

# United Nations Special Rapporteur on Extreme Poverty and Human Rights

## Visit to the United Kingdom of Great Britain and Northern Ireland

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Evidence submitted by

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### ***SUMMARY***

*This submission shows how the UK's system of benefit sanctions, in relation to unemployed, sick and disabled people, contravenes two of the UN Guiding Principles on Extreme Poverty and Human Rights (2012): that persons living in poverty must be recognized and treated as free and autonomous agents, with the right to make their own decisions; and that States should ensure access to adequate food.*

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### **Introduction**

1. This submission is addressed to two of the UN Guiding Principles on Extreme Poverty & Human Rights (2012):

- *Persons living in poverty must be recognized and treated as free and autonomous agents. All policies relevant to poverty must be aimed at empowering persons living in poverty. They must be based on the recognition of those persons' right to make their own decisions and respect their capacity to fulfil their own potential, their sense of dignity and their right to participate in decisions affecting their lives.* (para. 36)
- *States should: ....take corrective measures, to be implemented both immediately and progressively, to provide access to adequate food* (para. 76)

2. The submission is concerned with the system of punitive benefit sanctions which has been built up in the UK social security system since 1986, affecting people who are unemployed and claiming Jobseekers Allowance (JSA); sick or disabled people in the 'Work Related Activity Group' of Employment and Support Allowance (ESA); lone parents or carers claiming Income Support (IS); and unemployed, sick or disabled, lone parents, carers and some others claiming the new Universal Credit (UC). UC is planned eventually to replace all the other benefits.

3. My locus for submitting evidence to the Special Rapporteur lies in the special study I have made of the sanctions regime over the past 6 years. I have submitted evidence to various UK-based inquiries on this topic since 2013, and since November 2013 I have published a quarterly briefing on the sanctions statistics published by the UK Department of Work and Pensions (DWP). These papers are available at [www.cpag.org.uk/david-webster](http://www.cpag.org.uk/david-webster).

4. I am happy for my submission to be published on the Special Rapporteur's website.

## AGENCY AND AUTONOMY

### *Conditions imposed on claimants*

5. The UK system of benefit conditionality impacts differently on the different claimant groups. For some groups – lone parents with children aged 1 to 2 and carers - requirements are limited to attending ‘work-focused’ interviews. Others – the sick or disabled considered to have prospects of eventual employment, and lone parents with children aged 2 to 5 – are additionally subject to directions to undertake ‘work-related activities’. Unemployed people have the strongest requirements, including the obligation to spend 35 hours a week on work search or preparation and to apply for particular jobs or undertake particular courses; for a number of years after 2011 some claimants were even made to undertake unpaid ‘workfare’. The work search and preparation requirements, currently applying to a total of around 1.5m people, undermine or remove benefit claimants’ right to make their own decisions. Although some acknowledgment is made of parental responsibilities via ‘lone parent flexibilities’, these are frequently not respected and in UC have been downgraded from their previous mandatory status to that of ‘guidance’. No allowance is made for holidays. The language used to describe conditionality has also become more undermining of claimants’ sense of self-worth: ‘failure’, ‘transgression’ and ‘offence’.

6. Under the system applying since 2013, claimants are required to accept a ‘claimant commitment’ at the start of their claim. A recent DWP survey of UC claimants (DWP 2018) found that

- Fewer than two-thirds (63%) of claimants thought their Claimant Commitment was achievable, and only 54% and 55% respectively thought that it took account of their personal circumstances and would help them to obtain or increase employment (p.41)
- Around 40% of claimants found it difficult to complete the hours of work search or preparation required by their Claimant Commitment, and almost half (47%) had completed fewer hours. (p.59)

7. In a new study comparing activation requirements imposed on unemployed claimants in 39 OECD and EU countries, Immervoll & Knotz (2018) found that the UK has the second most demanding job search requirements, after Malta.

8. The DWP is also wedded to a ‘work first’ approach, under which it is argued that any sort of job will set the claimant on an upward path. The claimant’s preferences are disregarded. A similar disregard often characterises the ‘work-related activity’ requirements imposed on sick and disabled people (Hale 2015).

### *Lack of safeguards*

9. The system lacks safeguards for the claimant. The decision to stop their benefits is made by a remote ‘decision maker’ following referral by the ‘work coach’, without a hearing and in most cases without any input by the claimant. The Social Security Act 1998 (prepared under the previous Conservative government but enacted under Labour) abolished the independent Adjudication Service which had previously made these decisions. Since 2000, all decisions have, in legal terms, been decisions of the Secretary of State.

### *The appeal system*

10. The powerlessness of the claimant is increased by the inadequacy of the appeal system. This only comes into play after the penalty has been imposed. Since October 2013, the first stage has to be a request to the DWP for 'mandatory reconsideration'. There is no timescale for DWP to respond. Only after a refusal by DWP to reconsider is it permitted to appeal to an independent Tribunal.

11. Over the period August 2015 to October 2017, the proportion of Universal Credit (UC) sanctions challenged was only 16.0%. Of these challenges, only 29.1% succeeded, with the result that only 4.7% of UC sanctions were overturned. The success rate of UC sanction challenges at mandatory reconsideration stage was only 28.3%, but at Tribunal it was a very high 80.2%, indicating that too few claimants are taking their cases to Tribunal and many wrongful UC sanctions are being allowed to stand. Out of 417,000 UC sanctions imposed up to October 2017, only about 0.3% reached a Tribunal (Webster 2018a).

12. Over the same period, 23.1% of JSA sanctions were challenged, and 76.1% of the challenges succeeded, so that 17.6% of the sanctions were overturned. For ESA, 62.1% of sanctions were challenged, and 41.2% of the challenges succeeded, so that 25.8% of the sanctions were overturned. IS sanctions are relatively mild and a lower rate of challenge is to be expected. Over the period since October 2016, the rate of challenge to IS sanctions on lone parents was very low at 1.4%, with however a relatively high success rate of challenges at 61.9%, resulting in 0.9% of sanctions overturned. Over the year to October 2017, there were no Tribunal appeals at all for ESA or IS sanctions, while out of about 273,000 UC sanction decisions and 84,000 JSA sanction decisions, only 558 and 221 respectively went to a Tribunal.

### *Impact of conditions and sanctions on the claimant*

13. The National Audit Office did its own study whether sanctioned claimants of JSA and ESA were more likely to get into work. They found that being sanctioned made an ESA claimant *less* likely to get into work (NAO 2016, p.41). For JSA, the NAO found that sanctioned claimants were more likely to get into work. But it also found that sanctioned claimants were as likely to leave benefit without finding work as to move into employment, and that sanctions encourage people to enter less well-paid jobs. This latter finding is supported by a number of studies which have shown that sanctions tend to drive people into worse jobs, in terms of pay, conditions and sustainability, than they would have got without them (Petrongolo 2009; Arni et al. 2012; Berg & Vikström 2014). Other evidence shows that only good jobs deliver better health than being unemployed (Butterworth et al. 2011; Chandola & Zhang 2017).

14. The experience of benefit claimants is summarised in the following account of a community discussion in Scotland (SURF 2018): 'Participants said the inconsistent and unpredictable imposition of sanctions and penalties undermined individuals, their families and communities..... Not knowing when or why a sanction might be imposed caused fear and stress, created barriers to community engagement, stigmatised those who were already disadvantaged, and fed into a culture of seeing the world in terms of 'us' and 'them'.' An insightful account of an individual claimant's experiences, given in detail, is in Webster 2015, pp. 31-32.

## ACCESS TO ADEQUATE FOOD

### *Severity of UK sanctions*

15. Sanctions in the UK involve the removal for a set period of time of the whole of the ‘personal’ or ‘standard’ allowance, i.e. the amount the claimant is supposed to live on, excluding additional payments for dependants, rent etc.. In 2012 these periods were mostly increased, with the usual minimum now 4 weeks but in some cases 13 weeks. Increased lengths were also introduced for second or subsequent ‘failures’ within 12 months, with a maximum of 3 years. This is entirely unprecedented; until 1986 the maximum length of ‘disqualification’ from unemployment benefit was 6 weeks. Moreover, sanctions up to now have been concurrent but UC makes them consecutive. The latest data show that of UC sanctions completed in the quarter March to May 2018 (including any consecutively served sanctions), less than one third (31.7%) were of 4 weeks or less, while a similar proportion (30.6%) were of more than three months and one in eight (12.4%) were over six months. For various reasons, these figures understate the true lengths (Webster 2018b).

16. There has never been any evidential basis for these extended sanction lengths. The DWP Permanent Secretary told the Public Accounts Committee (2017, Oral evidence Q.74-75) that the decision to increase sanction lengths was made without any information on the likely effects and that because DWP has done no research, these effects remain entirely unknown.

17. Immervoll & Knotz (2018) found that a first refusal of a suitable job results in a disqualification for 1 week in Sweden, 2 weeks in Korea, 8 weeks in Australia, and 13 weeks in the United Kingdom, Spain and New Zealand, and that the increase for second and third refusals is ‘particularly steep’ in the UK.

### *Frequency of sanctions*

18. Sanctions are very frequent, especially for unemployed claimants. The NAO (2017) found that of all the people who claimed JSA at any time over the six years 2010 to 2015, 24% were sanctioned before challenges. In March 2017, over 10% of unemployed UC claimants were actually serving a sanction at that time. **Figure 1** shows the monthly rates of sanction on the four benefits up to October 2017, the UC figures being estimated. Although rates of sanction have fallen on JSA, ESA and IS, UC rates are high, taking us back to the highest rates previously seen. In the peak year 2013 there were over 1.1m sanctions on all four benefits, falling to around 318,000 in the 12 months to April 2018 (Webster 2018b).

### *The ‘hardship payment’ system*

19. As well as being extremely severe, the UK sanctions system is designed in such a way as to destroy its victims’ financial resilience.

20. Up to 1988, claimants of non-contributory unemployment benefit who had been disqualified were entitled to claim Income Support (previously Supplementary Benefit) on the normal criteria, with a 40% deduction. In that year, a new system of discretionary ‘hardship payments’ was introduced, with its own harsh criteria which in effect meant that claimants had to have exhausted all their financial resources, and all possibility of support from relatives, before they received any assistance. They are not allowed to retain any savings. This system was then extended to claimants on contributory benefits by the

Jobseekers Act in 1996, with the additional provision that JSA claimants cannot even apply for a hardship payment for the first two weeks of a sanction, however desperate they may be. Under Universal Credit the two-week wait is replaced by a requirement to demonstrate 'compliance' for 7 days before applying for a hardship payment, and hardship payments become repayable. Given that repayments are made at the rate of 40% of benefit – the same as the amount by which a hardship payment is lower than the benefit – this means that for claimants receiving hardship payments, UC sanctions are in effect 2½ times as long as their nominal length. There is anecdotal evidence that many claimants entitled to UC hardship payments do not take them up, because they do not think they will be able to repay them.

21. The only justification which has been put forward by ministers for making hardship payments repayable does not hold water. In reply to a question from the House of Commons Work and Pensions Committee (27 June 2018, Q.278, see also Qu.282) the Minister said 'I think the policy rationale for this was that if somebody was facing a sanction and they did receive a hardship payment ..... it should also then be fair to those who did not get a hardship payment. Therefore effectively those who do get a hardship payment will eventually be required to pay it back.' Of course this logic would mean that all means-tested benefits should be repayable.

### *Consequences of sanctions*

22. The UK sanctions system therefore promotes extreme poverty. Its well-attested consequences include increased debt, worsened health, damaged family relationships, 'survival crime' and hunger. These are all demonstrated in multiple case histories which are available on the Child Poverty Action Group website at <http://www.cpag.org.uk/content/sanctions>, and by the recent Welfare Conditionality project (2018). In relation to hunger, a systematic statistical study by Loopstra et al. (2018) found that the rate of adults fed by food banks rose by an additional 3.36 adults per 100,000 as the rate of sanctioning increased by 10 per 100,000 adults. And, in relation to food, even in the absence of hunger the extreme poverty created by the sanctions system makes a healthy diet impossible or excessively difficult.

## **CONCLUSION**

23. Over the last three decades the UK social security system has become more and more punitive in its approach, being much more directive towards claimants and imposing much more frequent and much harsher penalties. These are for what are officially described as 'failures', but which in truth are often simply differences of opinion about the best way to seek work and about the relative priority to be put upon job search as opposed to family and other responsibilities. The result has been to create a clear departure from the UN *Guiding Principles on Extreme Poverty and Human Rights*, in relation both to respect for the autonomy of the claimant and to the need to ensure access to adequate food.

24. It does not have to be this way. For 86 years up to 1986 the UK unemployment insurance system operated with a maximum disqualification period of 6 weeks, and for well over 60 of those years, other than in exceptional circumstances, there were no work search requirements other than 'signing-on'. In no key respect – economic growth, employment or productivity – have the past 30 years shown a better performance than in those earlier years. It is time to reassert the principles of dignity and respect for people who happen to be out of work.

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Figure 1

