

## **Legal Services Agency**

### **Written Submission to the United Nations Special Rapporteur on extreme poverty and human rights, for his visit to the United Kingdom of Great Britain and Northern Ireland from 5 to 16 November 2018**

**14 September 2018**

#### **About us**

The [Legal Services Agency](#) (LSA) is a Law Centre and Charity which provides skilled legal advice, assistance and representation to vulnerable people and those who would otherwise find it difficult to get legal advice.

We have offices in Glasgow, Edinburgh and Greenock.

We concentrate on the rights of people who are disadvantaged through mental illness, dementia, vulnerability resulting from youth or old age, poverty, debt, threatened homelessness, actual homelessness, exclusion or any other reason.

We focus on many aspects of the law and human rights including:

- Housing and preventing homelessness
- Defended eviction and mortgage repossession cases
- Protecting the rights of asylum seekers, refugee and migrant women and young people
- Advice and representation for young people from abroad
- Rights relating to incapacity law, mental health, dementia and acquired brain injury.
- Criminal Injuries Compensation, employment law and social welfare law.

We are a major legal educator in Scotland and run numerous seminars every month. We also produce various publications and run policy campaigns.

We are grateful for this opportunity to submit evidence to the UN Special Rapporteur on extreme poverty and human rights and welcome his visit to the UK. This submission draws on our casework experience with clients in poverty. It focuses on the effects of austerity on the human rights of those in extreme poverty; and particularly on homelessness and the right to adequate housing.

Please contact Kirsti Nelson, Depute Head of the LSA's Housing and General Court Team for enquiries related to this submission.

Email: [kirstinelson@lsa.org.uk](mailto:kirstinelson@lsa.org.uk)

Phone: 0141 353 3354

**(3) What are the most significant human rights violations that people living in poverty and extreme poverty in the United Kingdom experience? Please exemplify by referring to specific cases and relevant norms of international human rights law.**

## **A. Homelessness**

### **i. Human rights impact of homelessness**

Poverty is a key cause of homelessness. Homelessness can lead to a violation of the following human rights for persons living in poverty:

- Right to adequate housing. The International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) contains a right to adequate housing (Article 11). Being homeless implies that a person does not enjoy their right to adequate housing, and homelessness has been described by the Special Rapporteur on adequate housing as, “perhaps the most visible and most severe symptom of the lack of respect for the right to adequate housing”.<sup>1</sup>
- Right to health. Homelessness is recognised to increase the chances of a person having a long-term physical health problem or being diagnosed with a mental health condition.
- Right to private and family life. As articulated in Article 8 of the European Convention on Human Rights 1952 (ECHR), this right requires the protection of a person’s physical and psychological integrity. Physical and psychological integrity are threatened where a person does not have access to stable accommodation.
- Right to life. The right to life in Article 6 of the International Covenant on Civil and Political Rights 1966 (ICCPR) has been interpreted as requiring positive measures from states to address homelessness.<sup>2</sup> People experiencing homelessness have dramatically reduced life expectancies and homelessness can present a threat to life. A 2017 report found that four homeless people were dying every month in Glasgow.<sup>3</sup> Reasons for these deaths include exposure to sub-zero temperatures, exposure to violence and abuse, and higher incidences of fatal illnesses.
- Right to education. Homelessness deprives children (and adults) of the space and privacy to do their homework and rest. A combination of a lack of sleep, being stigmatised due to their circumstances and the inability to focus on their studies can all be detrimental to educational attainment.

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<sup>1</sup> UN Special Rapporteur on the right to adequate housing, ‘Report of the Special Rapporteur on adequate housing’ (E/CN.4/2005/48), p2.

<sup>2</sup> UN HRC, ‘Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context’ A/HRC/31/54 (2015), para 53.

<sup>3</sup> Liam O’Hare, ‘Death on the streets: Shock figures reveal horrifying extent of homeless fatalities in Scotland’, 14 May 2017, Sunday Herald.

## ii. Gatekeeping by Glasgow City Council

Local Authorities in Scotland are required by law to offer advice, assistance and temporary accommodation to all homeless households and those at risk of homelessness in terms of the Housing (Scotland) Act 1987.

There were 34,972 homelessness applications recorded in Scotland in 2017/2018. This is 1% higher than the previous year and the first annual increase following eight consecutive annual decreases.<sup>4</sup>

2017 research projected that homelessness in Scotland will rise by 53% over the next 25 years.<sup>5</sup> Poverty and the welfare system are key factors driving this.<sup>6</sup>

There is evidence that Glasgow City Council carries out 'gatekeeping' of temporary accommodation to a number of those who present as homeless. Gatekeeping is where a person is denied the homelessness services which they are entitled to by law.

Gatekeeping is effectively an unlawful rationing of resources which denies people experiencing homelessness their right to adequate housing. Our case studies demonstrate that this practice can lead to people having to sleep rough (with further consequent human rights impacts).

Gatekeeping is not restricted to Glasgow, but this is the area in Scotland where it is most prevalent. The Scottish Government's 2017/2018 statistics show that over this period temporary homeless accommodation was unlawfully refused 3,025 times by Glasgow City Council.<sup>7</sup> There were 3,200 refusals across Scotland during this period (94.5% in Glasgow).

## iii. Gatekeeping case studies

- October 2015 – A presented as homeless to Glasgow City Council. A was told that there was no accommodation available. A was without any accommodation for a period of 9 days and had to sleep in a car. A repeatedly asked to be housed during this period, and was only provided with housing after seeking legal assistance. A has paranoid schizophrenia. A's health deteriorated during the period without any accommodation. A became desperate to be readmitted to a mental health hospital during this period – and was aggressive and threatening to some of the staff there until the police removed A. The deterioration in A's condition was a direct result of the gatekeeping by Glasgow City Council. A claim for discrimination in terms of the Equality Act 2010 was raised for A.
- May 2017 - B attended our drop-in service, B was street homeless. B had been refused temporary accommodation due to local connection as B had been working elsewhere in the UK. B had spent 6 out of the last 12 months in Glasgow so ought to have fulfilled the local connection test, but in any event was entitled to temporary accommodation pending a written decision on local connection - this was a statutory

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<sup>4</sup> Scottish Government, 'Homelessness in Scotland: 2017-18' (2018), p4.

<sup>5</sup> Glen Bramley, 'Homelessness projections: Core homelessness in Great Britain - Summary Report' (Crisis, 2017), p12.

<sup>6</sup> Ibid, p14-17.

<sup>7</sup> Scottish Government, 'Homelessness in Scotland: 2017-18' (2018), p30. See also Shelter Scotland, 'Evidence of Gatekeeping in Glasgow City Council' (2018); and BBC News, 'Homeless illegally turned away by councils', 09/02/2018.

breach. We sent a letter that day to the Council's casework team and gave a copy to B. B was told to return if he was not accommodated. B did not come back to the office so appears to have been accommodated.

- February 2018 - C attended our drop-in service, C was street homeless and had presented at GCC but not been accommodated because C was not receiving benefits yet. This was a statutory breach. We sent a letter that day to the Council's casework team and gave a copy to C. C was told to return if C was not accommodated. C did not come back to the office so appears to have been accommodated.

## **B. Asylum seekers**

### **i. Destitute asylum seekers**

Asylum seekers in the UK often live in poverty as a result of the limited state support which is provided to them.

Asylum seekers are eligible to apply for 'asylum support' while their claims are being considered. The current rate at which this is paid (£37.75 per person in a household per week, plus small additions for pregnancy or infant children)<sup>8</sup> is below the poverty line.<sup>9</sup> The low level of payments limits the quality and quantity of food which pregnant asylum seeking women and their children can access.<sup>10</sup>

The Home Office does not administer asylum support. Charity Migrant Help is contracted to run the scheme. Migrant Help offer a telephone service, which has long waiting times and which many clients are unaware of.

Destitute asylum seeker case study - D was recently left without money to cover essential living needs for over 3 weeks. D is a single mother with an infant. She should receive £37.75 per week plus £3 per week for her baby. However, support did not arrive on D's ASPEN card (a type of debit card given to asylum seekers) in time. With no phone credit and no money for transport D was unable to resolve her situation. It was only when D's solicitor noticed during an appointment that D looked unwell due to not eating, that action was taken to address this.

### **ii. Serco evictions of asylum seekers in Glasgow**

Serco is contracted by the UK Home Office to provide asylum seekers with accommodation while their asylum claims are being considered.

On 30 July 2018, Serco issued notices warning of eviction proceedings to 300 asylum seekers whom it provides housing in Glasgow. Six of those affected were given warning that their locks would be changed within seven days.<sup>11</sup>

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<sup>8</sup> See <https://www.gov.uk/asylum-support/what-youll-get>.

<sup>9</sup> G Fassetta et al, 'A HEALTHY START? Experiences of pregnant refugee and asylum seeking women in Scotland' (British Red Cross, 2016), p24.

<sup>10</sup> Ibid.

<sup>11</sup> BBC News, '[Hunger Strike' over refugee evictions](#)' 1/08/2018.

We were instructed by a client who received a notice giving him seven days to vacate the property. We understand five other individuals were also threatened with this. This case is ongoing.

It is questionable whether Serco's proposed lock changes are lawful.<sup>12</sup> We are concerned that Serco's actions constitute potential breaches of Articles 3 (prohibition of inhuman or degrading treatment), 6 (right to a fair trial) and 8 of the ECHR. It may also be contrary to Section 35 of the Equality Act 2010 which states that anyone who manages premises must not harass or victimise the occupier or do so in a discriminatory manner.

## **(6) Which areas of the United Kingdom should the Special Rapporteur visit in light of the poverty and human rights situation in those locations?**

A 2017 study by academics from the University of Liverpool found that Glasgow topped the list of the most deprived areas in the UK over the period 1971 – 2011.<sup>13</sup> Over this period, the ten most deprived areas in the UK were in Glasgow.

34% of all children in Glasgow were estimated to be living in poverty in 2017. Child poverty levels vary across the city (47% in Calton and 45% in Southside Central wards).<sup>14</sup>

Also, as mentioned previously, Serco intends to evict up to 300 destitute asylum seekers in Glasgow by changing their locks, depending on the outcome of legal challenges. This will include families with children and disabled persons. We consider this will be a large scale human rights violation.

**Glasgow would be a useful location for the Rapporteur to visit due to the longstanding and complex deprivation which exists in the city.**

**We would welcome a visit from the Special Rapporteur and are open to hosting him at our offices.**

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<sup>12</sup> See our comment, '[Is Serco's plan to evict 300 asylum seekers in Glasgow unlawful?](#)' 31/07/2018.

<sup>13</sup> C Lloyd et al, '[Deprivation Change in Britain – PopChange Briefing 2](#)' Centre for Spatial Demographics Research, University of Liverpool.

<sup>14</sup> End Child Poverty, '[Poverty in Your Area](#)' (2018).

**(9) Have austerity measures implemented by the government taken adequate account of the impact on vulnerable groups and reflected efforts to minimize negative effects for those groups and individuals?**

No.

Policies such as the benefit cap and the two child policy for child tax credits (discussed below in our answer to question 11) have failed to take into account their disproportionate effects on women. Lone parents (predominantly women) with young children are disproportionately affected and these policies are likely to be contrary to Article 14 ECHR, read alongside Article 1, Protocol 1 ECHR (protection from discrimination in relation to the right of protection of property). They are also likely to constitute discrimination for the purposes of the UK Equality Act 2010.

The Child Poverty Action Group have challenged the legality of the benefit cap as it applies to lone parents. They allege that it unlawfully discriminates against parents and children, contrary to article 14 of the European Convention on Human Rights, read with article 8 and/or Article 2 of the First Protocol (the right to education).<sup>15</sup> A UK Supreme Court judgement is pending.

A 2015 report by Engender noted that £22 billion of the £26 billion of cuts to social security between 2010 and 2015 fell on women's incomes.<sup>16</sup>

The Equality and Human Rights Commission's 2018 report on the cumulative impact of tax and welfare reforms between May 2010 and January 2018 found that austerity measures had disproportionately detrimental impacts on several protected groups, including disabled people, certain ethnic groups and women. It found that:

- Impacts were particularly large for households with more disabled members, and for those with more severe disabilities.
- Women have lost on average ~£400 per year, whereas men have lost only £30 per year.
- There were large impacts on lone parents on low incomes.<sup>17</sup>

The report notes a lack of evidence of an assessment of the cumulative impact on protected groups by the UK Government.<sup>18</sup>

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<sup>15</sup> See <http://www.cpag.org.uk/content/revisted-benefit-cap-cpag-ds-and-others-v-secretary-state-work-and-pensions>.

<sup>16</sup> Engender, 'A Widening Gap: Women and Welfare Reform' (2015), p4.

<sup>17</sup> J Portes et al, 'The cumulative impact of tax and welfare reforms' (EHRC, 2018), p15.

<sup>18</sup> Ibid, p23.

## **(11) Have the human rights of individuals experiencing poverty been affected by austerity measures?**

The ICESCR includes the right to social security (Article 9). The UN Committee on Economic, Social and Cultural Rights has observed that benefits must be adequate in amount and duration to ensure that recipients can achieve an adequate standard of living.<sup>19</sup>

There is a presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant, and any deliberately retrogressive measures require the State to ensure that they have been introduced after a careful consideration of the alternatives and with justification by reference to the totality of the rights covered in the ICESCR.<sup>20</sup>

These obligations do not appear to have been taken into account in the design and implementation of austerity measures.

A number of austerity measures which have made changes to the UK's social security system have had detrimental effects on the human rights of individuals experiencing poverty (most clearly on the right to social security and the Article 1 Protocol 1 ECHR right to property).

### **i. Two child limit**

The child element of child tax credit (CTC) was limited to two children for those born after 6 April 2017 (unless certain exceptions apply). Similar changes were announced to Universal Credit, meaning that Universal Credit claimants will not be paid any additional amount if they have more than 2 children, unless the children are born before 6 April 2017 or special circumstances apply.

UK Government statistics estimated that, in the first year of its operation, 71,000 families lost entitlement to child allowances due to this policy.<sup>21</sup> The Child Poverty Action Group estimated that it will pull 200,000 children into child poverty.<sup>22</sup>

### **ii. Benefit cap**

The benefit cap limits the amount of state benefits that people of working age can be paid. It came into effect in 2013 and was lowered in 2016.

Outside of London the cap is now:

- £384.62 per week (£20,000 a year) per couple, whether living with children or not.
- £384.62 per week (£20,000 a year) for a single person living with children.
- £257.69 per week (£13,400 a year) for a single person with no children, or not living with his/her children.

<sup>19</sup> UN CESCR, General Comment No. 19: The Right to Social Security (Article 9) (2008), para 22.

<sup>20</sup> Ibid, para 42.

<sup>21</sup> See <https://www.gov.uk/government/statistics/child-tax-credit-and-universal-credit-claimants-statistics-related-to-the-policy-to-provide-support-for-a-maximum-of-2-children-april-2018>.

<sup>22</sup> CPAG, '[71,000 Families hit by the Two-Child Limit Policy in its First Year](#)' (2018).

The benefit cap can create shortfalls for those in receipt of benefits. It can lead to people getting into rent arrears – putting them at risk of losing their homes.<sup>23</sup>

Benefit cap case studies:

- July 2017 - E lives with four children. E had been receiving several benefits – Income Support, Child Benefit, Child Tax Credit and Housing Benefit. As a result of the benefit cap, E's housing benefit was reduced to £0.50 per week. This led to E accruing rent arrears. E's landlord started proceedings to evict E and E's children. We defended E from eviction.
- 2018 - F has four children. F's rented accommodation has 3 bedrooms. The property is overcrowded and F's two infant children have to sleep in rocker chairs in the lounge because there is no room for cots. F is subject to the benefit cap which led to rent arrears. F's landlord raised eviction proceedings. We defended F from eviction proceedings.

### **iii. Bedroom tax and discretionary housing payments**

In 2013, the UK government removed what it called the 'spare room subsidy' (referred to here as the 'bedroom tax'). The effect of this change is that tenants renting from a local authority, housing association or other registered social landlord have their housing benefit reduced by 14% if their property has a spare bedroom, or reduced by 25% if they have two or more. This can leave tenants with a shortfall in rent.

To mitigate its impact, tenants can apply for 'discretionary housing payments' (DHPs). The administration of DHPs was devolved to Scotland in 2017. The Scottish Government has committed to fully mitigate the effects of the bedroom tax in Scotland, and has provided funding to Local Authorities in Scotland to pay DHPs to those affected by the bedroom tax.<sup>24</sup>

The benefit cap also interacts with DHPs. The benefit cap can result in a shortfall in rent payments – which can be mitigated using DHPs. However, a 2018 report found that the majority of Scottish Local Authorities were not in a position to ensure that all families affected by the lowered benefit cap can access housing payments to fully mitigate the bedroom tax and maintain this support in the long term.<sup>25</sup>

### **iv. Benefit sanctions**

Benefit sanctions have been a part of the UK social security system since 1996.<sup>26</sup> Sanctions can be applied where a claimant does not meet certain conditions without good reason (e.g. looking for work) – reducing or stopping payments of benefits. The length of a sanction depends on why someone is claiming benefits, the type of non-compliance and any previous sanctions.

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<sup>23</sup> S Kennedy et al, 'The Benefit Cap', Briefing Paper No. 06294 (House of Commons Library, 2016), p36-43.

<sup>24</sup> See <https://news.gov.scot/news/bedroom-tax-mitigation>.

<sup>25</sup> One Parent Families Scotland and CPAG Scotland, 'The Impact of the Benefit Cap in Scotland' (2018), p5.

<sup>26</sup> National Audit Office, 'Benefit Sanctions' HC 628 (2016), p6.



A major 2018 UK study found little evidence that welfare conditionality enhanced people's motivation to prepare for or enter paid work – and that benefit sanctions regularly resulted in profoundly negative personal, financial and health outcomes for those affected.<sup>27</sup> Sanctions can cause hardship, hunger, rent arrears and homelessness.<sup>28</sup>

**(16) What has the impact of Universal Credit been on poverty and the lives of the poor in the United Kingdom until now? It would be helpful to also distinguish the specific impact of Universal Credit on specific groups, including for example children, persons with disabilities, women and other groups which may be more vulnerable on the basis of their identity and circumstances.**

The design and administration of Universal Credit is having detrimental effects on the rights to social security, adequate housing and an adequate standard of living.

**i. Delayed initial payments**

UC is paid monthly (to mimic the monthly payment of wages); whereas legacy benefits were paid more frequently. The first UC payment takes at least 5 weeks to be made. Delays in initial payments can be much longer.<sup>29</sup> The delay in initial payments is associated with claimants falling into rent arrears, problem debt and claimants having to use foodbanks.<sup>30</sup>

The House of Commons Work and Pensions Committee has noted that:

*Universal Credit claimants would ideally have savings or a last monthly paycheque to cover essential outgoings during this period. More than half of low and middle income families, however, have no savings, and two thirds have less than a month's worth... Many households simply do not have the resources to persist for six weeks, or in a minority of cases far longer, without resorting to desperate measures.<sup>31</sup>*

**ii. Single household payments**

Where two people live together as a couple and both claim UC, they must make a joint claim together as standard. One single household payment is made when a couple claim UC.

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<sup>27</sup> See <https://www.york.ac.uk/news-and-events/news/2018/research/welfare-conditionality-is-ineffective/>.

<sup>28</sup> House of Commons Committee of Public Accounts, 'Benefit sanctions' HC 775 (2017), p10-12.

<sup>29</sup> The Trussell Trust, 'Left Behind: Is Universal Credit Truly Universal?' (2018), p7.

<sup>30</sup> House of Commons Work and Pensions Committee, 'Universal Credit: the six week wait' First Report of Session 2017–19, p4.

<sup>31</sup> Ibid, p6.

Single household payments make it easier for perpetrators of domestic abuse to abuse and control their victims – leaving their victim dependent on them for their basic needs.<sup>32</sup>

### iii. UC case studies

- G is in work and claiming UC. G is paid every two weeks. The ‘assessment period’ for UC is one month. As a result, there are two months every year where G is paid three times in one month.<sup>33</sup> G’s UC claim was stopped in one month because G was paid three times, meaning that G was not eligible for UC that month. G then had to reapply for UC to restart the claim (this is not done automatically). As a result, G fell into rent arrears and G’s landlord took eviction proceedings against G. We are currently defending G from eviction.
- H is receiving UC. However the housing element of H’s UC claim has not been properly processed. H is not being paid the housing element of UC. As a result, H is struggling with rent arrears, and H’s landlord is taking eviction proceedings. We are currently defending H from eviction.

## Concluding statement

It is our position that:

- (a) There are a number of ongoing human rights violations experienced by people living in poverty in the UK. In particular, for asylum seekers and those experiencing homelessness.
- (b) There is little evidence that austerity measures implemented by the UK Government have taken into account relevant human rights obligations government or their disproportionate impact on vulnerable groups.
- (c) The human rights of people in poverty have been detrimentally affected by austerity measures in the UK. Changes to the social security system, such as the introduction of Universal Credit and the benefit cap have caused hardship for people in poverty.

We hope our submission is useful to the Rapporteur’s visit to the UK and would welcome any enquiries on our submission.

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<sup>32</sup> House of Commons Work and Pensions Committee, ‘Universal Credit and domestic abuse’ HC 1166 (2018), paras 41-53.

<sup>33</sup> See <https://www.gov.uk/universal-credit/how-youre-paid>.