

To whom it may concern,

Please find attached a submission which I confirm may be published on the UN website.

Many thanks,
Coralie Blatchford-Neave

Submission to the United Nations Special Rapporteur on Extreme Poverty and Human Rights – visit to the United Kingdom of Great Britain and Northern Ireland

Coralie Blatchford-Neave

Introduction

1. I am a PhD student based at the University of the West of England conducting research into the compliance of disability benefit policy with international human rights obligations, specifically the Convention on the Rights of Persons with Disabilities (CRPD) and the European Convention on Human Rights (ECHR). This submission is based on empirical and doctrinal research undertaken as part of PhD study, and also personal employment knowledge from working in a charitable advice centre in Bristol, directly dealing with people in the vulnerable position of trying to access disability benefit. This submission may be published.

2. This submission focusses on Employment and Support Allowance (ESA), the only income-replacement benefit available to those in the UK who are unable to work due to a health condition or disability. ESA has previously been found to be in breach of the CRPD during the investigation under the Optional Protocol by the Committee on the Rights of Persons with Disabilities (the Committee) which concluded that **there have been systematic and grave violations of Articles 19, 27, and 28 of the CRPD in the UK.**¹ The Committee held that the welfare system breached the CRPD in a number of ways, including that: policy is based on an assumption that employment is preferable to social security and claimants have to be incentivised through conditionality and sanctions to return to work;² that disabled claimants are regularly portrayed negatively as being lazy and a burden on taxpayers, despite the Committee finding no evidence of widespread benefit fraud;³ that people with disabilities are not considered as rights holders with an entitlement to social security;⁴ and that the Work Programme and JobCentre Plus, who deliver employment support to unemployed claimants, are ineffective at supporting people with disabilities to return to work, and that in some cases the cuts to financial support for programmes which were effective have resulted in persons with disabilities losing their employment.⁵

ESA System

3. ESA was introduced in 2008 and is the only income replacement benefit for those who are unable to work due to a health condition or disability, although it is now included in the Universal Credit rollout. Eligibility for ESA is determined by the Work Capability Assessment (WCA), a functional assessment based on the medical model

¹ United Nations Committee on the Rights of Persons with Disabilities, 'Inquiry concerning the United Kingdom of Great Britain and Northern Ireland Carried Out by the Committee Under Article 6 of the Optional Protocol to the Convention' (CRPD/C/15/R.2/Rev.1, 6 October 2016), [113].

² *ibid* [83]. The conditionality and sanctions regime refers to the system of benefit entitlement by which benefit claimants can be sanctioned part or all of their benefit payments for failing to complete activity mandated by the Secretary of State.

³ *ibid* [85].

⁴ *ibid* [88].

⁵ *ibid* [107].

of disability.⁶ **The Committee held that there was 'significant hardship, including financial, material and psychological, experienced by persons with disabilities undergoing assessments'.**⁷ Following the WCA, claimants can either be placed in the higher level Support Group, where benefit payments are higher, and unlimited, and claimants receive support unconditionally, or can be placed in the lower level Work Related Activity Group (WRAG), where benefit payments are lower and may be time limited to one year. Claimants who, following the WCA, are expected to return to work at some point and so are placed in the WRAG are subjected to the conditionality and sanctions regime to improve their employability, and claimants who are sanctioned face financial hardship.⁸

4. This submission will focus particularly on the conditionality and sanctions regime in English benefits, and especially on how this is particularly harmful to ESA claimants. This will be particularly relevant to question (3) in the call for submissions, although the submission will also touch on areas of interest under questions (4) and (5).

Breach of Article 3 of the European Convention on Human Rights

5. In relation to question (3), the sanctions regime which applies to ESA WRAG claimants is such that **poverty inflicted on claimants by the sanctions regime may rise to the level of inhuman and degrading treatment such as to breach Article 3 of the European Convention on Human Rights** (prohibition on torture, inhuman and degrading treatment) in line with the House of Lords jurisprudence in *Limbuella*.⁹ Poverty will breach Article 3 where a person 'with no means and no alternative sources of support, unable to support himself, is, by the deliberate action of the state, denied shelter, food or the most basic necessities of life'.¹⁰ Because this state of poverty must arise by some deliberate action of the state,¹¹ the existence of poverty is not in itself enough to breach Article 3; however, where the state has caused the inhuman and degrading poverty by the deliberate withdrawal of benefits, this will constitute action by the state, and thus will be sufficient to create an obligation on the state to alleviate the poverty by some means.¹²

Findings Under the Inquiry

6. There is a large body of evidence of **the extreme poverty caused to benefit claimants who are sanctioned, and in particular of the hardship faced by ESA claimants who are sanctioned**. During its inquiry under the optional protocol, the Committee found that 'claimants who have been sanctioned have faced financial hardship, including through becoming indebted, relying on the support of relatives or on food banks or having reduced essential services'.¹³ ESA claimants with mental health problems are disproportionately sanctioned as a group because of the

⁶ *ibid* [89].

⁷ *ibid* [105].

⁸ *ibid* [106].

⁹ *R v Secretary of State for the Home Department ex parte Limbuella* [2005] UKHL 66.

¹⁰ *ibid* [7], per Lord Bingham.

¹¹ *O'Rourke v United Kingdom* Application no. 39022/97 (ECHR 26 June 2001).

¹² (n9) [53] per Lord Hope.

¹³ (n1) [106].

discriminatory nature of the benefit system, meaning that those with mental health problems are more likely to be wrongly assessed and placed in the WRAG,¹⁴ and that they are more likely to be sanctioned for failing to comply with the requirements placed on WRAG claimants.¹⁵ A sanction will be particularly harmful to those with mental health problems because '[a]dding a benefits sanction to their already multiple, complex problems can aggravate their health problems even further'.¹⁶

7. At the most extreme, **benefit sanctions have been linked to the death of disabled benefit claimants**. It has been suggested that sanctions are deliberately responsible for loss of life in some cases; for example, David George Clapson died as a result of a Jobseekers' Allowance sanction which left him unable to manage his diabetes.¹⁷ For ESA claimants specifically, this should be seen in the context of a system which the Committee recognised operates in a way which increases the risk of claimants undergoing the WCA suffering 'severe' deterioration of their mental health.¹⁸ There is also a body of evidence exploring the lived reality of claimants who have been sanctioned, which indicates that **a benefit sanction can have an extreme impact on a claimant's mental and physical health, ability to manage health conditions, ability to access basic services, safety, and dignity**. Stories include a disabled claimant who was raped after she was forced into prostitution following a benefit sanction.¹⁹ Although these individual cases are extreme and atypical, there is evidence of the widespread harm caused by benefit sanctions. The United Kingdom Council for Psychotherapy has found that severe anxiety and depression has risen by over 50% since 2013, and have recommended suspending the sanctions system entirely until a review has been conducted of the effect of

¹⁴ *MM & DM v Secretary of State for Work and Pensions* [2013] UKUT 0259 (AAC).

¹⁵ Kayleigh Garthwaite and Clare Bamba, 'Written evidence submitted by Dr Kayleigh Garthwaite and Professor Clare Bamba, Durham University (SAN0011) (Parliament.uk) <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/benefits-sanctions-policy-beyond-the-oakley-review/written/16150.pdf>> accessed 27 January 2016.

¹⁶ *ibid* para 3.2.

¹⁷ Gill Thompson, 'Written Evidence Submitted by Gill Thompson (SAN0047)' (Parliament.uk)

<<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/work-and-pensions-committee/benefit-sanctions-policy-beyond-the-oakley-review/written/16303.pdf>> accessed 21 July 2017. David George Clapson suffered from Type I diabetes, and died five days after his benefits were sanctioned, as he was unable to afford food, or electricity to keep his insulin refrigerated. His death arose directly as a result of the hardship caused by a lack of money. Sanctions are not the only point in the system where withdrawal of benefits has been linked to fatalities; for example, Mark Wood starved to death after he was held to be ineligible for ESA and so had all of his benefits stopped: Amelia Gentleman, 'Vulnerable Man Starved to Death after Benefits were Cut' *The Guardian* (London, 28 February 2014) <<http://www.theguardian.com/society/2014/feb/28/man-starved-to-death-after-benefits-cut>> accessed 29 August 2018. For a report on deaths and suicides associated with the WCA specifically, see: The Spartacus Network, 'Work Capability Assessment: Deaths and Suicides' (The Spartacus Network 28 April 2015) <bit.ly/WCA-deaths> accessed 22 July 2017.

¹⁸ (n1) [91].

¹⁹ Peter Dwyer and others, 'First Wave Findings: Disability and Conditionality' (Economic and Social Research Council May 2016), 9: a disabled woman who was sanctioned was reported as saying: 'It was the most horrific time of my life. I got raped. I got raped. I got [hesitates] beaten up, raped and bugged, trying to [hesitates] earn money via prostitution. I was working with [two support organisations]. They were liaising with benefits as well. It made no difference.'

welfare reforms on mental health.²⁰ The Trussell Trust, a food bank charity, estimates that 49% of referrals are as a result of benefit payment problems.²¹ **A sanction can be particularly harmful for ESA claimants, both because it can exacerbate existing conditions and make managing health more difficult,²² but also because the majority of WRAG claimants already do not receive enough to live on.**²³ A review by Lord Low of Dalston, Baroness Meacher, and Baroness Grey-Thompson, members of the House of Lords, into a proposed reduction to ESA and the effect of this on the policy of halving the disability employment gap, found that 57% of WRAG claimants feel that they don't receive enough to live on; 28% could not afford food and 38% heating, whilst 52% struggled to stay healthy.²⁴ ESA claimants are therefore already in a vulnerable economic position before a potential sanction is applied.

8. The sanctions regime operates to enforce conditionality on claimants. This conditionality is intended to move claimants closer to the workplace and improve their employability, however **the operation of conditionality within the social security system is ineffective and breaches ILO provisions, whilst contributing to poverty within the UK because of the associated sanctions.** It is clear from the findings of the Committee that the Work Programme and JobCentre Plus are ineffective in helping ESA claimants return to employment, and that austerity cuts to specialist employment services which focus exclusively on helping disabled people to find employment have caused job losses in some cases.²⁵ This is supported by the Work and Pensions Select Committee, which has concluded that existing employment support is ineffective and is particularly failing persons with disabilities.²⁶

9. The ILO has held that countries cannot rely on a workfare model of employment support, which it defines as a system which obliges benefit recipients to work on inferior terms in exchange for benefits without any further safety net.²⁷ At present, a claimant can be sanctioned up to 100% of their ESA personal allowance component, currently worth £73.10 per week, for failure to complete conditionality. Conditionality requirements are set by the Secretary of State for Work and Pensions, who can require claimants to undertake any work which is 'reasonable... having regard to the person's circumstances'.²⁸ For ESA WRAG claimants, this can include a requirement to perform unpaid work placements of up to full time hours for charities or private corporations.²⁹ **It is therefore possible that ESA claimants are being mandated under threat of removal of benefits to below subsistence levels to perform**

²⁰ United Kingdom Council for Psychotherapy, '50% Rise in Severe Anxiety and Depression in the Unemployed' (United Kingdom Council for Psychotherapy, 17 July 2017) <<https://www.psychotherapy.org.uk/news/50-rise-severe-anxiety-depression-unemployed/>> accessed 30 September 2017.

²¹ Niall Cooper and others, 'Below the Breadline: The Relentless Rise of Food Poverty in Britain' (Church Action on Poverty and Oxfam, June 2014).

²² (n15).

²³ Lord Low of Dalston and others, 'Halving the Gap?' (2015), 8.

²⁴ *ibid.*

²⁵ (n5).

²⁶ Work and Pensions Select Committee, *Welfare-to-work* (HC 2015-16, 363).

²⁷ Nanna Kildal, 'Workfare Tendencies in Scandinavian Welfare Policies' (International Labour Organisation, February 2001).

²⁸ s.3(4)(a) The Employment and Support Allowance (Work-Related Activity) Regulations 2011.

²⁹ s.13 Welfare Reform Act 2007 as amended by s.55 Welfare Reform Act 2012.

unpaid work for charities and private corporations. As a result of these measures, the ILO, in its latest report into UK compliance with international labour standards, held that:

'the policy of keeping the basic standards of living of those who are on benefits and not in work below the absolute poverty line results in using social security as a means of economic compulsion to labour... in the twenty-first century the international community believes that "basic income security should allow life in dignity" and [in] "secure protection aimed at preventing or alleviating poverty"... The policy of keeping [benefit rates] below the poverty line stands in direct contradiction to such objectives... the Government apparently remains deaf to the common European and international objectives of social protection'.³⁰

Conclusion

10. The UK Government have been clear that welfare reforms were intended to ensure that 'work always pays', including for persons with disabilities.³¹ Nevertheless, ESA, which is a replacement income benefit for those who are currently unable to work due to a health condition or disability, has shown to be ineffective at helping persons with disabilities to return to work. Coupled with sanctions which cause excessive poverty among claimants, **it is clear that the state is using poverty to punish those who are unable to work or complete conditionality, and to force persons with disabilities to complete unpaid work under threat of destitution.** This impacts on a number of related rights, including the right to employment freely chosen, the right to a minimum standard of living sufficient to prevent inhuman and degrading poverty, the right to life, and the right to social security.

11. For these reasons, the Committee on the Rights of Persons with Disabilities found that austerity measures and welfare reform had constituted systematic and grave violations of the rights of persons with disabilities in the UK. **The Government is using the deliberate infliction of poverty on its citizens as a means of furthering economic and social policy, in contravention of several human rights norms.**

12. **The UK government should accept the recommendations of the Committee on the Rights of Persons with Disabilities in full and implement them in a timely manner, and before introducing any further welfare reforms. It should also acknowledge the role of benefit policy in the breaches of human rights caused by the extreme poverty engendered by the conditionality and sanctions regime.**

³⁰ International Labour Organization, 'Application of International Labour Standards 2017 I' (ILC.106/III(1A), 2017).

³¹ United Nations Committee on the Rights of Persons with Disabilities, 'Consideration of Reports Submitted by States Parties Under Article 35 of the Convention: United Kingdom of Great Britain and Northern Ireland' (24 November 2011).