



September 2018

## Visit by the UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, to the UK from 5 to 16 November 2018

### *Written submission*

#### **Introduction**

This briefing addresses four of the topics raised by the Special Rapporteur in his call for submissions: 1) “welfare” reform and the right to social security; 2) inequality; 3) no-fault evictions and child homelessness in England; and 4) some of the possible effects of Brexit. This submission addresses questions No. 3, 8-11, 13-16, 18 and 25-30 of the call.<sup>1</sup>

<sup>1</sup> Call for written submissions – Visit by the UN Special Rapporteur on extreme poverty and human rights to the UK from 5 to 16 November 2018:

<https://www.ohchr.org/EN/Issues/Poverty/Pages/CallforinputUK.aspx>

This contribution has been written by Just Fair and is supported by Unison, Women’s Budget Group, Inclusion London, Sustain Alliance’s Right to Food Project, The Equality Trust, Race on the Agenda, Amnesty International UK, York Human Rights City Network, Surviving Economic Abuse, Mind, Generation Rent, British Institute of Human Rights, Latin American Women’s Rights Service, and Equality and Diversity Forum.<sup>2</sup> Just Fair works to realise a fairer and more just society in the UK by monitoring and advocating for the protection of economic and social rights.<sup>3</sup>

### **“Welfare” reform and the right to social security**

As a Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UK must take steps to the maximum of its available resources to achieve progressively the realisation of economic, social and cultural rights, including the right to social security.<sup>4</sup> To comply with human rights standards, policy adjustments in times of economic crisis must be temporary, necessary and proportionate, must not be discriminatory, must mitigate inequalities and ensure that the rights of the most disadvantaged people are not disproportionately affected.<sup>5</sup>

The most significant changes to the UK’s social security were introduced through the Welfare Reform Act 2012 and the Welfare Reform and Work Act 2016, and include a benefit cap, the introduction of Universal Credit, replacing the Disability Living Allowance (DLA) with Personal Independence Payments (PIP), tougher sanctions in case of breach of requirements, a freeze on benefits, and the limitation of the child tax credit and Universal Credit awards to two children.

The Office for Budget Responsibility observed in 2016 that “the scale and sustained nature of the welfare spending cuts seen over the current and previous Parliaments are in some respects unprecedented”.<sup>6</sup> The UK has indeed made remarkable savings at the expense of welfare expenditure. Reforms introduced since 2010 saved around £26 billion by the end of

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<sup>2</sup> EDF [Members](#): Action on Hearing Loss, Age UK, BRAP, British Institute of Human Rights, Children’s Rights Alliance for England (CRAE), Citizens Advice, Disability Rights UK, Discrimination Law Association, End Violence Against Women Campaign, The Equality Trust, Fair Play South West, Fawcett Society, Friends, Families and Travellers, Gender Identity Research and Education Society (GIRES), Humanists UK, Law Centres Network, Mind, National AIDS Trust, National Alliance of Women’s Organisations (NAWO), Press for Change, Race on the Agenda (ROTA), RNIB, Runnymede Trust, Scope, Stonewall, Trades Union Congress (TUC), Traveller Movement, UKREN (UK Race in Europe Network), UNISON, Women’s Budget Group and Women’s Resource Centre.

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<sup>3</sup> Just Fair is a member of the End Child Poverty Coalition, campaigning to see an end to child poverty in the UK.

<sup>4</sup> Art. 2(1) and 9 ICESCR.

<sup>5</sup> CESCR, [Letter by the Chairperson of the CESCR to States parties to the ICESCR](#), 12 May 2012. See also CESCR, [Public debt, austerity measures and the ICESCR: Statement by the CESCR](#), 24 June 2016, UN doc: E/C.12/2016/1, para. 4.

<sup>6</sup> OBR, [Welfare Trends Report](#), October 2016, p. 12.

2017, roughly 10% of what welfare spending might otherwise have been; the greatest savings come from tax credits, £4 billion lower, and child benefits, 22% lower.<sup>7</sup>

The UK's public deficit reached 2% in the year ending March 2018,<sup>8</sup> but this figure does not reflect the economic cost of poverty in terms of public services, healthcare, achievement gap in schools, adult social care, housing and homelessness, and police and criminal justice. The cost of UK poverty has been estimated at £78 billion per year,<sup>9</sup> which is around three times more than the estimated savings from welfare reforms, as indicated in the previous paragraph.

The government defended the measures in order to encourage, "including through benefit sanctions where appropriate, those who can work to find and keep work and to increase their earnings rather than relying on benefits".<sup>10</sup>

However, the UK Statistics Authority cast doubt on any possible causal relationship between welfare reforms and the labour market: "The available numerical evidence does not demonstrate a particularly strong causal link between the benefit cap and the decisions made by individuals about moving into work".<sup>11</sup> Recently the National Audit Office disclosed that neither they nor the Department of Work and Pensions (DWP) were confident it would ever be possible to measure whether the economic goal of increasing employment has been achieved.<sup>12</sup>

The tax and welfare cuts have had a regressive effect on social protection. The cumulative impact assessment by the Equality and Human Rights Commission (EHRC) shows that key human rights requirements have not been met: namely, the principle of proportionality, non-discrimination, protection of most disadvantaged groups and independent review. The largest cash gains from changes to income tax and national insurance contributions were enjoyed by the wealthiest 30%.<sup>13</sup> As a result of changes to benefits and tax credits and Universal Credit, households in the second and third deciles have lost more than twice as much as those in the top 20%. At this pace, in four years from now 1.5 million more children will live in poverty, the child poverty rate for lone parent households (90% of whom are women) will increase from 37 to 62%, and households with at least one disabled adult and a disabled child will lose 13% of their income. Lone mothers will lose almost one fifth of their annual income.

Analysis by The Women's Budget Group and The Runnymede Trust found that black employed women are set to lose the most, around £1500 per year by April 2021. In relative terms this amounts to 28% of the net individual income of those not in employment and 20% of those in employment.<sup>14</sup>

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<sup>7</sup> House of Commons Library, [Welfare savings 2010-11 to 2020-21](#), July 2016.

<sup>8</sup> ONS, [UK government debt and deficit: March 2018](#), July 2018.

<sup>9</sup> Glen Bramley *et al.*, [Counting the cost of UK poverty](#), Joseph Rowntree Foundation, 2016.

<sup>10</sup> UK Government Ministry of Justice, [National report to the UN Universal Periodic Review](#), February 2017, para. 50.

<sup>11</sup> [Letter](#) from the Chair of the UK Statistics Authority to Jonathan Portes, December 2014.

<sup>12</sup> NAO, [Rolling out Universal Credit](#), June 2018, p. 10.

<sup>13</sup> EHRC, [Cumulative impact of tax and welfare reforms](#), March 2018.

<sup>14</sup> Runnymede Trust and Women's Budget Group, [Intersecting Inequalities: The impact of austerity on Black and Minority Ethnic women in the UK](#), November 2017.

Despite the dramatic reduction in access to legal aid since 2012,<sup>15</sup> some of the regressive measures have been challenged in the courts. In March 2015, the Supreme Court said that “it cannot possibly be in the best interests of the children affected by the (benefit) cap to deprive them of the means to provide them with adequate food, clothing, warmth and housing, the basic necessities of life”.<sup>16</sup> In November 2016, the Court ruled that adults with a disability who cannot share a room with another person should not have their housing benefit reduced.<sup>17</sup>

The House of Commons Public Accounts Committee denounced the “unexplained variation” in the use of benefit sanctions in different parts of the country,<sup>18</sup> and the National Audit Office criticised the government for not doing enough to assess the impact of sanctions on people on low incomes.<sup>19</sup>

It was revealed in August that the government was considering commissioning a piece of research on the impact of its policies on the rise in use of food banks.<sup>20</sup> In this regard, a clear correlation has been found between the increase of food bank use and the rollout of Universal Credit,<sup>21</sup> and between food bank use and benefit sanctions.<sup>22</sup>

Four UN Special Rapporteurs, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of Persons with Disabilities, and the European Committee of Social Rights have expressed serious doubts about the compatibility of “welfare” reforms with the UK’s international human rights obligations.<sup>23</sup>

Recommendations:

- The DWP should review the Welfare Reform Act 2012 and the Welfare Reform and

<sup>15</sup> Amnesty International, [Cuts that hurt: The impact of legal aid cuts in England on Access to justice](#), October 2016.

<sup>16</sup> [R \(on the application of SG and others \(previously JS and others\)\) \(Appellants\) v Secretary of State for Work and Pensions \(Respondent\)](#) [2015] UKSC 16, para. 226. That benefit cap challenge was unsuccessful but the Supreme Court is due to rule on a challenge to the lowered benefit cap heard in July.

<sup>17</sup> [R \(Carmichael and Rourke\) v. Secretary of State for Work and Pensions](#) [2016] UKSC 58. In 2013 the government implemented the “removal of the spare room subsidy” (commonly known as “bedroom tax”) as part of its welfare reform package with the intention of reducing spending on social housing for tenants that live in accommodations deemed too large for their needs.

<sup>18</sup> HC Public Accounts Committee, [Benefit Sanctions](#), February 2017, p. 3, 5 and 7.

<sup>19</sup> NAO, [Benefit sanctions](#), November 2016, p. 7.

<sup>20</sup> The Guardian, [“Revealed: ministers' plan to research effect of policies on food bank use”](#), 1 August 2018.

<sup>21</sup> The Trussell Trust, [Early Warning: Universal Credit and Foodbanks](#), April 2017; End Hunger UK, [Fix Universal Credit](#), July 2018.

<sup>22</sup> Rachel Loopstra *et al*, [Impact of Welfare Benefit Sanctioning on Food Insecurity: a Dynamic Cross-Area Study of Food Bank Usage in the UK](#), *Journal of Social Policy* 47(3), 2018, pp. 437-457.

<sup>23</sup> UN Special Rapporteurs on Housing, on Rights of Persons with Disabilities, on Extreme Poverty, and on the Right to Food, [“Joint letter to the UK Government”](#), UN doc. AL GBR 1/2016, April 2016, p. 12; CRC, [Concluding Observations: UK](#), July 2016, UN doc. CRC/C/GBR/CO/5, para. 66 and 69-70; CESCR, [Concluding Observations: UK](#), July 2016, UN doc: E/C.12/GBR/CO/6; para. 40-42 and 47-48; CRPD, [Inquiry concerning the UK](#), 2016, UN doc. CRPD/C/15/R.2/Rev.1; ECSR, [Conclusions XXI-2 \(2017\) United Kingdom](#), January 2018. See also BIHR *et al*, [Joint Civil Society Report to the UN Universal Periodic Review of the UK \(3rd Cycle\)](#), 2016, pp. 20-23.

Work Act 2016 to restore the link between social security entitlements and the costs of living.

- The DWP should design and implement a comprehensive child poverty strategy and reinstate the targets and reporting duties on child poverty.
- HM Treasury should extend the analysis of the distributional impact of tax and public spending to look at the aggregate impact in light of the protected characteristics under the Equality Act 2010 as well as income and wealth disparities.

### **Inequality harms society and puts human rights at risk**

Equality is of paramount importance for individual freedom and meaningful choice in a free society, and growing inequality within a country suggests that the government is not doing everything in its power to guarantee an adequate standard of living for all. Non-discrimination is essential to the enjoyment of economic and social rights, and socio-economic status is one of the forbidden grounds of discrimination.<sup>24</sup>

Inequality is projected to rise in the next four years with sluggish growth across much of the distribution and a “leaving behind” of those at the bottom.<sup>25</sup> Wealth inequality contracted in the decade prior to the financial crisis, but it is now rising in part because of the decreasing accessibility of home ownership and the decoupling of land value and economic growth.<sup>26</sup>

Inequality is closely linked to the poverty premium, that is, the fact that poorer people pay more for essential goods and services. While median household disposable income rose in recent years, households with a lower income have less money to spend on non-essential items; furthermore, lower income households have to assign a greater share of their food budget to basic groceries and, relative to their disposable income, they spend approximately three times as much in electricity, gas and other fuels than those with highest income.<sup>27</sup>

Income and wealth are distributed unevenly across regions. All the top 10 local areas in terms of gross disposable household income per head are in London and the South East; the bottom 10 are more widespread but confined to the North West, Yorkshire and the Humber, East Midlands, West Midlands and Northern Ireland.<sup>28</sup> The median household net property wealth in the South East is 233% larger than that in the North East, and while the median wealth increased in the South East by 14% between 2012 and 2016, it fell by 7% in the North East.<sup>29</sup>

<sup>24</sup> Article 2(2) ICESCR; CESCR, *General Comment No. 20: Non-discrimination in economic, social and cultural rights* (2009), UN doc: E/C.12/GC/20, para. 35; [Sustainable Development Goal](#) No. 10.

<sup>25</sup> Resolution Foundation, *The Living Standards Outlook*, February 2018, p. 65; IFS, *Living standards, poverty and inequality in the UK: 2017-18 to 2021-22*, November 2017. This section is based on the chapter on SDG 10 written by Just Fair for UKSSD, *Measuring up: How the UK is performing on the SDGs*, June 2018.

<sup>26</sup> Resolution Foundation, *Britain's increasingly unevenly shared property wealth is driving up inequality after a decade-long fall*, June 2017; IPPR, *Capital gains: Broadening company ownership in the UK economy*, December 2017.

<sup>27</sup> ONS, *Family spending in the UK: Financial year ending March 2016*, February 2017.

<sup>28</sup> ONS, *Regional gross disposable household income, UK: 1997 to 2016*, May 2018.

<sup>29</sup> ONS, *Wealth in Great Britain Wave 5: 2014 to 2016*, February 2018.

The socio-economic duty (Section 1 of the Equality Act 2010) would require public authorities to actively consider how they can reduce inequalities of outcome caused by socio-economic disadvantage. However, successive governments have failed to bring the duty to life.<sup>30</sup> The duty is in force in Scotland since April 2018, where it is known as the 'Fairer Scotland Duty'.<sup>31</sup>

Even though Section 1 has not been commenced, some councils in England are showing what the duty could look like in practice. Just Fair interviewed 20 council representatives, senior officers and voluntary sector groups in Manchester, Newcastle, Oldham, Wigan, Bristol, York and the London Borough of Islington.<sup>32</sup> All respondents were clear that austerity had prompted them to react both because of the way Universal Credit and other welfare reforms were affecting their residents and because of the limitations on local government funding.

Recommendation:

- The UK Government should commence all the outstanding clauses of the Equality Act 2010 and in particular the socio-economic duty.

### No-fault evictions and child homelessness in England

The right to adequate housing is guaranteed in international human rights treaties ratified by the UK,<sup>33</sup> and is inextricably linked to the protection of the home and the right to a private and family life.<sup>34</sup> Security of tenure is an essential ingredient of the right to adequate housing "notwithstanding the type of tenure".<sup>35</sup> To be in line with international human rights law, national legislation on evictions must respect the principles of reasonableness and proportionality; this means that tenants must be able to object or lodge an appeal so that the judge might consider the consequences of the eviction and its compatibility with the ICESCR.<sup>36</sup>

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<sup>30</sup> The CESCR called on the government to bring the socio-economic duty into force "in order to enhance and guarantee full and effective protection against discrimination in the enjoyment of economic, social and cultural rights" (CESCR, [Concluding Observations: UK](#), July 2016, UN doc: E/C.12/GBR/CO/6, para. 23).

<sup>31</sup> Scottish Government, [Fairer Scotland Duty - Interim Guidance for Public Bodies](#), March 2018.

<sup>32</sup> Just Fair, [Tackling socio-economic inequalities locally: Good practices in the implementation of the socio-economic duty by local authorities in England](#), June 2018.

<sup>33</sup> Art. 11(1) ICESCR, Art. 27(4) of the Convention on the Rights of the Child, Art. 5(e) of the International Convention on the Elimination of All Forms of Racial Discrimination, and Art. 13 and 14 of the Convention on the Elimination of all Forms of Discrimination Against Women.

<sup>34</sup> Art. 17 of the International Covenant on Civil and Political Rights and Art. 8 of the European Convention of Human Rights, which is incorporated into the UK through the Human Rights Act 1998.

<sup>35</sup> CESCR, [General Comment No. 4: The Right to Adequate Housing](#), 1991, UN doc: E/1992/23, para. 8.a.

<sup>36</sup> CESCR, [General Comment No. 7: The Right to Adequate Housing and Forced Evictions](#), 1997, UN doc: E/1998/22, para. 11; CESCR, [Views with regard to communication 5/2015, MBD et al v. Spain](#), 2017, UN doc: E/C.12/61/D/5/2015, para. 13.4 and 21.a.

Currently English law does not protect tenants if a landlord fails to maintain a property in a standard that is fit for human habitation. The limits contained in the Landlord and Tenant Act 1985 (requirement of paying less than £80 annual rent in London and £52 in the rest of the country) are absolutely dated and leave tenants unprotected in front of socially irresponsible landlords.<sup>37</sup> The Act imposes obligations to repair on landlords but only if there is “disrepair”; damp, mould or exposed asbestos not causing structural damage are not covered.

The English Housing Survey, commissioned by the Ministry of Housing, Communities and Local Government, shows that in 2016/17 the private rental sector had the highest proportion of homes with at least one indicator of poor housing: 38%. More than one quarter (27%) of privately rented homes failed the decent home standard in 2016, compared to 20% in the case of owner-occupied homes and 13% in the social housing sector.<sup>38</sup>

In this context, tenants expose themselves to the risk of eviction if they take legal action because Section 21 of the Housing Act 1988 permits landlords to evict tenants with no fault and without giving a reason.

The ending of private sector tenancies is the biggest single driver of statutory homelessness in England.<sup>39</sup> Based on the cross reference of 2017/18 data from the Ministry of Justice and the Ministry of Housing, Communities and Local Government, Generation Rent has found a tight correlation between homelessness and Section 21 evictions: 92% in London and 88% outside of London.<sup>40</sup> The Cambridge Centre for Housing and Planning Research concluded that 80% of private sector evictions in 2015 were no-fault evictions.<sup>41</sup>

Recommendation:

- The Landlord and Tenant Act 1985 must be amended to require that residential rented dwellings in England are fit for human habitation, and no-fault evictions regulated in Section 21 of the Housing Act 1988 must be abolished.<sup>42</sup>

Local housing authorities in England have a duty to secure accommodation for households who are unintentionally homeless in priority need (Part 7 of the Housing Act 1996). Recent government figures show that there were 79,880 households in temporary accommodation in March 2018, including 123,230 children, which represents a 65% increase since 2010.<sup>43</sup>

The government’s own guidance makes clear that hotels and bed and breakfast (B&B) accommodations are not suitable for 16-17 year olds in care, even in emergency situations. However, 40% of local authorities have admitted rare or occasional use of B&Bs to house

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<sup>37</sup> Karen Buck’s Homes (Fitness for Human Habitation) Bill 2017-19 is seeking to amend relevant sections of the Landlord and Tenant Act 1985. Report stage in the House of Commons is scheduled to take place on 26 October 2018.

<sup>38</sup> Ministry of Housing, Communities and Local Government, [English Housing Survey 2016/17](#), 2018.

<sup>39</sup> NAO, [Homelessness](#), 2017, p. 6.

<sup>40</sup> Generation Rent, [No-fault evictions drive up homelessness](#), August 2018.

<sup>41</sup> JRF and CCHP, [Poverty, Evictions and Forced Moves](#), 2017.

<sup>42</sup> Just Fair and Generation Rent, [No-fault evictions violate human rights: Section 21 must end](#), September 2018.

<sup>43</sup> Ministry of Housing, Communities & Local Government, [Live tables on homelessness](#), last updated in June 2018.

teenagers of that age, and a further 30% reported increased use of this type of accommodation. Over half of the local authorities do not have a safeguarding policy to transfer children to temporary accommodations or B&Bs.<sup>44</sup>

Recommendation:

- Local authorities must stop using B&Bs beyond six weeks and action should be taken when they break the law.

### **Brexit: The loss of the EU Charter and European structural and investment funds**

At the time of writing, it is not certain what sort of relationship the UK will have with the rest of the European Union after March 2019.

However, Brexit has been identified as a concern by many civil society organisations, particularly as regards the unequal impact it may have on different regions and groups.<sup>45</sup>

The EU Withdrawal Act 2018 establishes that, following the UK's departure from the EU, nearly all EU law will be automatically retained and will be directly applicable in the UK. The Act however makes clear that "the Charter of Fundamental Rights is not part of domestic law on or after exit day" (Section 5(4)). The impact of this omission is significant because there is no other constitutional mechanism at the UK level by which courts can invalidate laws that fail to meet basic human rights standards. As currently drafted, the Trade Bill grants extraordinarily wide powers to ministers to amend retained EU law, including on equalities and human rights.<sup>46</sup>

European structural and investment funds like the European Social Fund (ESF) and the European Regional Development Fund (ERDF) provide a large amount of investment for equality and human rights related projects, worth over £5.55 billion to the UK.<sup>47</sup> The government has promised a UK Shared Prosperity Fund that will focus on regional disparities,<sup>48</sup> but the announcement fails to guarantee the future of public investment in equality and human rights projects after Brexit.

Brexit with no deal with the EU, which cannot presently be ruled out, would leave significant governance gaps in terms of monitoring, overseeing and ensuring compliance with laws and regulations. The British Medical Association has warned that "a 'no deal' Brexit could have wide ranging, and potentially damaging consequences for health services across the UK and

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<sup>44</sup> CRAE, *Change It: Children speak out on homelessness*, June 2018. The personal stories included in this report are worth every reader's time.

<sup>45</sup> See Repeal Bill Alliance <https://repealbill.org/> and Equality and Diversity Forum <http://www.edf.org.uk/brexit/> BIHR, Just Fair and 29 other organisations, *Joint Committee on Human Rights Submission: European Union (Withdrawal) Bill Scrutiny*, November 2017; Women's Budget Group and Fawcett Society, *Exploring the Economic Impact of Brexit on Women*, March 2018; IPPR, *An equal exit? The distributional consequences of leaving the EU*, July 2018.

<sup>46</sup> EDF, *Briefing for the Lords 2<sup>nd</sup> reading of the Trade Bill*, September 2018; Liberty and Amnesty International, *Trade Bill Briefing for Lords Second Reading*, September 2018.

<sup>47</sup> Equality and Diversity Forum, *Shared Prosperity, Shared Rights*, February 2018.

<sup>48</sup> James Brokenshire (Secretary of State for Housing, Communities and Local Government), *Local Growth: Written statement in the House of Commons - HCWS927*, 24 July 2018.



Europe, including on workforce and immigration, Northern Ireland, access to medicines, reciprocal health care, professional qualifications and patient safety, access to medical radioisotopes, medical research and rare diseases".<sup>49</sup>

Recommendations:

- To ensure that Brexit does not turn into a backdoor regression in human rights protection without adequate parliamentary scrutiny, the UK should bring economic and social rights home by enhancing the status of international human rights law in the national legal system.
- The government should provide guarantees that it will match the funding received from European structural and investment funds on equality and human rights once the UK leaves the EU.

*\* We would like this submission to be published on the website of the Special Rapporteur.*

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<sup>49</sup> BMA, [A health service under threat: the dangers of a 'no deal' Brexit](#), August 2018.