures that state benefit levels are adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant.

c. Explains how the reduction in benefits of around £30 per week to the estimated 500,000 people who have been independently assessed as having limited capability for work will result in them securing paid employment.

d. Ensures that the basic level of benefits enables persons with disabilities to enjoy an adequate standard of living, including the right to live independently and to be included in the community.

Article 10 – Protection of the family, mothers and children

LOI 16. Please provide information on the concrete measures that have been adopted to make childcare services available, accessible and affordable throughout the State party. Please clarify to what extent the costs of childcare services prevent disadvantaged groups from accessing them.

151. State provision for childcare consists of a complicated mixture of demand and supply side subsidy: 15 hours of free early education for three and four year olds and for deprived two year olds (to be extended to 30 hours for three and four year olds with working parents from September 2017); a 70% childcare subsidy for low-income working families under tax credits (85% under universal credit); childcare vouchers provided by employers; tax-free childcare providing 20% of childcare costs up to an annual ceiling; and various childcare grants for parents in education.

152. The transition from tax credits to Universal Credit will mean low-income families receive a higher percentage subsidy for childcare costs, and this will be available regardless of hours of work.

153. However, the ceilings on the maximum amount of childcare costs that can be claimed are **inadequate**: they have not been updated for over ten years (while childcare costs

have risen by more than 50%[164]) and they do not rise with the number of children after two nor provide extra for disabled children. In contrast, non-means-tested support through the tax-free childcare scheme rises with the number of children and provides additional funding for disabled children.

Recommendation 13 – Article 10: childcare services

Just Fair recommends that the State Party:

a. Raises the ceilings for childcare costs under tax credits and Universal Credit for families with more than two children, and for disabled children, in line with costs.

b. Develops a long-term plan to ensure universal high quality childcare, starting with: the expansion of free entitlement from the end of maternity leave; increased support for children's centres; and the development of comprehensive 8am-6pm out-of-school and holiday childcare provision.

LOI 17. Please provide information on access to justice and on the protection and support services available to victims of domestic and gender-based violence. Please indicate the number of cases investigated and brought before the courts, and the penalties imposed on the perpetrators.

154. The Government has made very **significant cuts to legal aid** (occasioned by the Legal Aid, Sentencing and Punishment of Offenders Act 2012) which have resulted in access to justice being severely undermined or denied altogether for many women and children who are fleeing abusive situations. They face stringent eligibility criteria including financial and residence criteria as well as rising court fees. There are also fewer quality legal aid solicitors and many law centres (offering free legal advice) have been forced to close due to lack of funding. All of this means women often have to represent themselves, or worse, remain 'trapped' in violent or abusive relationships.

[164] Department for Education, *Review of childcare costs: the analytical report* (2015); https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/479659/151124_Analytical_review_FINAL_VERSION.pdf.

155. The Government has made a pledge to do more to tackle violence against women and girls but this rhetoric has not always been supported by funds or resources. Refuges and women's organisations have closed due to funding being withdrawn or funding contracts not being renewed. Specialist BME services have been particularly vulnerable to this as the **Government has refused to ring-fence funding for BME women's services**.[165]

156. The Joint Committee on Human Rights expressed concern that the number of refuge spaces per head in local authority areas is unknown as this undermined claims that there are sufficient bed space.[166]

157. The Government has made some exceptions for legal aid in certain family law cases involving domestic violence.[167]

158. However, this list of accepted evidence of domestic violence remains restrictive and fails to take account of the fact that some women (particularly BME women) may not have reported domestic violence to any professional or statutory agency due to a combination of powerful religious and cultural constraints and lack of awareness of their rights.

159. The Government has also sought to introduce a residence test in terms of legal aid (to exclude anyone from accessing civil legal aid that cannot provide proof of 12 months' lawful residence in the UK) despite having a profoundly discriminatory effect on victims of gender based violence.

160. Examples of groups of destitute women who may be caught by the residence test and therefore be unable to access legal aid or pay for legal advice and representation privately include:

a. Migrant women who have overstayed their visa and who are subject to domestic violence;

[165] 'Government to ignore pleas to ringfence money for black, Asian and minority ethnic females who have suffered abuse', *The Independent*, 27 February 2016.

[166] JCHR, Sixth Report of Session 2014–15*, Violence against women and girls*, HL Paper 106, HC 594 (2015) paras. 113 and 114.

[167] *R (Rights of Women) v Secretary of State for Justice* [2016] EWCA Civ 91.

b. Women who arrive in the UK under spouse visas who are subject to domestic violence who have been in the England and Wales for less than a year;

c. Women who are subject to transnational marital abandonment otherwise known as 'stranded spouses';

d. Children who are abducted or separated from their mother whilst abroad; e.g. migrant domestic workers;

f. Trafficked women who have not or cannot claim asylum. Again, this does not sit easily with Government rhetoric that they are committed to ensuring access to legal aid for victims of domestic violence.

Recommendation 14 – Article 10: services available to victims of domestic and gender-based violence

Just Fair recommends that the State Party:

a. Ring-fences funds for the provision of statutory services available to BME women who are victims of domestic and gender-based violence;

b. Works with local authorities to collect and monitor data about the number of refuge spaces to ensure adequate provision across the UK, and ensure appropriate funding of that provision.

c. Ensures that the list of specified evidence of domestic violence required to obtain legal aid is culturally sensitive.

d. Exempts victims of gender-based violence from the legal aid residence test.

LOI 18. Please provide information on the experience of the State party in preventing child and forced marriage, as well as in effectively implementing its legislation on female genital mutilation. Please also provide information on the number of cases that have been investigated and prosecuted and explain what specific mechanisms have been established to provide effective protection, support and rehabilitation services for victims of female genital mutilation, including awareness-raising and training for front-line service agencies.

161. Legislation on forced marriage provides both civil and criminal protection to victims (or 'anticipated victims') of forced marriage, whether they are children or adults. Forced

marriage is a criminal offence, as is breaching a forced marriage protection order (a civil injunction which can be granted by the family court). The Forced Marriage Unit within the Foreign and Commonwealth Office seeks to assist victims here and abroad. In terms of female genital cutting (FGC), again this provides protection through both the criminal and civil law. Recent legislation imposes mandatory reporting duties on certain categories of professionals.

162. There have been **very few prosecutions**. The problem is not lack of legislation but the lack of will and resources to bring the legislation into force. The experience of Southall Black Sisters is that statutory agencies still require resources, support and training to properly implement this legislation.

Recommendation 15 – Article 10: preventing child and forced marriage and effectively implementing legislation on female genital cutting

Just Fair recommends that the State Party:

a. **Invests in comprehensive training of state agencies in the implementations and enforcement of the civil and criminal law in relation to child and forced marriage and female genital cutting**.

LOI 19. Please provide updated information on concrete measures that have been adopted to combat human trafficking throughout the State party, including in the overseas territories and the Crown dependencies.

Anti-trafficking measures adopted in the UK since 2008

163. The Council of Europe Convention on Action Against Trafficking in Human Beings (ECAT) was opened for signature on 16 November 2005. The UK signed ECAT in March 2007 and ratified it on 17 December 2008. It entered into force on 1 April 2009.

164. The State party, as a dualist state, did not introduce primary legislation to incorporate the ECAT into domestic law. Instead it said that it gave effect to ECAT through non-statutory guidance and the National Referral Mechanism for the Identification of Support of victims of trafficking (NRM) which commenced operation on the same day as the

ECAT entered into force, 1 April 2009.[168] The NRM is not on a statutory footing but operates on the basis of published policies.

165. The State party notified the Group of Experts on Action Against Trafficking in Human Beings (GRETA) (responsible for monitoring the implementation of ECAT) that it "formalised" the ECAT in domestic law through the creation of The State Party did not opt into the EU Residence Permits Directive 2004/81/EC of 19 April 2004 so is not bound by it.

166. The EU Trafficking Directive (Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA on combating trafficking in human beings) entered into force in the UK on 6 April 2013.

167. In July 2011, the State Party notified the European Commission of its intention to be bound by Directive 2011/36/EU. On 14 October 2011, the Commission issued a decision according to which the Trafficking Directive was to apply in the UK.[169]

168. The deadline for transposition of the Trafficking Directive was 6 April 2013. The State Party informed the European Commission (consistent with the Ministerial Statement of March 2011) that it was not necessary to introduce any further legislation as existing domestic measures already reflected the UK's obligations under the Directive. That view is not shared by many lawyers or NGOs representing the rights of victims who consider that the UK needs to take steps to give effect to its duties under the Directive.

169. Therefore the position remains that the UK consider existing guidance and not-statutory services cover the obligations in the Directive and the Convention. Practitioners working with victims disagree.

170. Legislation on trafficking and its development has been piecemeal.[170] The Modern Slavery Act 2015 (MSA 2015) received Royal Assent on 26 March 2015. Some of its sections are in force, others are not. It harmonised criminal offences and defences to victims. Section 60 deals with territorial extent. The MSA 2015 did not put the NRM on a statutory footing.

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[168] See GRETA First Evaluation Round Report on the UK, 12 September 2012 (hereafter, 'GRETA Evaluation Report'), p. 6 and para. 16.

[169] GRETA Evaluation Report (n 168) paras. 14-15.

[170] GRETA Evaluation Report (n 168) paras. 18-22.

171. Despite commitments on paper there are serious concerns of non-implementation of the State Party's international trafficking obligations. The key areas of concern that relates to Articles 9, 11 and 12 of the ICESCR are are non-identification, failure to support and the punishment of victims.

172. These failures are well-documented and are not cured by the Modern Slavery Act 2015. In particular the recommendations of the Joint Committee on the Modern Slavery Bill HL[171] were ignored by the State Party.

Failure / Refusal to implement the ECAT or the Directive effectively

173. The Secretary of State for the Home Department (SSHD) has now informed the UK Courts that it is not bound by ECAT, and it does not confer rights on individuals. See *Galdikas & Ors*.[172] This contradicts what the State Party told GRETA in 2012 (above) that ECAT had been "formalised" in the UK through the NRM in 2009.

174. The SSHD has also maintained that the Directive does not have direct effect - see *Galdikas* case and others. But the Courts have recognised that it has direct effect.[173]

Refusal to provide support to victims of trafficking who are conclusively identified.

175. The SSHD has refused to recognize that it has a duty to support victims under Article 11 Directive at the point at which they are identified (and in the UK the end of the NRM). The High Court agrees, finding that support may be provided on an discretionary basis. This can lead to destitution, homelessness, re-trafficking, re-victimisation and re-exploitation.[174]

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[171] Joint Committee on the Draft Modern Slavery Bill, Session 2013-14, *Draft Modern Slavery Bill*, HL Paper 166 HC 1019 (2014).

[172] *R (on the application of) v Secretary of State for the Home Department & Ors (Rev 1)* [2016] EWHC 942 (Admin) (26 April 2016) paras 58 & 66

[173] As a matter of general EU law, certain provisions of Directives can have direct effect in national law if they are clear, precise, and unconditional, and if the deadline for implementation has passed (Case 41/74 *Van Duyn v Home Office*). Provisions of Directives must be incorporated into domestic law in any event, but if they have not, or have not been incorporated properly, individuals may rely directly on those directly effective provisions before domestic courts. The Courts have held that the Directive is directly effective: *Hounga v Allen and another (Anti-Slavery International intervening*) [2014] UKSC 47 [2014] 1 WLR 2889 at para 61.

[174] Human Trafficking Foundation, *Life Beyond the Safe House* (2015).

176. This issue must be urgently addressed and support services made mandatory and adopted in regulations or on a statutory basis.

Non-identification of victims, in particular third country nationals.

Conflicted role of the Home Office tasked with identification and border control

177. There are two Competent Authorities tasked with the identification of victims of trafficking in the UK. The UK Human Trafficking Centre for British and EU nationals and the Home Office (UK Visas and Immigration (UKVI) for third country nationals.

178. Concerns have been raised that this is because UKVI's dual role of immigration control and victim identification is conflicted and/or the system is discriminatory.[175] Disparities in identification rates have been identified – so that of numbers of victims of trafficking referred to the NRM lower numbers of third country nationals have been identified.

179. The Home Office itself has acknowledged this.[176] Though a pilot scheme in selected areas of the UK has commenced, the Home Office retains a decisive role. This ignores the findings of the Joint Committee on Human Rights that the Home Office's primary role of removing illegal migrants conflicts with duty to identify victims of trafficking.

Consequences of non-identification

180. Despite clear obligations under ECAT Art 10 and Directive Art 11 to promptly and correctly identify victims of trafficking, there are routine failures to identify victims. This results in a denial of rights to victims of trafficking, in failures to bring traffickers to justice and can result in further exploitation of victims.

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[175] See Joint Committee on the Draft Modern Slavery Bill (n 171) at paras. 84-89 and in particular its recommendations at paras. 90-91:

> "90. Officials with responsibility for determining immigration claims should not take decisions on modern slavery victimhood. There is an inherent conflict of interest in such an arrangement. The UK Human Trafficking Centre's (UKHTC) multi- disciplinary staffing model is far more appropriate.
>
> 91. The current NRM subjects victims of trafficking to a support and assistance lottery dependent on their nationality and the region where support is offered. We recommend that competent authority status be removed from UK Visas and Immigration (UKVI)."

[176] Review of the National Referral Mechanism for victims of human trafficking (November 2014) (hereafter, 'Home Office NRM Review').

181. Identification is critical and it is the gateway to support, as explained by the Explanatory Report to ECAT:

"[127] Failure to identify a trafficking victim correctly will probably mean that victim's continuing to be to be denied his or her fundamental rights and the prosecution to be denied the necessary witness in criminal proceedings to gain a conviction of the perpetrator for trafficking in human beings."[177]

182. However this duty is being routinely breached. As GRETA recorded in its First Evaluation Report on the UK:

"…,a number of potential victims of trafficking are reportedly detained in immigration detention centres, police cells or prisons. GRETA considers that the British authorities should take further steps to ensure that all victims of trafficking are properly identified and can benefit from the assistance and protection measures contained in the Convention."[178]

"[226] Failure to recognise a victim at the outset can result in him/her being treated as an irregular migrant, detained and/or peremptorily removed from the UK. Much depends upon the access a person has to legal advice and representation to be able to put forward the evidence that he/she has been trafficked and is in need of protection."[179]

183. GRETA has recommended that there should be training of officials to improve victim identification. Lack of training of officials, including front-line and detention centre immigration officers, police, and local authorities, seen as a wider systemic problem.

184. The Home Office NRM Review includes the following:

"We have heard from many people that awareness of the National Referral Mechanism and trafficking is less well established than it should be amongst frontline staff. Far too often a victim is dependent on whom they meet, how well trained those people might be and where in the UK they are.

[177] Council of Europe Convention on Action Against Trafficking in Human Beings, Explanatory Report, paras. 127-128.

[178] GRETA Evaluation Report (n 168) Executive Summary.

[179] GRETA Evaluation Report (n 168) para. 66.

There is evidence that staff employed by public bodies may not recognise victims when they encounter them or may not refer them into the National Referral Mechanism…"[180]

185. Failures by local authorities to spot indicators of trafficking can result in child victims being denied the necessary protection and assistance and can lead to their re-trafficking into further exploitation and severe abuse. A 2012 Parliamentary inquiry[181] highlighted the staggeringly high percentage (60% estimate) of suspected trafficked children in local authority care that go missing, most of whom are likely to have been re-trafficked and are never found.

186. Even where indicators of trafficking are detected and referrals into the NRM are made there can of course be failures in that process that results in a missed opportunity to identify a victim of trafficking.

Detention and punishment of victims

187. As stated above many victims of trafficking are detained and punished as a result of the failure to identify then.

188. The failure to identify victims of trafficking has led to them wrongly being treated as criminals: *R v O*[182] where a young Nigerian girl was wrongly prosecuted because not identified her. The Court of Appeal said "*There was no fair trial. We hope that such a shameful set of circumstances never occurs again*."

189. Unfortunately, those circumstances do persist, with significant numbers of victims not being identified and therefore remaining unprotected in situations of abuse and exploitation. See *L & Ors v The Children's Commissioner for England & Anor*[183] and subsequent cases.

Prioritisation of immigration control over the rights of victims.

190. The State Party has "In the case of the domestic worker's visa, policy changes have unintentionally strengthened the hand of the slave master against the victim of

[180] Home Office NRM Review (n 176) paras. 4.2.1-4.2.2.

[181] The All Party Parliamentary Group for Runaway and Missing Children and Adults and the All Party Parliamentary Group for Looked After Children and Care Leavers, *Report from the Joint Enquiry into Children who go Missing from Care* (2012).

[182] [2008] EWCA Crim 2835

[183] [2013] EWCA Crim 991 (21 June 2013)

slavery".[184] This has been brought about by a change in the immigration rules in 2012 which ties overseas domestic workers to exploitative traffickers/ employers; and which discriminate against diplomatic domestic workers.

191. The Government has again ignored recommendations that the immigration rules should be changed to allow victims to switch employers so that they are not turned into over stayers (irregular migrants) if they escape abusive employers/ traffickers.[185]

Recommendation 16 – Article 10: measures to combat human trafficking

Just Fair recommends that the State Party

a. Incorporate the Council of Europe Convention on Action Against Trafficking in Human Beings into domestic law through primary legislation

b. Provide support to persons who are conclusively recognised as being victims of trafficking following exit from the National Referral Mechanism.

c. Ensure that victims of trafficking are promptly and correctly identified from the moment of first contact with the authorities by having regard to standardised indicators of trafficking (e.g. the ILO indicators).

d. Remove the identification of victims from the Home Office (including under the pilot scheme where the Home Office plays a decisive role).

e. Ensure that victims of trafficking are not detained where there are indicators of trafficking. Deportation shall not be used against victims of trafficking as a result of criminal offences they were compelled to commit as a result of their trafficking situation (Art 26 ECAT, Art 8 Directive 2011/36).

f. Amend the immigration rules on overseas domestic workers and diplomatic domestic workers (in force since April 2012) to allow for switching employers.

LOI 20. Please provide information on cases of human trafficking for sexual exploitation during the reporting period, including the number of cases

[184] Joint Committee on the Draft Modern Slavery Bill (n 171) para. 5.

[185] See Joint Committee on the Draft Modern Slavery Bill (n 171) paras. 223-227 and James Ewin, *Independent Review of the Overseas Domestic Workers Visa* (2015).

brought before the courts and their outcome in terms of remedies provided to victims and sanctions imposed on perpetrators.

192. There are no official statistics to answer this question with respect to the criminal or civil courts.

193. The following attempts to provide some information to answer the question.

Criminal courts

194. The Independent Anti-Slavery Commissioner's Strategy reports:

"*At present very few modern slavery crimes come to the attention of police and criminal justice agencies, and very few modern slavery offenders are caught and convicted. In 2014-15 the Crown Prosecution Service flagged 187 prosecutions as involving human trafficking offences. 130 of these cases resulted in a successful conviction. Data from the Ministry of Justice shows there were 39 convictions in 2014 for slavery and human trafficking offences as a principal offence. These conviction figures must increase.*"[186]

195. The number of prosecutions recorded in the UK does not disaggregate trafficking cases for the purposes of sexual exploitation as opposed to other forms of exploitation such as forced labour.

Civil courts

196. There are no recorded statistics.

197. Of the reported cases, of which we are aware, there has been:

a. one successful civil claim for compensation (outside of the Employment Tribunal) against traffickers for sexual exploitation;[187]

b. one successful claim for damages against the police for failing to investigate trafficking for domestic servitude;[188]

[186] Independent Anti-Slavery Commissioner Strategic Plan 2015–2017 (Presented to Parliament pursuant to Section 42 (10)(a) of the Modern Slavery Act 2015
October 2015), p. 20;

[187] *AT and others v. Dulghieru and another* [2009] EWHC 225 (QB)

c. one case to reach the Supreme Court in Allen v Hounga [2014] UKSC 47 demonstrated the innumerable difficulties for the victim in that case to bring a claim against her traffickers in the employment Tribunal, including all the way to the UK Supreme Court. Case concerned trafficking for the purpose of domestic servitude/ forced labour.

198. This demonstrates the difficulties in bringing civil claims for damages against traffickers because there is no streamlined trafficking tort in the UK. Again the Government refused to introduce such a tort in the MSA 2015.

Recommendation 17 – Article 10: prosecution and conviction of perpetrators

Just Fair recommends that the State Party:

a. Record the number of cases brought before the courts and their outcome in terms of remedies provided to victims and sanctions imposed on perpetrators.

Article 11 – The right to an adequate standard of living

LOI 21. Please clarify how the poverty line is determined in all jurisdictions of the State party, including in the overseas territories and the Crown dependencies, and where it currently stands in relation to the cost of living. Please provide updated disaggregated data on the poverty rate in the State party and information on measures adopted to reduce poverty, particularly among children and the most marginalized and disadvantaged individuals and groups.

Official measures of poverty and their relationship to the cost of living

199. The 2010 Child Poverty Act (recently renamed the Life Chances Act following amendments set out in 2016 Welfare Reform and Work Act) set out four official measures of child poverty, to which targets were attached:

a. Children in relative low income (less than 60% of median household income)

[188] *OOO v Commissioner of Police for the Metropolis* [2011] EWHC 1246 which awarded £5,000 for 12-15 months of pain and anguish caused by the police failure to investigate trafficking under Article 4 of the European Convention on Human Rights.

b. Children in combined low income and material deprivation (less than 70% of median household income and unable to afford adequate essentials)

c. Children in absolute low income (less than 60% of 2010/2011 median income)

d. Children in persistent poverty (in relative poverty for three or more of the last four years)

200. The Welfare Reform and Work Act 2016 commits the Government to continuing to publish data on child poverty against the four measures listed above, **but removes the associated targets and reporting duties.**

201. The headline UK poverty line has historically been set at 60% of median income, net of direct taxes and any social security benefits received and equivalised for family size and composition. An adult couple with no dependent children is taken as the benchmark and for other households, incomes are adjusted using weights: 0.67 for the first adult in a household, 0.33 for a subsequent adult, 0.2 for a child under 14, and 0.33 for a child 15-18.

202. The State Party publishes annual data on equivalised household incomes and poverty rates among children, working age adults and pensioners, disaggregated by region, family composition, employment status and disability in its 'Households Below Average Income' (HBAI) data series. Poverty rates and numbers are calculated on both a before housing costs (BHC) and after housing costs (AHC) basis. The figures for adults and children facing material deprivation are also included.

203. With the exception of the material deprivation measure, **the poverty line is not directly related to the standard of living**. However, since 2008 independent analysis has assessed this relationship by comparing the poverty line with the MIS.

204. The most recent available analysis shows that in 2012-13 the MIS[189] stood at between 67% and 90% of median incomes, before housing costs, and between 56% and 87% after housing costs, depending on family type. For pensioners, the MIS stood at 67% of median incomes BHC and 56% AHC, meaning that the poverty line is a fairly good approximation of a minimum acceptable standard of living for this group. But for working age adults, with or without children, MIS is always over 80% of median income. The 60% median income poverty line is thus set at a level considerably below what the

[189] For an explanation of the MIS, see n 104 above.

public has determined that families need to achieve a decent standard of living. The gap is biggest for lone parents.[190]

Poverty rates

205. Most recent available HBAI data is from 2013/14. The following table gives a breakdown of poverty rates using the 60% median income measure, before and after housing costs, for key groups.

	Poverty rate (BHC)	**Poverty rate (AHC)**
Whole population	15%	21%
All children	17%	28%
Children with a lone parent	19%	41%
Children with two + siblings	22%	35%
Disabled children	18%	30%
All working-age adults	14%	21%
Working-age adults with disabled household member	22%	32%
All pensioners	16%	7%
All individuals, where household head is white	14%	19%

[190] Donald Hirsch, *A minimum income standard for the UK in 2015* (Joseph Rowntree Foundation, 2015); https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/MIS-2015-full.pdf.

All individuals, where household head is Pakistani	40%	46%
All individuals, where household head is black	25%	41%

Measures taken to reduce poverty

206. A primary way in which Government s protect against poverty is through the social security system. As shown above, the UK's social security system is going through a period of unprecedented cuts. The combined effect of tax and benefit policies is projected to increase relative child poverty in the UK by 50% with 18.3% in absolute poverty by 2020-21[191] The IFS also predicts that both **relative poverty and household income inequality** in the UK will increase over the next five years.[192] Working age persons with children in the second poorest decile are the worst effected (see para 29 above).

207. As noted in **LOI 10**, in April 2016, the Government introduced a higher minimum wage for over-25s, termed the National Living Wage, this term is misleading as the level is not based on an assessment of the cost of living and the measure is offset by other changes to the tax and benefits system.

Recommendation 18 – Article 11: measuring and reducing poverty

Just Fair recommends that the State Party:

a. Reinstates the targets and reporting duties contained in the Child Poverty Act 2010;

(See also Recommendation 3 - Impact of "welfare reform": impact assessment and strategy to eradicate destitution and food insecurity).

(See also Recommendation 10 – Article 7: National Living Wage).

(see also Recommendation 12 - Article 9: adequacy of social assistance benefits).

[191] Browne and Hood (n 7).

[192] Browne and Hood (n 7) p. 2.

LOI 22. Please provide information on how the State party ensures that all individuals, in particular members of disadvantaged and marginalized groups, have access to adequate and affordable food. Please also provide information on measures adopted to address food insecurity and to reduce the reliance on emergency food aid from food banks.

The Human Right to Food

208. There is a lack of monitoring and evidence gathering on food security in the UK:[193] There is no rights based food strategy and no legal framework exists to ensure that the State complies with its obligations under the Covenant. The UK fails to recognise the right to food as a human right, declaring during the 2009 CESCR review that ICESCR rights constitute mere declaratory principles and programmatic objectives rather than legal obligations.[194]

Food accessibility - Social Security

209. Historically, food security has been achieved through the social security system. [195] The adequacy of this system has been **undermined in three key ways**.

210. First, levels of various **benefits have been reduced** since 2011, through successive benefit freezes or below-inflation uprating. As set out in **LOI 4 & 15, 21 & 22** reforms have left benefit levels insufficient to meet basis needs, create destitution and are **impermissibly retrogressive**. This is incompatible with Article 9.

211. Second, there is evidence that the recent rise in **benefit sanctioning** as well as delays caused by maladministration have contributed to the rise in hunger in the UK.[196]

[193] DEFRA, *Household Food Security in the UK: A Review of Food Aid Final Report* (2014), p. 59; https://www.gov.uk/Government /uploads/system/uploads/attachment_data/file/283071/household-food-security-uk-140219.pdf. See also Just Fair's Parallel Report, Section II The Right to Food 2.2.1.

[194] CESCR (n 117) p. 3. See also Parallel Report Section II The Right to Food 2.2.1.

[195] CESCR, Fifth periodic reports submitted by States parties under articles 16 and 17 of the Covenant, United Kingdom of Great Britain and Northern Ireland (2007) pp. 39-40; http://tinyurl.com/qgecy25; Submission Section II The Right to Food 2.2.1.

[196] The Sheffield Political Economy Research Institute (SPERI), *Food Bank Provision and welfare reform in the UK* (2014), pp. 1-2; http://speri.dept.shef.ac.uk/wp-content/uploads/2014/01/SPERI-British-Political-Economy-Brief-No4-Food-bank-provision-welfare-reform-in-the-UK.pdf; see also Parallel Report Section II The Right to Food 2.3.3.

The number of sanctions imposed on recipients of Jobseeker's Allowance increased from 279,840 in 2001 to 553,000 in 2013.[197] See paragraphs 56-62 above.

212. Third, the '**safety net beneath the safety net'** – the system of emergency support that steps in when an individual or a household faces a crisis, including one that originates from delay or error in the benefit system – **was substantially reformed** by the Welfare Reform Act 2012, which created short term benefit advances (STBAs) to handle delays, and local welfare assistance schemes (LWAS) to handle discretionary payments. The number of people receiving STBAs is much lower than the number of people receiving the equivalent payment under the old Social Fund. In 2013-14, only 169,000 STBA claims had a positive outcome, compared with 834,500 alignment payments in 2012/13 – an 80% fall. Part of the explanation is that many fewer people are applying for STBAs (313,000 in 2013/14).[198] Unless there has been a sharp reduction in the need or demand for such payments, which seems unlikely in the current climate, this strongly suggests that many potential applicants are either unaware of the existence of STBAs, or are being deterred from applying.

Food accessibility - National Minimum Wage

213. As noted in **LOI 10** in April 2016, the Government introduced what it has labelled 'the National Living Wage' for those over the age of 25; however, the rate is well below the figure that Living Wage Foundation, an independent NGO, argues is necessary to cover the basic costs of living.

Food Adequacy and Food Insecurity

214. The failing of the UK to comply with its obligations under ICESCR to guarantee access to adequate food is manifested in rising levels of malnutrition.[199] The number of

[197] DWP, *Ad-hoc analysis on the number of Jobseeker's Allowance (JSA) sanctions and disallowances* (1 April 2000 to 21 October 2012), 2013; http://tinyurl.com/oub4lnr. See also: DWP, Jobseeker's Allowance Sanctions: how to keep your benefit payment; https://www.gov.uk/Government /publications/jobseekers-allowance-sanctions-leaflet/jobseekers-allowance-sanctions-how-to-keep-your-benefit-payment and Parallel Report, Section 2, 2.5.3

[198] The Government does not routinely publish data on Short Term Benefit Advances, and this information is therefore taken from Freedom of Information requests (FOI 907, FOI 3207, FOI 4003).

[199] UK Government House of Commons, Hansard, Malnutrition, 12 Nov 2013, Column 619W; Malnutrition is a serious condition that occurs when a person's diet does not contain the right amount of nutrients – see NHS Choices, *Malnutrition* (2014);

malnutrition-related admissions to hospital in England has **increased by 74% since 2008-09**.[200] The rise in malnutrition can be seen to **directly correlate** with the rise in use of food banks.[201]

215. The UK further fails to guarantee the right to food (access) by the restrictions to availability of food in parts of the UK. Food scarcity remains common-place among people on low incomes[202] and the expansion of ´food deserts´ (i.e. areas where there is limited local availability of healthy food),[203] has often left the poorest people without access to affordable, healthy food.[204] This runs contrary to the ICESCR requirement that food is available both from natural resources and for sale in markets and shops.[205] Individuals should be able to afford food for an adequate diet without compromising on any other basic needs.[206]

216. The Food Foundation, using a method of data collection developed by the Food and Agriculture Organisation, estimates that **8.4 million people in the UK were living in severely food insecure homes in the UK** in that they did not have enough food of sufficient quality and quantity to allow them to stay healthy and participate in society.[207]

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http://www.nhs.uk/Conditions/Malnutrition/Pages/Introduction.aspx and the Parallel Report Section II The Right to Food 2.7.2.

[200] Hansard, Written Answers, Malnutrition, 12 November 2013, Column 619W.

[201] British Medical Journal, *The rise of food poverty in the UK,* 2013 (BMJ, 2013) p. 347; see also Parallel Report Section II The Right to Food 2.7.2.

[202] Neil Wrigley, *Food Deserts in British Cities* (Economic and Social Research Council, 2004); The UN Special Rapporteur on the Right to Food has also recognised that "food deserts are developing throughout many rich countries, [where] poor neighbourhoods are under served by retailers that provide affordable access to fresh food"; see Just Fair, *Freedom from Hunger: Realising the Right to Food in the UK* (2013), p 8. See the Parallel Report Section II The Right to Food 2.8.

[203] Wrigley (n 202). See also Just Fair, *Freedom from Hunger* (n 202) p. 8; http://tinyurl.com/nbkvftb; Parallel Report Section II The Right to Food 2.8.

[204] Royal College of Physicians of the UK, *Food Poverty and Health: Briefing Statement* (2005), p. 3;http://www.fph.org.uk/uploads/bs_food_poverty.pdf; See the Parallel Report Section II The Right to Food 2.8.

[205] See ICESR Art 11; See also CESCR*, General Comment 12, The right to adequate food (art. 11),* 1999, para 12. See the Parallel Report Section II The Right to Food 2.8.

[206] OHCHR, *The Right to Adequate Food Fact Sheet No. 34* (2010) p. 3; see the Parallel Report Section II The Right to Food 2.2.2.

[207] Taylor and Loopstra (n 5); Patrick Butler, 'More than 8 million in UK struggle to put food on the table, survey says', *The Guardian*, 6 May 2016;

The UK ranked among the top half of European Union states for the levels of food insecurity in 2014, despite having the sixth largest economy in the world.

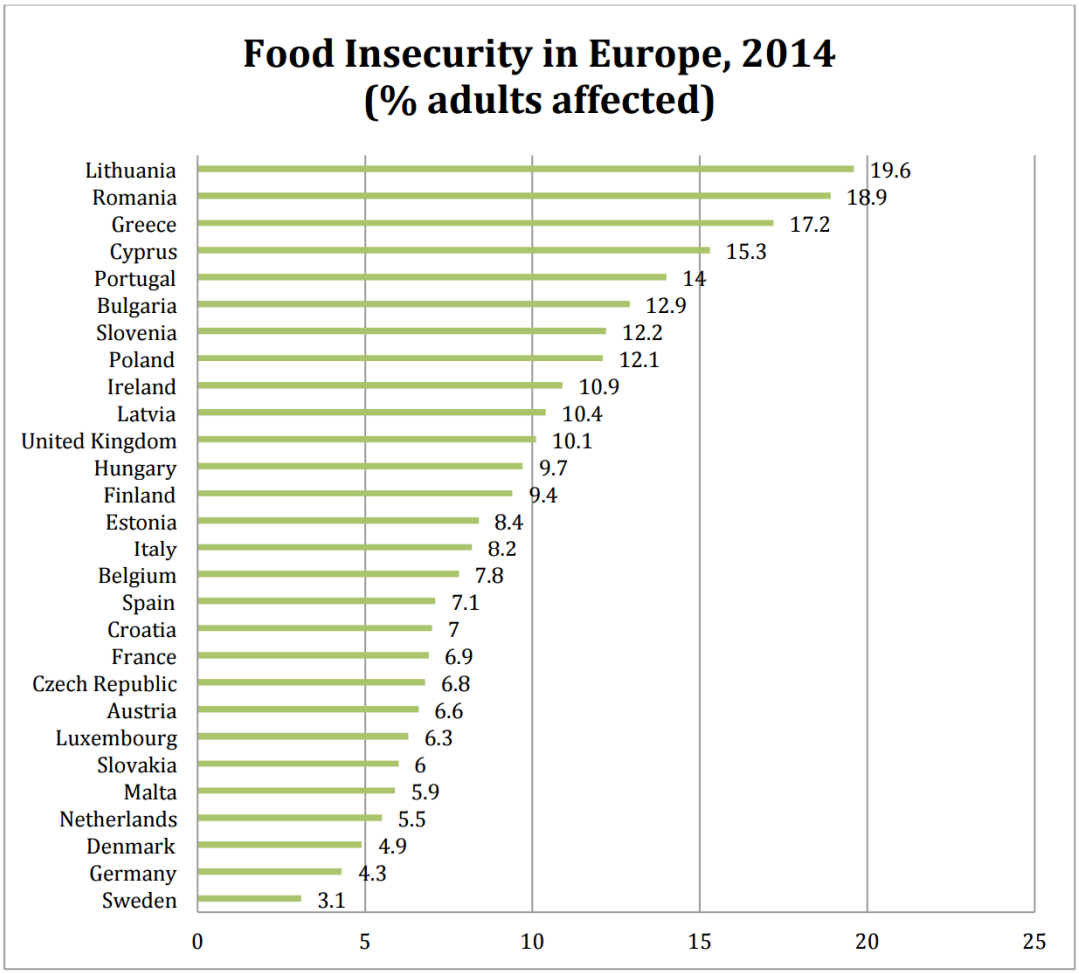

Figure 1 from Food Foundation, Food Insecurity Briefing, May 2016 p. 6

The use of food banks

217. There is real concern that **food banks are, in practice, becoming a substitute** for an adequate social security system.[208] In 2013/14, 1% of food bank referrals were made as a result of the refusal of a crisis loan, 8% were due to debt,[209] and 78% of people

http://www.theguardian.com/society/2016/may/06/more-than-8-million-in-uk-struggle-to-put-food-on-table-survey-says.

[208] Chris Mould, 'Food banks are filling gaps left by jobcentres and the DWP', 18 March 2014, *The Guardian*; http://www.theguardian.com/voluntary-sector-network/2014/mar/18/dwp-jobcentres-food-banks-gaps; see also Parallel Report Section II The Right to Food 2.3.3.

[209] See Trussell Trust, *Latest foodbank figures top 900,000* (2014); Parallel Report Section II The Right to Food 2.5.4.

taking out a payday loan did so to afford food.[210] The latest statistics published by the Trussell Trust show that **1,109,309 people were provided with three days' emergency food supply by its food banks in 2015-16**, representing a 2% increase from the previous year.[211] Although the Government has thus far failed to launch its own inquiry into drivers of food bank usage, research conducted by a coalition NGOs in three food banks found that **benefit delays** accounted for between 28 to 34% of food bank usage and that **benefit sanctions** were responsible for between 19 to 28%, in addition receipt of support from LWAS (11 to 35%), STBAs (2 to 16%), and hardship payments (5 to 18%) were very low.[212] Ineffective administration has been evidenced as another driver of need, in the All-Party Parliamentary Inquiry into Hunger and Food Poverty[213] and by SPER.[214]These findings are also consistent with national administrative data provided by the Trussell Trust.[215]

Disadvantaged groups

218. The Government 's failure ensure that all individuals have access to adequate and affordable food disproportionately **impacts on disadvantaged groups** in breach of ICESCR Art 2(2) and Art 11 requiring equal enjoyment of the right to food for everyone. According to research published by the IFS in 2013, households with young children saw the largest reductions in real food expenditure[216] between 2005–07 and 2010–12.[217]

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[210] Christians against Poverty, *Payday lending customers are typically hungry, cold and worried about eviction* (2013), p. 1; https://capuk.org/downloads/press/paydaylendingPDF.pdf; Parallel Report Section II The Right to Food 2.5.4.

[211] The Trussell Trust (n 4).

[212] Jane Perry,Martin Williams, Tom Sefton, and Moussa Haddad, 'Emergency Use Only: Understanding and reducing the use of food banks in the UK (Child Poverty Action Group, Church of England, Oxfam GB, and Trussell Trust, 2014).

[213] All-Party Parliamentary Inquiry into Hunger in the United Kingdom, Feeding Britain. A strategy for zero hunger in England, Wales, Scotland and Northern Ireland. The report of the All-Party Parliamentary Inquiry (2014)..

[214] See the Parallel Report Section II The Right to Food 2.5.3.

[215] Trussell Trust (n 4); and the Parallel Report Section II 2.3.2.

[216] Real food expenditure is nominal food expenditure on food purchases brought into the home, divided by the food component of the consumer price index; see Parallel Report Section II The Right to Food 2.6.3.

[217] IFS, *Food expenditure and nutritional quality over the Great Recession* (2013), p. 9; see also the Parallel Report Section II The Right to Food 2.6.3.

Data released by the Centre for Economics and Business Research, [218] Netmums,[219] and Gingerbread[220] show that **67% of single parents**, 91% of whom are women, **have cut back on food for themselves** and are more likely than any other group to find themselves in a state of food insecurity, particularly if they have children and already live on a low income.[221]

219. A survey carried out by the Disability Benefit Consortium found that among those **people with disabilities** who have been affected by welfare reforms, as many **as 15% are using food banks**[222] in order to ensure the satisfaction of the basic levels needed to avert hunger. Nine in ten disabled people who were refused Discretionary Housing Payments said they had cut back on food and drink and/or household bills.[223]

220. The **Government 's response** to the large (and vastly increased) numbers using food banks[224] and other forms of emergency food assistance has been variously to deny

[218] Kellogg's and the Centre for Economics and Business Research, *Hard to Swallow, The Facts about Food Poverty* (2013), p. 15 and the Parallel Report Section II The Right to Food 2.6.1.

[219] Netmums, *Feeling the Squeeze Survey Results* (2012), pp. 2 and 5, http://www.netmums.com/files/Feeling_the_Squeeze_Survey_Summary.pdf; see also the Parallel Report Section II The Right to Food 2.6.3. Netmums surveyed 1,924 parents between 9th and 15th February 2012. The survey allowed members to include a comment and 330 chose to do so. In addition, individual stories were invited on a thread in the Netmums Coffee House forum where 110 people posted their thoughts and discussed the issues at the time of writing. The thread was viewed over 10,000 times.

[220] Gingerbread, *Paying the Price Single parents in the age of austerity* (2013), p. 35; http://www.trustforlondon.org.uk/wp-content/uploads/2013/12/full.pdf; see also the Parallel Report Section II The Right to Food 2.6.3.

[221] See the Parallel Report Section II The Right to Food 2.6.1.

[222] Disability Benefit Consortium, *Food banks become lifeline for disabled people as benefit changes hit* (2013); http://disabilitybenefitsconsortium.wordpress.com/2013/12/17/food-banks-become-lifeline-for-disabled-people-as-benefit-changes-hit/; Welfare reforms measured include housing benefit changes and council tax revisions: For further information regarding the impact of austerity and spending cuts on the rights of people with disabilities, please also see Just Fair, *Dignity and Opportunity for All* (2014) and the Parallel Report Section II The Right to Food 2.6.2.

[223] Papworth Trust, *Making Discretionary Housing Payments work for disabled people* (2013), pp. 1-2; http://www.papworth.org.uk/downloads/makingdiscretionaryhousingpaymentsworkfordisabledpeople_130710181752.pdf.

[224] See the Parallel Report Section II 2.3.1; 1,084,604 people, including 396,997 children, received three days' emergency food from Trussell Trust food banks in 2014-15: The Trussell Trust, *Foodbank*

any link with policy, including that on social security, to deny responsibility for monitoring, and to suggest that **demand is fuelled by supply**.[225] In response to policy recommendations from the All-Party Parliamentary Inquiry, reflecting those of the earlier NGO report, the Government undertook to make limited changes to communications around sanctions, including advertising hardship payments more widely. The Feeding Britain Working Party on Benefit Administration, in its December 2015 submission to the All-Party Parliamentary Group on Hunger, found limited evidence of any impact of these activities.[226]

Recommendation 19 – Article 11: Access to adequate and affordable food

Just Fair recommends that the State Party:

a. Systematically collects statistics to monitor food poverty and the use of food banks in the UK; and

b. Conducts an inquiry into the cause of food poverty and the use of food banks within the UK, which looks at how the levels as well as the maladministration of benefits have contributed to food insecurity.

(See also Recommendation 3 – Article 2(1): Impact of "welfare reform" - impact assessment and strategy to eradicate destitution and food insecurity).

(See also Recommendation 10 – Article 7: National Living Wage).

(See also Recommendation 12 - Article 9: adequacy of social assistance benefits).

LOI 23. Please provide concrete information on how current housing policies and welfare reform are contributing to addressing the housing deficit in the

use tops one million for the first time says Trussell Trust (2015); http://www.trusselltrust.org/resources/documents/Press/Trussell-Trust-foodbank-use-tops-one-million.pdf.

[225] See for example Lord Freud, Hansard, House of Lords, 2 July 2013: Column 1071: http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/130702-0001.htm; see also the Parallel Report Section II 2.2.3.

[226] Child Poverty Action Group, 'Feeding Britain Working Party on Benefit Administration: Evidence to the All-Party Parliamentary Group on Hunger' (2015); http://cpag.org.uk/content/evidence-all-party-parliamentary-group-hunger.

State party. Please provide statistical information on the supply of social and affordable housing, especially for the most disadvantaged and marginalized individuals and groups, including middle- and low-income individuals and households, young people and persons with disabilities. Please also provide information on how security of tenure is guaranteed, particularly in the private rental sector, and on the measures adopted to protect tenants from forced eviction.

Section 1: Please provide concrete information on how current housing policies and welfare reform are contributing to addressing the housing deficit in the State party:

221. As a whole, **housing policies** and welfare reform in England **have worsened** the **housing deficit** and made it **more difficult** for individuals to access housing:

Housing Policies A: Lack of Supply of all Types of Housing

222. England faces a stark undersupply of dwellings, and current policies are not adequate to remedy this issue:

a) There have been decades of underproduction and the current undersupply cannot be justified in terms of austerity policies or on account of any recent economic downturn.[227]

b) 250,000 new dwellings are needed each year, double the number currently being built.[228]

c) At current building rates, by 2031 England will be 2.5 million homes short of need.[229]

d) Over the next 5 years, the Government proposes to build 200,000 'starter homes', available for first time buyers under the age of 40, and proposes a range of enabling policies for the private sector such as those to 'unlock homes on brownfield land' as well as demand side subsidies such as the Help to Buy Equity loan scheme.[230]

[227] Just Fair Parallel Report, Section I 1.2.2.d (Supply).

[228] Ibid.

[229] Ibid.

[230] Ibid.

e) However, proposed house building measures only address the housing needs of already relatively economically advantaged individuals or households.[231]

Disinvestment in Social Housing and the 'Right to Buy'

223. In the 1970's state provided or 'social' housing in the UK comprised one third of the housing stock, and housed **more than a third of the population**. Only 3.9 million households now live in social housing.[232]

a. Since 1980, the 'Right to buy has resulted in the **loss of 2 million social housing units**.

b. A proposed 'reinvigorated' right to buy could see a **further 80,000 council houses** lost by 2020.

c. Proposed legislation will see local authorities forced to sell their high-value social housing into the private market and allow social landlords **previously prohibited** from selling their stock to do so at an undervalue. This includes some **1.3 million** social housing households that can exercise the right to buy.[233]

d. There is no requirement that replacement stock will be new social housing.[234]

224. Lack of social housing has pushed more households into an expensive, poor quality, and poorly regulated private rental sector.

Increased Reliance on an Expensive, Poorly Regulated Private Rental Sector

225. The private rental sector (PRS) has grown rapidly, and now forms the second largest form of tenure in England, at 17% of the total households.[235] Although presented as a choice, the overall context of private rentals suggests that the sector provides housing for a number of households, particularly families, for whom a private rental home is a source of anxiety over tenure security, cost, habitability, and quality, rather than a

[231] Just Fair Parallel Report, Section I 1.2.1 (Rapid Change).

[232] Ibid.

[233] Housing and Planning Bill 2016

[234] Just Fair Parallel Report, Section I 1.2.1 (Rapid Change).

[235] Ibid.

sought-after choice.[236] In addition, for those unable to access the housing safety net, the PRS is often the only option.[237]

a. Almost one third **(29%) of households** in the private rental sector are living in housing that is **substandard to the point that it is unsafe or unhealthy**: and

b. Vulnerable groups such as the elderly and unemployed in the PRS face an increased incidence of non-decent living conditions.[238]

c. **Average rent in the PRS is almost double the average rent for houses in the social rental sector**. Private renters face the highest weekly housing costs of any tenure type.[239]

d. **Over a quarter** of those renting in the private sector are dependent on housing benefit to pay their rent.

e. 18% of those households were reliant on housing benefit **despite being in work**.

f. Recent Government statistics show **that one third of private renters** were finding it difficult to pay their rent, with 31% of those households citing the decrease in housing benefit or local housing allowance as a factor, along with 20% citing unemployment, and 25% mentioning other debts and responsibilities.[240]

g. Accessing housing in the PRS normally requires paying agency fees, a tenancy deposit and advance rent. In an already unaffordable market, these fees can prove prohibitive. Moreover, the costs of tenancy deposits required by landlords are rising sharply, up 34% since 2007.[241]

h. Affordability is impacted by short term tenancies: The shorter one's tenancy, the more likely one is to be paying a higher level of rent. With over half of private renters

[236] Just Fair Parallel Report, Section I 1.4.2 (PRS).

[237] Just Fair Parallel Report, Section I 1.4.2 (PRS); 1.4.1.d (Recent Weakening of LHA Homelessness Duties).

[238] Just Fair Parallel Report, Section I 1.4.2.a (PRS, Quality).

[239] Just Fair Parallel Report, Section I 1.4.2.c (Barriers to Accessing the PRS – Affordability).

[240] Ibid.

[241] Ibid.

having lived in their current address for less than two years, lower protection of tenancy both a security of tenure issue and an affordability issue.[242]

'Right-to-rent'

226. The implications of the 'right-to-rent' legislation under the Immigration Act are increased discrimination against people who appear foreign, and against the most vulnerable, and make the PRS more inaccessible and unaffordable.[243]

'Right to rent' checks are resulting in direct discrimination against those who appear foreign:

227. A UK Home Office evaluation found that black and minority ethnic (BME) applicants had been asked to provide more information to landlords in making applications; an independent review found that 42% of landlords said the requirements made them less likely to consider an applicant who does not have a British Passport, 27% were reluctant to engage with those applicants who had foreign names or accents, and that checks were not being undertaken uniformly, but were directed at those who 'appear' foreign.[244]

'Right to rent' checks indirectly discriminate against vulnerable individuals.

228. Many homeless individuals lack identity documents; women fleeing domestic violence may not have been able to take documents with them when they fled.

229. Applicants who cannot provide their documents immediately are further disadvantaged in a competitive rental market.

230. In line with the legislation's stated aim, the Right to Rent further marginalizes and stigmatizes irregular migrants, who remain one of the most vulnerable groups in society, and who will be further driven to street homelessness, where the numbers of recent migrants remain startlingly high.[245]

<u>Housing policies B: Welfare Reform</u>

[243] Just Fair Parallel Report, Section I 1.4.2.c (Barriers to Accessing the PRS – Right to Rent).

[244] Ibid.

[245] Ibid.

231. It is difficult to understand the overall housing situation in England absent an examination of recent, deepening, cuts to social or welfare benefits:

232. **67% of local authorities in England report that welfare cuts since 2010 have increased homelessness in their area**.

233. **Policy factors, particularly ongoing welfare benefit cuts are having a more direct bearing on levels of homelessness than the economic context itself**.[246]

The 'Bedroom Tax' / Removal of the 'Spare Room Subsidy'

234. The recent benefit reductions for households considered to be 'under occupying' social housing, in the form of the 'spare room subsidy' or 'bedroom tax' has put additional pressure on already vulnerable households and individuals, particularly those with disabilities.[247]

235. The Government 's Interim Report evaluating the policy reveals that **20% of affected households have been unable to pay the increased cost of their housing**

236. Where payments were being made, in more than 50% of cases, households were forced to make cuts to other household essentials or incur debts in order to pay the rent. Some households report having skipped meals to pay rent since the policy came into effect.[248]

Cuts to Support for Young Adults

237. Individuals under 35 with no dependants are only able to claim for the cost of a room in a shared house, regardless of whether such accommodation is available or appropriate. A Government review found that 67% of under 25 year olds claiming the shared accommodation rate faced a rental shortfall.[249]

238. Recent budget cuts will strip housing benefit eligibility from those under 21 years of age.

[246] Just Fair Parallel Report, Section I 1.2.2.b (Deepening Cuts to Welfare Benefits).

[247] Ibid.

[248] Ibid.

[249] Just Fair Parallel Report, Section I 1.2.2.b (Cuts to Support for Young Adults).

239. **Private renters aged 16 - 24 were among those who paid more than half their income in rent, even when housing benefit was taken into account**, thus this measure is likely to affect vulnerable households disproportionately and is likely to push more young people into street or hidden homelessness.[250]

Welfare Conditionality and Benefit Sanctions

240. Welfare conditionality and benefit sanctions exacerbate homelessness through rendering housing out of reach of the vulnerable.

241. Sanctions and conditions are increasingly severe: under the Welfare Reform Act (2012) those falling foul of the conditions risk having benefits withdrawn for up to three years.

242. Already homeless individuals are more likely to be sanctioned than the wider benefit claimant population, providing yet another barrier to access to housing for homeless people.[251]

Section 2: Please Provide Statistical Information on the supply of social and affordable housing:

Supply[252]

243. See Housing Policies A: Lack of Supply of all Types of Housing

Affordability[253]

244. All types of housing in the UK are increasingly unaffordable.

Social Housing

a. Large numbers of social housing units have been privatised in recent years and there are inadequate commitments to replace them. The Government now plans to extend the right to buy to 1.3 million social housing units not previously available to buy.

b. Fewer than 4,000 replacements have been built.

[250] Ibid.

[251] Just Fair Parallel Report, Section I 1.2.2.b (Deepening Cuts to Welfare Benefits).

[252] Just Fair Parallel Report, Section I 1.2.2.d (Supply).

[253] Just Fair Parallel Report, Section I 1.2.2.a (Affordability).

c. Those that have been built are not necessarily affordable or social housing.[254]

House Prices

d. House prices in England rose by 200% in the 15 years to 2012. At the same time, median full-time earnings rose by just over 50%.

e. In London, in the year to January 2015, house prices in London rose 13% and the average house price was £510,000.

f. Housing costs in much of the South of England are also high.

g. While housing costs in other areas of England, particularly the economically depressed North East, are lower, this does not necessarily equate to greater affordability. When lower salaries in these regions are taken into account, all but a handful of regions in England are classed as unaffordable, based on average house prices exceeding seven times the average salary.[255]

Private Rental Costs

h. Housing costs in the PRS have risen sharply, and private renters experience the highest weekly rental costs of any tenure type.

i. Average rent in the PRS is almost double the average rent for houses in the social rental sector.[256]

j. 18% of those households were reliant on housing benefit despite being in work.

k. Recent Government statistics showed that one third of private renters were finding it difficult to pay their rent, with 31% of those households citing the decrease in housing benefit or local housing allowance as a factor, along with 20% citing unemployment, and 25% mentioning other debts and responsibilities.[257]

Section 3: Specific Supply and Affordability Issues for the most disadvantaged and marginalised individuals and groups

[254] Just Fair Parallel Report, Section I 1.2.1 (Rapid Change).

[255] Just Fair Parallel Report, Section I 1.2.2.a (Affordability).

[256] Just Fair Parallel Report, Section I 1.4.2.c (Barriers to Accessing the PRS – Affordability).

[257] Ibid.

245. See above Section 1: **"**concrete information on how current housing policies and welfare reform are contributing to addressing the housing deficit in the State party"

Section 4: Specific Supply and Affordability Issues for Middle and low-income individuals and households

246. In an overall context of high house prices, low pay, low savings rates, a high level of household or personal debt, and increasingly stringent restrictions on the housing costs that are eligible for coverage by State benefits, **many middle and low-income households are in a precarious state.**

247. In **2013/14, private renters as a whole spent an average of 52% of income on their housing**.

248. For **20% of all households**, state support is necessary to be able to meet the cost of housing at all.

249. Owner-occupiers are often highly mortgaged. While the UK has not suffered the shocks and repossessions experienced in the housing crisis elsewhere in Europe, many mortgaged households remain vulnerable, particularly those already economically or social disadvantaged.[258]

Section 5: Specific Supply and Affordability Issues for Young people

250. See above *Cuts to Support for Young Adults*

Section 6: Specific Supply and Affordability Issues for Persons with Disabilities

251. In a housing market where supply is low and costs are high, and where key welfare benefits are being deeply cut, the most vulnerable and marginalised are likely to suffer most. Disabled individuals are among these most vulnerable of society's members, and are likely to experience the housing crisis most deeply. Specific issues include the '*Bedroom Tax'/'Spare Room Subsidy'*, above.

How Is Security of Tenure Guaranteed?

252. Especially in the private rental sector, but also with respect to social housing, tenure is increasingly insecure. With the expansion of home ownership since the early 1980s,

[258] Just Fair Parallel Report, Section I 1.2.2.c (Security of Tenure).

and in the overall context of low wages and scant savings, increasing numbers of low and moderate income households are now owner-occupiers. Across all housing types, security of tenure is not robust.

a. Tenants In the private rental sector are subject to short tenancies, poor regulation, and retaliatory or revenge evictions. See further below.

b. Security of tenure is being eroded in the social housing sector, with the proposed scrapping of the right to a life tenancy in the Housing and Planning Bill 2015-16 [259] .

c. Home owners are heavily mortgaged, and many households remain vulnerable, particularly those already economically or socially disadvantaged.[260]

Private rented sector ("PRS")

253. The majority of tenancies in the PRS are regulated by the Assured Shorthold Tenancy (AST). **ASTs set a minimum tenancy period of six months, after which the tenancy can be renewed, or the landlord can terminate at will with two months' notice.** The landlord can increase the rent at the renewal period as he or she sees fit.[261]

254. The short minimum term of six months on Assured Shorthold Tenancies means that tenants have very little security of tenure. In a climate of undersupply (and thus high tenant demand) and with landlords able to demand increasingly high rents, **there is an incentive for landlords to evict sitting tenants in order to raise rents for new potential renters**.[262]

255. Weak security of tenure, and the extreme poor quality of the PRS, where one third of homes are classed as non-decent,[263] has produced a situation of the **retaliatory or 'revenge' eviction**.

256. A retaliatory eviction occurs where a landlord takes **steps to evict a tenant in response to a tenant's request that the landlord repair or improve the property**, or

[259] Just Fair Parallel Report, Section I 1.2.1 (Rapid Change).

[260] Just Fair Parallel Report, Section I 1.2.2.c (Security of Tenure).

[261] Just Fair Parallel Report, Section I 1.4.2 (PRS).

[262] Just Fair Parallel Report, Section I 1.4.2.b (Retaliatory Evictions – A Failure of Security of Tenure).

[263] Just Fair Parallel Report, Section I 1.4.2.a (Quality).

when the tenant has involved the local authority's environmental health department in seeking improvements to the safety or quality of the property.

257. In the absence of official statistics, housing charities estimate that in 2014, **over 200,000 private renters were evicted or served with an eviction notice in apparent retaliation for complaint**.

258. The fear of retaliatory eviction further disadvantages tenants who would otherwise seek repairs or improvements to a property, who may face a stark choice between inadequate, unsafe and unhealthy housing, and the risk of losing their home.

259. The Deregulation Act 2015 is a welcome legislative change, which has brought some safeguards into play.

260. Under the Deregulation Act, where Local Authority has served a landlord with an improvement notice after a tenant has complained to it about poor conditions, the landlord is prevented from evicting the tenant for six months.

261. The legislative change must be strengthened, as it depends upon the Local Authority having adequate resources to inspect premises and serve improvement notices in every case. In the overall context of the under-resourcing of Local Authorities, and the scale of the problem of retaliatory evictions, it is unlikely that these resources will be forthcoming.

Recommendations

Please see the answer to LOI 24 below

LOI 24. Please provide updated data on the extent of homelessness in the State party, disaggregated by sex, region and ethnic group. Please also explain to what extent the measures adopted by the State party have contributed to reducing homelessness and indicate the number of reception facilities, including emergency shelters, hostels and social rehabilitation centres, that are available in the State party.

Section 1: Please Provide Updated data on the extent of homelessness in the State party, disaggregated by sex, region and ethnic group.

A: Street Homelessness/Rough Sleeping is Rising

262. There has been a **55% increase** in rough sleeping numbers between 2010 and 2014.

263. Figures for autumn 2015 indicate an **increase of 30% from 2014**.

264. Outside London, the rise in rough sleeping was estimated at **31%**.

265. More accurate figures are available for London, where rough sleeping doubled over the six years to 2013. The autumn 2014 counts for London indicate a **startling 37% increase over 2013**, while autumn 2015 figures show another significant increase of 27%. 67% of those seen sleeping rough were new rough sleepers.[264]

B: Rates of 'Hidden' Homelessness and Overcrowding Unacceptably High

266. **2.35 million English households contain a 'concealed' additional individual**, with 267,000 concealed couples or lone parents. These numbers represent a rise of 40% since 2008.

267. Concealed households were also more common in black and minority ethnic households, indicating issues with respect to discrimination and attendant higher levels of poverty in these communities.[265]

268. Over 3%, or 701,000 households, in England were overcrowded in 2013.

269. Overcrowded households were most commonly found in the private and social rental sector, at 6% of households in those tenure categories.

270. **The rates of overcrowding in London are the highest in the country, at 8%,** and trends in the south of England continue to move in upwards directions.[266]

C: Numbers at Risk of Homelessness Higher

271. In 2013/14, 280,000 households in England were at risk of homelessness, **a 9% increase on the previous year**. High housing costs, lack of adequate and affordable housing units, low wages, and cuts in state support mean that increasing numbers of families and individuals live in a situation of day-to-day insecurity.[267]

Government Statistics do not Show Real Homelessness Levels

[264] Just Fair Parallel Report, Section I 1.4.1.a (Rising Levels of Street Homelessness)

[265] Just Fair Parallel Report, Section I 1.4.1.c (Rates of Hidden Homelessness are Unacceptably High).

[266] Just Fair Parallel Report, Section I 1.4.1.c (Overcrowding)

[267] Just Fair Parallel Report, Section I 1.4.1.d (Numbers at Risk of Homelessness Higher).

272. The UK Government 's own Statistics Authority has recently reported that statistics on rough sleeping and homelessness in England required 'urgent actions', including 'presenting them in their proper context', as at present there is real concern that they fail to meet 'standards of trustworthiness, quality and value.'[268]

Statutory Homelessness:

273. The **UK Statistics Authority** review considered 'that the Statutory Homelessness statistics are **'potentially misleading**.'[269]

'Gatekeeping' by LHAs, though incompatible with the legislation, can significantly skew the figures of 'homelessness acceptances'.

274. In addition, **those helped informally**, whether by the LHA or by charities or civil society, are **not reflected** in the statistics.[270] Importantly, therefore a drop in homelessness acceptances does not mean that homelessness, or the numbers of those at risk of homelessness, is actually declining.[271]

Rough Sleeping:

275. The **UK Statistics Authority** has recently assessed the **rough sleeping statistical method**, and found it **wanting** in quality, trustworthiness, and **statistical value**, to the extent that the Rough Sleeping Statistics cannot meet the standards required to be considered as national statistics. Rough sleeping statistics present a snapshot of rough sleepers on any given night. They do not represent a total of people sleeping rough in any month or year

276. Rough Sleeping Statistics can be compiled not from a count but an estimate.

277. The statistics do not take into account those street homeless individuals who have been able to find temporary accommodation on the evening in question, nor do they take into account those on the street but who are not 'about to bed down' or 'bedded down' within the definition.

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[268] Just Fair Parallel Report, Section I 1.4.1.d ('Homelessness Acceptances' as Misleading Statistic on Actual Numbers of Homeless'); 1.4.1.a (Rough Sleeping).

[269] Just Fair Parallel Report, Section I 1.4.1.d ('Homelessness Acceptances' as Misleading Statistic on Actual Numbers of Homeless');

[270] Ibid.

[271] Just Fair Parallel Report, Section I 1.4.1.d (A Safety Net with Significant Holes).

278. The UK Statistics Authority found involvement of policy officials in the rough sleeping statistics, which leaves them open to political pressure, and the lack of transparency about the decision making processes around these statistics to be critical to the problems with them.[272]

Section 2: Please explain to what extent the measures adopted by the State party have contributed to reducing homelessness

279. Homelessness is increasing across England, and is at unacceptably high levels. Deep cuts to benefits,[273] rising housing prices,[274] and a weakening legislative housing safety net[275] mean that more and more individuals and households are homeless or at risk of homelessness. Therefore, state measures have failed to reduce homelessness, and in some cases, clearly exacerbated it.

280. In the spring 2016 Budget, the Government announced a welcome £115 million to reduce rough sleeping. However, it is not yet known how or where this money will be allocated, and in the context of continuing austerity measures and cuts to welfare and social services, is unlikely to provide even stop-gap relief for rough sleepers.

Section 3: Indicate the number of reception facilities, including emergency shelters, hostels and social rehabilitation centres that are available.

281. In the face of high levels of street homelessness, a weakening legislative housing safety net, a shrinking social housing sector and an unaffordable private rental sector, **emergency shelters and hostels are severely stretched**. Funding has been cut in recent years, putting further pressure on these services

Emergency Night Shelters at Capacity:

282. Almost half of night shelter providers offering beds to homeless individuals were operating at or above full capacity in 2013-14.

[272] Just Fair Parallel Report, Section I 1.4.1.a (Rough Sleeping).

[273] Just Fair Parallel Report, Section I 1.2.2.b (Deepening Cuts to Welfare Benefits).

[274] Just Fair Parallel Report, Section I 1.2.2.a (Affordability).

[275] Just Fair Parallel Report, Section I 1.4.1.d (A Safety Net with Significant Holes).

283. 72% of providers refused access to their services because all beds were full in 2013, a rise from 47% in 2012.[276]

Fewer Hostel Places Available:

284. 40,000 people in England are using hostels for housing. The number of hostel places available in England, has dropped with 6% fewer beds available in hostels in 2013 than in 2012, and a further 5% fewer accommodation projects for single people available in 2014.

285. There is a drop of 3% in available beds for single homeless persons. This fall, though statistically small, means more people are pushed onto the street, further increasing unacceptable levels of rough sleeping.

286. Hostel accommodation is not available to those who are not eligible for Government welfare benefits, which affects its availability, particularly for recent migrants. It is generally not available to families or couples.[277]

Cuts in Funding for Frontline Homelessness Prevention and Relief

287. Frontline homelessness prevention and support have been under severe financial pressure. Many of these services have been cut, and these cuts are a contributory factor in the rising numbers of rough sleepers in England.

288. Local Authority budgets to support single homeless people had been cut by over a quarter in the three years leading up to 2013-14.

289. Budget pressures, coupled with legislative reforms that weaken local authority duties to the homeless[278] have resulted in inadequate frontline help for homeless individuals, even those who present with clear signs of need and vulnerability.

290. As many as 38% of emergency and temporary accommodation services saw their funding fall from 2012 levels in 2013. Almost half of those services affected have responded to the budget shortfalls by reducing the number of frontline staff.[279]

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[276] Just Fair Parallel Report, Section I 1.4.1.a (Rates of Shelter or Hostel Use).

[277] Ibid.

[278] Just Fair Parallel Report, Section I 1.4.1.d (Recent Weakening of Local Authority Homelessness Duties).

Overreliance on Temporary Accommodation; especially 'Bed and Breakfast' Accommodation in Breach of Government 's Own Standards

291. In December 2014, statistics record the **highest number of households placed in temporary accommodation** by local authorities in the last five years, and a 9% increase on the previous year. Yet, by the 31st of December 2015, this number had risen again, representing a 12% rise on December 2014, and bringing the total to **69,140 households**.

292. There is a heavy reliance on often very poor quality shared facility 'B&B' accommodation. The Homelessness (Suitability of Accommodation) Order 2003 states that B&B accommodation is not 'suitable accommodation' for families unless there is no other accommodation available and, even then, only for a maximum period of six weeks.

293. The number of families with dependent children placed in B&B style accommodation increased from 630 at the end of March 2010 to 5,110 at the end of December 2015 – **an increase of 13% from a year earlier**.

294. Of these, 870 households with children had been in B&B style accommodation for more than six weeks. By December 31st 2015 the **increase was 12%** over the end of the same quarter of 2014.

295. The operation of homelessness legislation means that families in temporary accommodation can be disadvantaged in gaining access to permanent and stable accommodation, as they can cease to be in 'priority need'.[280]

Criminalisation of Rough Sleepers

296. Legislation designed to control 'anti-social' behavior, such as public space protection orders (PSPOs) has recently been **used criminalise rough sleeping** by some Local Authorities.[281] Such prosecutions are punitive. They result in the discriminatory violation of the rights of individuals who often have no other place in which they can safely be, and they endanger a range of other rights of the individual rough sleeper, such as the

[279] Just Fair Parallel Report, Section I 1.4.1.b. (Cuts in Funding for Frontline Homelessness Prevention and Support).

[280] Just Fair Parallel Report, Section I 1.4.1.c (Temporary Accommodation for Homeless Households including 'Bed and Breakfast' Accommodation.)

[281] Just Fair Parallel Report, Section I 1.4.1.a (Criminalisation of Rough Sleepers).

right to be free from cruel and unusual punishment and the right to liberty and security of the person.

The Legislative Safety Net for Homeless and Threatened homeless households Has Holes and has Recently been Further Weakened

297. Local Authorities in England have a statutory duty to house homeless individuals and households.

298. The Housing Act 1996 imposes a duty on Local Housing Authorities (LHAs) to house those who are unintentionally homeless, **and who are in priority need**.

299. Importantly, it covers not only 'roofless' individuals but those in overcrowded or other unsuitable accommodation and thus 'threatened' with homelessness.

300. The threshold for making an application to be considered homeless is low, and, once made, imposes a duty on the LHA, which may include to provide temporary accommodation.

301. The legislation on homelessness can provide good protection for some individuals, particularly those who are found to be unintentionally homeless and within the category of priority need.

302. Despite these positive features, the **legislation remains problematic** as a means of protecting the right to adequate housing.

303. Those people who do not fit the categories of priority need and unintentionality cannot access the housing safety net. Thus in most instances, their only housing options will be in the private rental sector (PRS).

304. Those who have to prove their vulnerability to demonstrate they are in priority need face a significant burden, which the vulnerable are often not well equipped to bear.

305. Single people, and those with complex needs, are a poor fit within the legislative framework and LHAs report that they have 'struggled' to provide for the needs of these groups in many cases.[282]

[282] Just Fair Parallel Report, Section I 1.4.1.d (A Safety Net with Significant Holes).

306. The already problematic legislation under the Housing Act 1996 is further weakened by recent legislative changes

307. The Localism Act 2011 allows LHAs to **discharge their duty to a homeless individual or household by making an offer of accommodation in the private rental sector**, even if the homeless individual does not accept that offer.

308. This significantly weakens the protection of the homeless individual, who was previously able to remain 'statutorily homeless' and gain, for example, temporary accommodation, while waiting to access permanent social housing.

309. LHAs are able to place homeless households **in other geographic areas** under the Localism Act 2011. In December 2015 the rate of increase of placements outside the local authority over the previous year was 17%. This is in potential violation of the location element of the right to housing under ICESCR, if links with family, support or care networks, livelihood and educational opportunities are denied and disrupted.

310. The Localism Act amendments to the Housing Act 1996 represent a regressive step in the realisation of the right to housing.[283]

The English Legislative Regime Falls Well Below the Rights Protection Levels in Wales and Scotland

311. The English legislative regime compares poorly with the legislative regimes in both Scotland and Wales.

312. In Scotland, the Homelessness (etc) Act 2003 makes housing an enforceable right, and the **CESCR recommended the UK Government take it in to account as best practice in its previous Concluding Observations**. The legislation also removes the priority need categories, and places an obligation to house all those found unintentionally homeless. This is coupled with stronger emphasis on prevention and relief.

313. In Wales, the 2014 Housing (Wales) Act imposes obligations on LHAs to take reasonable steps to aid any homeless household within 56 days. Priority need categories are no longer used, and the Welsh Government has committed to end the

[283] Just Fair Parallel Report, Section I 1.4.1.d (Recent Weakening of Local Authority Homelessness Duties).

'intentionality' text for households with children by 2019. The legislation also sets out specific steps LHAs should take, which makes it easier for applicants to challenge the LHA's (in)action.

314. The Welsh and Scottish examples indicate that better legislative models for protecting the right to housing exist within the UK, and that households subject to the English model are significantly disadvantaged in their ability to have their right to housing redressed under the English legislation.[284]

Recommendation 20 – Article 11: reducing homelessness

Just Fair recommends that the State Party

a. Takes immediate steps to end homelessness, ensuring an adequate supply of affordable, permanent, decent and habitable housing, by building and/or facilitating the building of at least 250,000 new homes per year.

b. In the absence of an adequate supply of affordable, decent and habitable housing, takes immediate measures to ensure affordability in the short-term through:

- **the adequate provision of state benefits to those unable to afford housing costs; and**
- **sustained investment in existing affordable housing stock.**

c. Takes immediate measures to reduce the exceptionally high levels of street homelessness, including through:

- **ensuring adequate numbers of hostel, or shelter, or emergency accommodation places;**
- **ensuring adequately resourced frontline support is available to all homeless or threatened homeless individuals and families;**
- **taking immediate legislative measures to strengthen security of tenure across the**
  - **social housing sector; and**
  - **private rental sector ; and**

[284] Just Fair Parallel Report, Section I 1.4.1.d (The English Legislative Regime Falls well Below the Rights Protection Levels in Wales and Scotland).

- **taking policy measures to ensure housing is affordable in line with recommendations a and b above.**

d. Reform legislation to:

- **ensure the statutory housing safety net provides meaningful assistance to all homeless and threatened homeless individuals regardless of 'priority need', and 'intentionality' taking the Welsh and Scottish legislation as best practice;**
- **reinstate the crucially protective link between the discharge of LHA homelessness duties and the provision of social housing to ensure all marginalised or disadvantaged individuals and families remain adequately and securely housed;.**
- **ensure Local Housing Authorities:**
  - **cannot discharge their duties to the homeless through provision of private rental accommodation without the consent of the homeless person;**
  - **discontinue the use of inadequate, temporary accommodation such as bed and breakfast accommodation for homeless and threatened homeless individuals and, particularly, families.**

e. Takes immediate steps to improve and ensure the reliability, trustworthiness and value of the statistics used to measure homelessness with regard to

- **rough sleeping;**
- **statutory 'homeless acceptances'; and**
- **local authority prevention and relief activities.**

Recommendation 21 – Article 11: Private Rental Sector

Just Fair recommends that the State Party:

a. Takes immediate legislative measures to strengthen security of tenure in the private rental sector including through:

- **stronger and better resourced legislative measures to prohibit retaliatory evictions, including through preventing landlords from bringing eviction procedures as reprisal for well-founded maintenance and improvement requests where a property is in a serious state of disrepair or serious hazards are present;**

- **legislative measures to prohibit arbitrary or retaliatory rent increases; and**
- **increasing the minimum tenancy term of private rental agreements to give tenants security and stability.**

b. Take immediate steps to ensure housing in the private rental sector meets the 'decent homes' standard including through:

- **immediate and rigorous monitoring of the safety and quality of housing in the sector; and**
- **taking progressive steps, alone and in conjunction with the private sector, to improve the quality of housing in the sector through new building and improvements to existing housing stock.**

c. Takes steps to ensure affordability in the private rental sector including through:

- **stimulating and creating new housing across tenure types;**
- **providing tenants with immediate legislative protection against arbitrary or retaliatory rent increases; and**
- **preventing private landlords form discriminatorily imposing higher costs on homeless applicants, applicants on benefits, and applicants who appear foreign or have non-straight-forward documentation under 'Right to Rent' checks.**

d. Takes steps to ensure that homeless and marginalised or disadvantaged persons can access housing without discrimination including through:

- **prohibiting discriminatory letting practices against homeless households and households in receipt of housing benefit by private landlords;**
- **providing funding for private rented sector access schemes to assist homeless households and households in receipt of benefit into the PRS.**
- **preventing discriminatory checks in the 'Right to Rent' process;**
- **ensuring that welfare policy particularly cuts to benefits – does not create a barrier to access to housing.**

Article 12 – The right to physical and mental health

LOI 26. Please provide updated statistical information on how the implementation of the Health and Social Care Act 2012, and the Equality Delivery System in England and the Healthcare Quality Strategy for the National Health Service in Scotland have contributed to reducing inequality in access to health-care services. Please provide additional information on measures taken to ensure the accessibility and affordability of health-care services for all individuals and groups, including migrants, asylum seekers and refugees, as well as Gypsies and Travellers.

Surcharges for migrants

315. The requirement of "ordinary residence" under section 39 of the Immigration Act 2014 subjects all those who do not have indefinite leave to remain in the UK to a **healthcare surcharge of £200 per year** (£150 for students).[285] This **includes** people **currently living and working in the UK with limited leave to remain**.[286] This has removed access to free healthcare for those with limited leave to remain in the UK. The NHS is therefore failing to comply with its statutory duties under the Health and Social Care Act 2012 to "have regard to the need to reduce inequalities" in access to and outcomes achieved by services.[287]

The Cost Recovery Programme

316. The Migrant and Visitor Cost Recovery Programme bills chargeable patients at 150% of the standard NHS tariff.[288] Undocumented migrants comprise the largest category of 'chargeable visitors' to the UK.[289] Considering that undocumented migrants **do not have the right to work** or to access state benefits, this is a **considerable hurdle** in the achievement of equal access to healthcare.[290] Furthermore, although certain groups are

[285] Department of Health, *Visitor & Migrant NHS Cost Recovery Programme Implementation Plan 2014–16* (2014), p. 22.

[286] Joint Council for the Welfare of Immigrants, *Immigration Act 2014 - summary provisions*, p. 6, at: https://www.jcwi.org.uk/sites/default/files/Immigration%20Act%202014%20Summary%20Provisions.pdf; and Section 3.3.1 of the Parallel Report, pp.125-126.

[287] Health and Social Care Act 2012, s.4.

[288] Department of Health (n 285) para. 85.

[289] Maternity Action, 'Maternity Services for undocumented migrants in the UK compared to EU provision' (2015), p. 1

[290] Section 3.4.1 of the Parallel Report, pp.128-132.

exempt from all charges, including asylum seekers, refugees and victims of trafficking,[291] often these **exemptions do not work in practice**. For instance, the exemption for victims of trafficking only applies to those formally accepted as victims or potential victims by the National Referral Mechanism system.[292] However, not all victims of trafficking are referred through the NRM,[293] and therefore not all will necessarily be able to access the healthcare that they need.

317. **Charges deter people with little or no money from accessing healthcare**,[294] even where there is no ground for refusing their treatment.[295] Furthermore, the complexity of the system discourages many of the most vulnerable migrants from seeking "timely and effective care."[296]

318. In contrast, in 2015 **Northern Ireland widened the categories of migrants who can receive free primary and secondary healthcare**, providing all asylum seekers with entitlement to free healthcare regardless of the status of their asylum claim.[297]

319. In light of the access issues identified above it is recommended that the United Kingdom **desist from pursuing or issuing National Health Service charges against undocumented migrants that are genuinely without funds**.

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[291] Department of Health, para 100; and Section 3.3.2 of the Parallel Report, Pp.127-128.

[292] Anti-Trafficking Monitoring Group, *Wrong kind of victim? One year on: an analysis of UK measures to protect trafficked persons* (2010); http://www.antislavery.org/includes/documents/cm_docs/2010/a/1_atmg_report_for_web.pdf.

[293] Serious Organised Crime Agency, *A Strategic Assessment on the Nature and Scale of Human Trafficking in 2012* (2013), para 8.

[294] Department of Health, Sustaining services, ensuring fairness: Government response to the consultation on migrant access and financial contribution to NHS provision in England (2013), para. 54.

[295] Doctors of the World, *Experiences of Pregnant Migrant Women receiving Ante/Peri and Postnatal Care in the UK: A Doctors of the World Report on the Experiences of attendees at their London Drop-In Clinic* (undated), p.9; http://b.3cdn.net/droftheworld/5a507ef4b2316bbb07_5nm6bkfx7.pdf.

[296] Hiam L., Mckee M., 'Making a fair contribution: is charging migrants for healthcare in line with NHS principles?' *Journal of the Royal Society of Medicine* (2016).

[297] Provision of Health Services to Persons Not Ordinarily Resident Regulations (Statutory Rules of Northern Ireland) 2015.

Barriers to accessibility of healthcare

320. A person does not need to be "ordinarily resident" in the country to be eligible for NHS primary medical care[298] through a General Practitioner (GP). **However, this safeguard is not effective in practice**. Research carried out by Doctors of the World (DOTW) in 2015 shows that **39%** of the 849 attempts made by DOTW to register vulnerable patients with a GP **were wrongly refused**,[299] with 13% of refusals resulting specifically from an individual's immigration status. Of the refusals, 39% were due to lack of identification and 36% because of lack of proof of address. This goes directly against the standard operating principles set out by the NHS, under which these factors are not reasonable grounds for refusing registration.[300]

321. **Questions about an individual's immigration status further deter migrants** and asylum seekers in this respect, since most fear being reported to the Home Office. For 11% of patients seen by DOTW, the fear of being arrested was sufficient to stop them from accessing healthcare,[301] while one in five pregnant migrant women feared being arrested if they tried to see a doctor.[302] This is particularly concerning, since migrant women are more likely to suffer from poor pregnancy outcomes.[303] Over a third of the women had previously been refused registration with a GP.[304]

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[298] NHS England, *Patient Registration Standard Operating Principles for Primary Medical Care (General Practice)* 2015, para. 3; https://www.england.nhs.uk/commissioning/wp-content/uploads/sites/12/2015/11/pat-reg-sop-pmc-gp.pdf; website of the British Medical Association, Patient registration for GP practices; http://www.bma.org.uk/support-at-work/gp-Practices/service-provision/patient-registration-for-gp-Practices.

[299] Doctors of the World, *Registration refused: A study on access to GP registration in England* (2015), p.1; https://www.doctorsoftheworld.org.uk/files/RegistrationRefusedReport_Mar-Oct2015.pdf.

[300] NHS England (n 298) para 2.1.

[301] Doctors of the World, *Access to Healthcare in the UK* (2015), p. 13; https://www.doctorsoftheworld.org.uk/files/2015-09-18_DOTW_Access_to_healthcare_final.pdf.

[302] Doctors of the World, (n 295) p. 5.

[303] MBRRACE-UK, *Saving Lives, Improving Mothers' Care Surveillance of maternal deaths in the UK 2011-13 and lessons learned to inform maternity care from the UK and Ireland Confidential Enquiries into Maternal Deaths and Morbidity 2009-13* (2015), pp. 14-15; https://www.npeu.ox.ac.uk/downloads/files/mbrrace-uk/reports/MBRRACE-UK%20Maternal%20Report%202015.pdf.

[304] Doctors of the World, (n 295) p. 5.

Gypsies and Travellers

322. Some Gypsies and Travellers face similar barriers to registering with a GP practice because they do not have a permanent address or because they cannot prove that they have a permanent address when living on an unauthorised site.[305] Further, the lower levels of literacy among some Gypsy and Traveller communities mean that written communications may be a further barrier to access.[306]

323. Currently, Gypsies or Travellers are not included in the NHS national ethnic monitoring system because NHS organisations rely upon the ethnic minority categories contained within the 2001 census, which did not recognise Gypsies and Travellers as a separate group, whereas the 2011 census does.[307] This goes against the Department of Health's internal guidance on ethnic monitoring [308] and exacerbates the lack of comprehensive data on the health needs of Gypsies and Travellers.[309]

Recommendation 22 – Article 12: accessibility and affordability of health-care services

Just Fair recommends that the State Party

[305] Department for Communities and Local Government , *Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers* (2012), para 4.2; https://www.gov.uk/Government /uploads/system/uploads/attachment_data/file/6287/2124046.pdf; and Royal College of General Practitioners: *Improving access to health care for Gypsies and Travellers, homeless people and sex workers* (2013), p. 21; Equality and Human Rights Commission, *Inequalities experienced by Gypsy and Traveller communities: A review* (2009), p. 52.

[306] Welsh Government , *Travelling to Better Health Policy Implementation Guidance for Healthcare Practitioners on working effectively with Gypsies and Travellers* (2015), para. 24; http://gov.wales/docs/dhss/publications/150730guidanceen.pdf.

[307] NHS England, *Monitoring Equality and Health Inequalities: A Position Paper* (2015); https://www.england.nhs.uk/wp-content/uploads/2015/03/monitrg-ehi-pos-paper.pdf.

[308] DH/Health and Social Care Information Centre/NHS Employers, *A Practical Guide To Ethnic Monitoring in the NHS and Social Care* (2005), para. 42.

[309] The Traveller Movement, 'Traveller Movement note on inclusion of Gypsies and Irish Travellers in the NHS data dictionary' (2014), p. 3; http://www.travellermovement.org.uk/wp-content/uploads/2014/11/Traveller-Movement-note-on-inclusion-of-Gypsies-and-Irish-Travellers-in-the-NHS-data-dictionary-March-2014.pdf; Centre for Health Services Studies, *Preparation study of gypsy/traveller health needs* (2010), p. 1; https://www.kent.ac.uk/chss/docs/Gypsy_Traveller_report_May_2010.pdf.

a. Provides guidance to all GP practices on primary care entitlement and registration;

b. Desists from pursuing or issuing National Health Service charges against undocumented migrants that are genuinely without funds.

c. Brings NHS ethnicity data categories in line with the most recent Census categories, thereby including Gypsies and Travellers and allowing for proper health data to be aggregated.

LOI 27. Please indicate what steps are being taken to ensure the availability and accessibility of adequate mental health services throughout the State party, including in the overseas territories and Crown dependencies. Please also provide information on the legal framework in place to prevent involuntary hospitalization and the use of involuntary medical treatment in the State party.

Inadequate services

324. The Health and Social Care Act 2012 imposed a new legal duty on the NHS to deliver 'parity of esteem' between mental and physical health, with the Government pledging to achieve this by 2020.[310] However, the Five Year Forward View published by the Independent Mental Health Taskforce in February 2016 **revealed real concerns** with mental health funding and provision. Its findings showed that:

a. **Three-quarters of people with mental health problems receive no help at all**.[311]

b. A large number of those who do receive help do not have access to the full range of interventions recommended by NICE (the National Institute for Health and Care Excellence), such as medication and therapy.[312]

c. Only **15% of adults have their psychological therapy needs met.**[313]

[310] Department of Health, *The Mandate: A Mandate From the Government to the NHS Commissioning Board: April 2013 to March 2015* (London, UK: Department of Health, November 2012).

[311] The Independent Mental Health Taskforce to the NHS in England, *The Five Year Forward View for Mental Health*, February 2016, p. 8; https://www.england.nhs.uk/wp-content/uploads/2016/02/Mental-Health-Taskforce-FYFV-final.pdf.

[312] Ibid.

d. There is **no consistency in the provision of service**, with waiting times ranging from just over six days to a near half-year wait across different areas of the country.[314]

e. Where services are accessed, studies show a deterioration in both patient and staff views of in-patient mental health services.[315]

325. Furthermore:

a. **One in five are waiting more than a year to access psychological therapies**, with many contemplating or attempting suicide in the intervening time.[316] NHS figures released in January 2016 showed a **21% rise in the number of annual deaths amongst mental health patient**s in England in just three years, while the number of **attempted or actual suicides soared by 26% between 2012-13 and 2014-15**.[317] Suicide levels in prisons across England and Wales are at their highest for at least 25 years.[318] In 2003-13, 15% of patient suicides occurred within three months of discharge from hospital,[319] highlighting inadequate support after discharge.[320]

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[313] Ibid, p. 14.

[314] Ibid, p. 8.

[315] Csipke E., Williams P., Rose D., Koeser L., McCrone P., Wykes T. and Craig T., 'Following the Francis report: investigating patient experience of mental health in-patient care', *The British Journal of Psychiatry* (2016), p. 5.

[316] We Need To Talk coalition*: Getting the right therapy at the right time* (undated), p. 18; https://www.mind.org.uk/media/280583/We-Need-to-Talk-getting-the-right-therapy-at-the-right-time.pdf.

[317] Denis Campbell, '*Spike in mental health patient deaths shows NHS 'struggling to cope'*, *The Guardian*, 26 January 2016; http://www.theguardian.com/society/2016/jan/26/rise-mental-health-patient-deaths-nhs-struggling-to-cope.

[318] Ministry of Justice, *Safety in custody quarterly bulletin: March 2016* (2016); https://www.gov.uk/Government /uploads/system/uploads/attachment_data/file/519425/safety-in-custody-march-2016.pdf.

[319] The University of Manchester, National Confidential Inquiry into Suicide and Homicide by People with Mental Illness (2015), p. 27.

[320] NICE, Mental health transitions: consultation draft (March 2016), p. 7; https://www.nice.org.uk/guidance/GID-SCWAVE0711/documents/draft-guideline-2.

b. **Access to acute care for severely ill adult mental health patients is inadequate**, and "potentially dangerous."[321] In 2015, more than 2,000 mental health patients had to travel outside of their local region for beds, often a journey of over 50km.[322] This has a significant impact on a patient's wellbeing; the further away from home the treatment is, the more likely they are to be detained under the Mental Health Act.[323] The shortage of inpatient beds has led to over 4,000 people in England and Wales still being detained in police cells.[324]

Children and new mothers

326. A **fifth of children are rejected for treatment by mental health services**.[325] Almost a quarter of all maternal deaths up to a year after birth are related to mental health problems.[326] These deaths occur more often in **women from economic and socially deprived backgrounds** and in women from certain ethnic groups.[327]

Inequalities in access

327. Those who already face discrimination, such as **Black and Minority Ethnic communities, continue to suffer from inequality** when attempting to access good quality mental health care and services.[328]Long waiting times for psychological therapies inevitably cause people's conditions to worsen, or force them to pay for private

[321] Crisp, N., Smith, G. and Nicholson, K. (Eds.) *Old Problems, New Solutions – Improving Acute Psychiatric Care for Adults in England* (The Commission on Acute Adult Psychiatric Care, 2016), p. 6.

[322] Health and Social Care Information Centre, 'A special feature on the distance to treatment for people in hospital', 22 January 2015, p. 9.

[323] Ibid, p. 17

[324] National Police Chiefs' Council Lead for Mental Health, *Use of section 136 Mental Health Act 1983 in 2014-15* (England and Wales).

[325] NSPCC, '1 in 5 children are rejected mental health treatment' (2015); https://www.nspcc.org.uk/fighting-for-childhood/news-opinion/1-in-five-5-children-referred-to-local-mental-health-services-are-rejected-for-treatment.

[326] MMBRACE-UK team at the National Perinatal Epidemiology Unit at the University of Oxford, *Saving Lives, Improving Mothers' Care 2015;* https://www.npeu.ox.ac.uk/downloads/files/mbrrace-uk/reports/MBRRACE-UK%20Maternal%20Report%202015%20-%20Lay%20Summary.pdf.

[327] Ibid, p. 14.

[328] The Independent Mental Health Taskforce (n 311) p. 6.

treatment, in the meantime.[329] This **exacerbates inequalities** in access to mental health care, since mental health problems disproportionately affect those living in poverty.[330]

Implementation of recommendations

328. There is now concern that the mental health improvement targets recommended by the Taskforce risk being missed.[331] Although waiting times standards for treatment of some mental health conditions came into force on 1 April 2016, they only cover anxiety, depression and first episodes of psychosis.[332]

329. The quality premium scheme under the Health and Social Care Act 2012 offers financial incentives to Clinical Commissioning Groups (CCGs)[333] to improve the quality of services, access to care and patient health outcomes and reducing health inequalities.[334] **Alarmingly, mental health care will no longer be a quality premium measure in 2016-17,** nor has NHS England carried out an assessment of the impact of this decision.[335] The removal of mental health from the quality premium scheme casts doubt on the Government's commitment to ensuring parity between physical and mental health services.

[329] National Health Executive, 'Mental health patients waiting 'unacceptably' long times for treatment' (2014), available at: http://www.nationalhealthexecutive.com/News/mental-health-patients-waiting-unacceptably-long-times-for-treatment-/85255.

[330] The Independent Mental Health Taskforce (n 311) p. 3.

[331] National Audit Office, *Mental health services: preparations for improving access*, p. 4; https://www.nao.org.uk/wp-content/uploads/2016/04/Mental-health-services-preparations-for-improving-access.pdf.

[332] NHS England, Guidance to support the introduction of access and waiting time standards for mental health services in 2015-16, p. 5; https://www.england.nhs.uk/wp-content/uploads/2015/02/mh-access-wait-time-guid.pdf.

[333] Clinically-led statutory NHS bodies are responsible for the planning and commissioning of health care services for their local area, and were created by the Health and Social Care Act 2012.

[334] NHS England, *Quality Premium: 2015-16 guidance for CCGs*, p. 6; https://www.england.nhs.uk/wp-content/uploads/2015/04/qual-prem-guid-1516.pdf.

[335] National Health Executive, 'Lords 'perplexed' by removal of incentives for mental health treatment' (2016); http://www.nationalhealthexecutive.com/Health-Care-News/lords-perplexed-by-removal-of-incentives-for-mental-health-treatment.

Involuntary hospitalization and the use of involuntary medical treatment

330. The Mental Health Act (MHA) 1983, as amended in 2007 (England and Wales), the Mental Health (Northern Ireland) Order 1986 and the Mental Health (Care and Treatment) (Scotland) Act 2003 provide the legal framework for involuntary hospitalization and treatment in the UK.

331. The MHA allows for involuntary detention in hospital for assessment or treatment, including emergency detention of a patient for up to 72 hours,[336] involuntary admission for assessment for up to 28 days[337] and involuntary admission and treatment for up to 6 months.[338] After three months of compulsory treatment, a second medical opinion must be obtained before it is continued, unless the patient gives consent to the treatment.[339] In 2014-15, detentions under the Mental Health Act rose by almost 10% compared to the previous year, [340] suggesting a deficient approach to prevention and early intervention.

332. The guiding principles of the MHA Code of Practice require decision-makers to keep the restrictions they impose on a patient's liberty to a minimum and encourage patients' involvement.[341] Although the Code is not legally binding, decision-makers must be able to justify any departures from its guidance.[342]

333. The Act also requires that detained patients be informed of their right to apply for an appeal or to make a complaint, and of their right to access to Independent Mental Health Advocacy (IMHA) to help them understand their rights and treatment. Despite this, one-

[336] Mental Health Act 1983, s.4.

[337] Mental Health Act, s.2(4).

[338] Mental Health Act, s.3.

[339] Mental Health Act 1983, s.58.

[340] Health and Social Care Information Centre, *Inpatients formally detained in hospitals under the Mental Health Act 1983, and patients subject to supervised community treatment, England 2014/15* (2015), p. 12; http://www.hscic.gov.uk/catalogue/PUB18803/inp-det-m-h-a-1983-sup-com-eng-14-15-rep.pdf.

[341] Department of Health, Mental Health Act 1983: Code of Practice (2015) p.22; https://www.gov.uk/Government /uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF.

[342] *R (Munjaz) v Mersey Care NHS Trust* [2005] UKHL 58, para. 21.

fifth of those sectioned under the Act do not have their rights explained to them.[343] Moreover, individuals are not being adequately assessed on their ability to give consent, with almost a third of records lacking a capacity assessment at the point of patient admittance to hospital.[344] In almost 40% of wards surveyed, staff had not received training on the IMHA service or how to refer a patient to that service.[345]

Recommendation 23 – Article 12: availability and accessibility of adequate mental health services

Just Fair recommends that the State Party

a. Fulfils its commitment to rebalancing the existing funding inequality, committing to real term increases in funding for mental health services for both adults and children, ensuring uniform protection throughout the State.

b. Ensures that every woman has access to the nationally recommended level of antenatal care.

c. Ensures that, where sectioning or detention is carried out, appropriate staff training is implemented on the relevant provisions of the Mental Health Act.

Articles 13 and 14 – The right to education

LOI 29. Please provide information on the measures taken to ensure equal access to primary and secondary education by all children, especially children belonging to ethnic minorities, or the Gypsy or Traveller communities, as well as the children of migrants, refugees and asylum seekers.

334. Many female BME children are being denied access to education in the broadest sense by their families and communities due to increasing cultural and religious constraints. This problem is growing with the rise of religious schools which encourage

[343] Care Quality Commission, *Monitoring the Mental Health Act in 2014/15* (2015), p. 21; http://www.cqc.org.uk/sites/default/files/20151207_mhareport2014-15_full.pdf.

[344] Ibid, p. 55.

[345] Ibid, p. 41.

gender segregation and limit girl's access to educational opportunities and promote gender inequality.[346]

Recommendation 24 – Articles 13 and 14: equal access to education

Just Fair recommends that the State Party

a. Review the provision of education in faith-based schools to ensure that girls do not experience discrimination in respect of their right to education.

[346] Southall Black Sisters, *Multiculturalism in Secondary Schools* (2006); http://www.southallblacksisters.org.uk/reports/multiculturalism-in-secondary-schools-report 'Cohesion Faith and Gender Report (2011); http://www.southallblacksisters.org.uk/reports/cohesion-faith-and-gender-report.

ANNEX: LIST OF RECOMMENDATIONS

Recommendation 1 – Bill of Rights

Just Fair recommends that the State Party:

a. Ensures that the forthcoming consultation on a Bill of Rights has terms of reference that are expressly non-regressive, and is inclusive, participatory and based on accurate, accessible and impartial information;

b. Uses the forthcoming consultation on a Bill of Rights to publish options for enhancing the status of ICESCR in domestic law, with a view to taking steps to the maximum of the State's available resources to progressively realise the rights enshrined in the Covenant, in line with Article 2(1).

Recommendation 2 – Issues relating to general provisions of the Covenant: National Strategy and Action Plan

Just Fair recommends that the State Party:

a. Adopts a National Strategy and Action Plan to realise economic, social and cultural rights in the UK. In accordance with the standards set out by the CESCR, the National Strategy and Action Plan should:

- contain specific steps to implement the recommendations of UN treaty bodies and human rights mechanisms, including the Concluding Observations of the UN Committee on Economic, Social and Cultural Rights;
- set targets to be achieved and the time-frame for their achievement, together with corresponding indicators, against which they should be continuously monitored;
- contain concrete proposals to reduce and eliminate absolute and relative rates of poverty;
- take into account the equal rights of the most disadvantaged and marginalised groups and respect people's participation;

- guarantee that the rights are enjoyed without discrimination and equally by men and women;
- be informed by wide consultation with civil society and national human rights institutions.

Recommendation 3 – Article 2(1): Impact of "welfare reform" - impact assessment and strategy to eradicate destitution and food insecurity

Just Fair recommends that the State Party:

a. Commissions and publishes an independent cumulative impact assessment regarding the impact of policies and spending decisions introduced since 2010 on the rights to social security and to an adequate standard of living;

b. Commits to monitoring and publishing key data on living standards, including the prevalence of income poverty and food insecurity;

c. Develops and implements a strategy to eradicate destitution and food insecurity.

Recommendation 4 – Article 2(1): Impact of "welfare reform" - sanctions, delays and errors

Just Fair recommends that the State Party:

a. Establishes a broad, independent review into delays, errors and the use of sanctions in the social security system;

b. Affirms that sanctions must not be so severe, or access to hardship payments so inadequate, as to push claimants or their children into destitution or food insecurity;

c. Commits to ensuring adequate funding and universal access to emergency hardship provision, local welfare provision and benefit advances, for those who face errors or delays in benefit payments;

d. Places safeguards for lone parents, claimants with mental health difficulties and other marginalised or disadvantaged groups on a statutory footing.

Recommendation 5 – Article 2(1): Impact of "welfare reform" - Universal Credit

Just Fair recommends that the State Party:

a. Updates the impact assessment of Universal Credit in the light of substantial cuts and changes to the programme;

b. Reverses recent cuts to Universal Credit (work allowance cuts, removal of the first child premium, increased minimum income floor) to restore the poverty-reducing potential of Universal Credit.

Recommendation 6 – Article 2(1): Impact of "welfare reform" - rights of persons with disabilities

Just Fair recommends that the State Party:

a. Raises the level of support for disabled children in Universal Credit to a level comparable with that provided under tax credits;

b. Sets out how it will mitigate any negative impact on the rights of persons with disabilities of policies and spending decisions introduced since 2010 and its plans to progressively realise the economic, social and cultural rights of persons with disabilities.

Recommendation 7 – Article 2(1): Impact of "welfare reform" - child poverty

Just Fair recommends that the State Party:

a. Develops and implements a long-term national plan to end child poverty

b. Restores benefit levels, in particular children's benefits, to a level which provides for a minimum acceptable standard of living.

c. Ensures that the level of (children's) social security benefits is sufficient to meet the cost of living and commit to annual review and uprating at least in line with inflation. End the policy of multi-year freezes and below-inflation uprating.

d. Affirms the right of every child to social security and an adequate standard of living regardless of family size and the circumstances of their parents.

e. End all child benefit caps and limits which deny children this entitlement (i.e. the benefit cap and the two-child rule).

Recommendations 8 – Article 2(2): discrimination against persons with disabilities

Just Fair recommends that the State Party:

a. Eliminates or significantly reduces Employment Tribunal Fees which evidence shows have created significant barriers to persons with disabilities and others experiencing discrimination from accessing an effective remedy; and

b. Increases the resources invested in the promotion of anti-discrimination and equality measures to duty-bearers and rights-holders and ensures an effective and robust scheme of enforcement.

Recommendation 9 – Article 6: Rights of persons with disabilities

Just Fair recommends that the State Party:

a. Outlines its plans to address the shortcomings of the Work Programme with respect to supporting persons with disabilities to secure sustainable employment.

b. Outlines its plans to engage and support small to medium size employers to employ persons with disabilities

c. Clarifies the intended success measures of Disability Confident in reaching, influencing the behaviour and actions of employers, and to provide details of the impact of the programme to date on enhancing the employment prospects of persons with disabilities.

d. Outlines how promotion and enforcement of the disability provisions of the Equality Act fits into its vision for halving the disability employment gap.

e. Explains the steps it will take to mitigate the impact on the jobs and employment prospects of persons with disabilities for whom the cost of support exceeds the upper-limit on Access to Work awards.

f. Outlines its plans to increase the vocational skills and qualifications of persons with disabilities.

Recommendation 10 – Article 7: National Living Wage

Just Fair recommends that the State Party:

a. Sets the National Living Wage to a level which adequately reflects the basic cost of living in all parts of the UK, as assessed by the Living Wage Foundation, and enables all individuals to support themselves and their families;

b. Considers extending the protection of the National Living Wage to those under the age of 25 and outlines steps which it intends to take to protect workers against age discrimination that might arise as the result of the existence of different rules for under- and over-25s;

c. Monitors the impact of the National Living Wage on the proportion of women in low-paid work and the gender pay gap, and takes steps to mitigate any adverse impacts identified.

Recommendation 11 – Article 9: Rights of asylum seekers, refugees and migrants

Just Fair recommends that the State Party:

a. Ensures full protection from destitution for asylum seekers and migrants regardless of status and uprate support for these groups in line with inflation;

b. Ensure equal treatment of the right to an adequate standard of living and health for migrants and asylum seekers;

c. Ends the Azure card payment system because it does not allow refused asylum seekers to meet their basic needs and live with dignity.

Recommendation 12 - Article 9: Adequacy of social assistance benefits

Just Fair recommends that the State Party:

a. **Restores the link between the rates of state benefits and the costs of living.**

b. Ensures that state benefit levels are adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant;

c. Explains how the reduction in benefits of around £30 per week to the estimated 500,000 people who have been independently assessed as having limited capability for work will result in them securing paid employment;

d. Ensures that the basic level of benefits enables persons with disabilities to enjoy an adequate standard of living, including the right to live independently and to be included in the community.

Recommendation 13 – Article 10: Childcare services

Just Fair recommends that the State Party:

a. Raises the ceilings for childcare costs under tax credits and Universal Credit for families with more than two children, and for disabled children, in line with costs.

b. Develops a long-term plan to ensure universal high quality childcare, starting with: the expansion of free entitlement from the end of maternity leave; increased support for children's centres; and the development of comprehensive 8am-6pm out-of-school and holiday childcare provision.

Recommendation 14 – Article 10: Services available to victims of domestic and gender-based violence

Just Fair recommends that the State Party:

a. Ring-fences funds for the provision of statutory services available to BME women who are victims of domestic and gender-based violence;

b. Works with local authorities to collect and monitor data about the number of refuge spaces to ensure adequate provision across the UK, and ensure appropriate funding of that provision.

c. Ensures that the list of specified evidence of domestic violence required to obtain legal aid is culturally sensitive.

d. Exempts victims of gender-based violence from the legal aid residence test.

Recommendation 15 – Article 10: Preventing child and forced marriage and effectively implementing legislation on female genital cutting

Just Fair recommends that the State Party:

a. Invests in comprehensive training of state agencies in the implementations and enforcement of the civil and criminal law in relation to child and forced marriage and female genital cutting.

Recommendation 16 – Article 10: Measures to combat human trafficking

Just Fair recommends that the State Party

a. Incorporate the Council of Europe Convention on Action Against Trafficking in Human Beings into domestic law through primary legislation

b. Provide support to persons who are conclusively recognised as being victims of trafficking following exit from the National Referral Mechanism.

c. Ensure that victims of trafficking are promptly and correctly identified from the moment of first contact with the authorities by having regard to standardised indicators of trafficking (e.g. the ILO indicators).

d. Remove the identification of victims from the Home Office (including under the pilot scheme where the Home Office plays a decisive role).

e. Ensure that victims of trafficking are not detained where there are indicators of trafficking. Deportation shall not be used against victims of trafficking as a result of

criminal offences they were compelled to commit as a result of their trafficking situation (Art 26 ECAT, Art 8 Directive 2011/36).

f. Amend the immigration rules on overseas domestic workers and diplomatic domestic workers (in force since April 2012) to allow for switching employers.

Recommendation 17 – Article 10: Prosecution and conviction of perpetrators

Just Fair recommends that the State Party:

a. Record the number of cases brought before the courts and their outcome in terms of remedies provided to victims and sanctions imposed on perpetrators.

Recommendation 18 – Article 11: Measuring and reducing poverty

Just Fair recommends that the State Party:

a. Reinstates the targets and reporting duties contained in the Child Poverty Act 2010,

(See also Recommendation 3 – Article 2(1): Impact of "welfare reform" - impact assessment and strategy to eradicate destitution and food insecurity).

(See also Recommendation 10 – Article 7: National Living Wage).

See also Recommendation 12 - Article 9: adequacy of social assistance benefits).

Recommendation 19 – Article 11: Access to adequate and affordable food

Just Fair recommends that the State Party:

a. Systematically collects statistics to monitor food poverty and the use of food banks in the UK; and

b. Conducts an inquiry into the cause of food poverty and the use of food banks within the UK, which looks at how the levels as well as the maladministration of

benefits have contributed to food insecurity.

(See also Recommendation 3 – Article 2(1): Impact of "welfare reform" - impact assessment and strategy to eradicate destitution and food insecurity).

(See also Recommendation 10 – Article 7: National Living Wage).

(See also Recommendation 12 - Article 9: adequacy of social assistance benefits).

Recommendation 20 – Article 11: Reducing homelessness

Just Fair recommends that the State Party

a. Takes immediate steps to end homelessness, ensuring an adequate supply of affordable, permanent, decent, and habitable housing, by building and/or facilitating the building of at least 250,000 new homes per year.

b. In the absence of an adequate supply of affordable, decent and habitable housing, takes immediate measures to ensure affordability in the short-term through:

- the adequate provision of state benefits to those unable to afford housing costs; and
- sustained investment in existing affordable housing stock.

c. Takes immediate measures to reduce the exceptionally high levels of street homelessness, including through:

- ensuring adequate numbers of hostel, or shelter, or emergency accommodation places;
- ensuring adequately resourced frontline support is available to all homeless or threatened homeless individuals and families;
- taking immediate legislative measures to strengthen security of tenure across the
    - social housing sector; and

        - private rental sector ; and
    - taking policy measures to ensure housing is affordable in line with recommendations a and b

d. Reform legislation to:

- ensure the statutory housing safety net provides meaningful assistance to all homeless and threatened homeless individuals regardless of 'priority need', and 'intentionality' taking the Welsh and Scottish legislation as best practice;
- reinstate the crucially protective link between the discharge of LHA homelessness duties and the provision of social housing to ensure all marginalised or disadvantaged individuals and families remain adequately and securely housed;.
- ensure Local Housing Authorities:
    - cannot discharge their duties to the homeless through provision of private rental accommodation without the consent of the homeless person;
    - discontinue the use of inadequate, temporary accommodation such as bed and breakfast accommodation for homeless and threatened homeless individuals and, particularly, families.

e. Takes immediate steps to improve and ensure the reliability, trustworthiness and value of the statistics used to measure homelessness with regard to

- rough sleeping;
- statutory 'homeless acceptances'; and
- local authority prevention and relief activities.

Recommendation 21 – Article 11: Private Rental Sector

Just Fair recommends that the State Party:

a. Takes immediate legislative measures to strengthen security of tenure in the private rental sector including through:

- stronger and better resourced legislative measures to prohibit retaliatory evictions, including through preventing landlords from bringing eviction procedures as reprisal for well-founded maintenance and improvement

requests where a property is in a serious state of disrepair or serious hazards are present;
- legislative measures to prohibit arbitrary or retaliatory rent increases; and
- increasing the minimum tenancy term of private rental agreements to give tenants security and stability.

b. Take immediate steps to ensure housing in the private rental sector meets the 'decent homes' standard including through:
- immediate and rigorous monitoring of the safety and quality of housing in the sector; and
- taking progressive steps, alone and in conjunction with the private sector, to improve the quality of housing in the sector through new building and improvements to existing housing stock.

c. Takes steps to ensure affordability in the private rental sector including through:
- stimulating and creating new housing across tenure types;
- providing tenants with immediate legislative protection against arbitrary or retaliatory rent increases; and
- preventing private landlords form discriminatorily imposing higher costs on homeless applicants, applicants on benefits, and applicants who appear foreign or have non-straight-forward documentation under 'Right to Rent' checks.

d. Takes steps to ensure that homeless and marginalised or disadvantaged persons can access housing without discrimination including through:
- prohibiting discriminatory letting practices against homeless households and households in receipt of housing benefit by private landlords;
- providing funding for private rented sector access schemes to assist homeless households and households in receipt of benefit into the PRS.
- preventing discriminatory checks in the 'Right to Rent' process;
- ensuring that welfare policy particularly cuts to benefits – does not create a barrier to access to housing.

Recommendation 22 – Article 12: accessibility and affordability of health-care services

Just Fair recommends that the State Party

a. Provides guidance to all GP practices on primary care entitlement and registration;

b. Desists from pursuing or issuing National Health Service charges against undocumented migrants that are genuinely without funds.

c. Brings NHS ethnicity data categories in line with the most recent Census categories, thereby including Gypsies and Travellers and allowing for proper health data to be aggregated.

Recommendation 23 – Article 12: availability and accessibility of adequate mental health services

Just Fair recommends that the State Party

a. Fulfils its commitment to rebalancing the existing funding inequality, committing to real term increases in funding for mental health services for both adults and children, ensuring uniform protection throughout the State.

b. Ensures that every woman has access to the nationally recommended level of antenatal care.

c. Ensures that, where sectioning or detention is carried out, appropriate staff training is implemented on the relevant provisions of the Mental Health Act.

Recommendation 24 – Articles 13 and 14: equal access to education

Just Fair recommends that the State Party

a. Review the provision of education in faith-based schools to ensure that girls do not experience discrimination in respect of their right to education.

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