



## Knowledge Exchange Seminar Series (KESS)

...is a forum that encourages debate on a wide range of research findings, with the overall aim of promoting evidence-based policy and law-making within Northern Ireland

# Protecting dignity, fighting poverty and promoting social inclusion in devolved social security

Mark Simpson

School of Law, Ulster University

6 June 2018

<https://www.ulster.ac.uk/staff/m-simpson>



# Social security and devolution in the UK

England and Wales	Discretionary assistance and council tax benefit devolved All other benefits controlled by UK Parliament
Northern Ireland	All benefits devolved, subject to parity convention
Scotland	Disability and carers' benefits, discretionary assistance and regulated social fund devolved Universal credit payment arrangements and housing element devolved Power to top up reserved benefits Other benefits reserved to UK Parliament



# Social security and dignity

“Everyone... has the right to social security and... the economic, social and cultural rights indispensable for his dignity”

Universal Declaration of Human Rights art 22

“The right to social security is of central importance in guaranteeing human dignity for all persons”

CESCR general comment on the right to social security

“Respect for the dignity of individuals is to be at the heart of the Scottish social security system”

Social Security (Scotland) Bill cl1



# Social security, poverty and social inclusion

“Social security.. plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion”

CESCR general comment on the right to social security

“The Scottish social security system is to contribute to reducing poverty in Scotland”

Social Security (Scotland) Bill cl1

“The Executive Committee shall adopt a strategy setting out how it proposes to tackle poverty, social exclusion and patterns of deprivation based on objective need.”

Northern Ireland Act 1998 s28E



# Protection of dignity as a legal right

Prohibition of inhuman and degrading treatment

The conditions for self-fulfilment and autonomy

Protection of group identity and culture

**Creation of the conditions for individuals to have their essential needs satisfied**

Clapham (2006)/McCrudden (2008)



# Defining essential needs

## Asylum support system

- Adequate, furnished housing with all utilities
- Food, clothing, toiletries and healthcare
- Essential travel and communication
- Cleaning products, babies' essentials, non-prescription medication
- Allowance of £37.75 per person per week (after housing costs)

## JRF *Destitution in the UK*

- Shelter, heating and lighting
- Food, clothing, footwear and basic toiletries
- Requires £70 (single adult) or £100 (couple) plus £20 per child per week



# Protection of dignity as subjective

## **Access to essential needs and social participation:**

- “It's like a pigeon, innit, you're just there pick pick pick, and that's it really. You're just existing.”
- “Your friends can be going out for a drink but [you] can't go...so then you feel embarrassed because people know that you can't go because you've no money

## **Treatment by system and society:**

- A “cultural economy of disgust” towards claimants?
- Claimants feel advisers “talk down to you”
- (Patrick, 2014; 2016; Jensen & Tyler, 2015; Edmiston, 2017)



# Claimants' interaction with the system

“I am confident that the [Social Security] bill will change the experience of our citizens. The system will be conducted in a way that is not punitive or bureaucratic. It will be done with dignity, fairness and respect.” (Clare Adamson MSP)

## Scotland:

- Scottish Welfare Fund available to sanctioned claimants
- Devolved employment support to be voluntary
- Duty on Ministers to promote take-up

## Northern Ireland

- Much lower sanctioning rate
- Well regarded take-up campaigns ('Make the call')
- Supplementary payment while appealing certain losses of eligibility





# Poverty and social exclusion

## Official UK poverty measures:

- Relative low income: <60% of median
- Absolute low income: <60% of median in 2010-11
- Material deprivation: <70% of med. income and lacking necessities for a normal standard of living
- Persistent poverty: <60% of med. income in 3/4 years

## Social exclusion:

- Relative low income threshold recognises that a minimum income is required to “take a full part in the activities that social inclusion demands” (DWP, 2003)
- JRF minimum income standard around 75% of median income



# Recent developments in social security

## **Welfare Reform Act 2012/(NI) Order 2015:**

- Introduction of universal credit
- Introduction of personal independence payment
- Shortened eligibility to contributory ESA
- Benefit cap
- Stiffened conditionality
- Social sector size criteria

## **Welfare Reform & Work Act 2016/(NI) Order**

- Zero uprating for four years
- Payment to ESA work related activity group reduced
- Two child limit on child tax credits/universal credit



# Litigating the child's right to social security

## Benefit cap:

- Discriminates against lone parents
- Contrary to best interests of children (UKSC, 3:2)
- But does not breach ECHR rights (UKSC, 3:2)
  - *SG v Secretary of State for Work and Pensions* [2015]
- Unlawfully discriminates against lone parents of children under 2 and their children (High Court)
- Circumstances of lone parents of children under 2 not sufficiently different to other lone parents' to require different treatment (Court of Appeal, 2:1)
  - *DA v Secretary of State for Work and Pensions* [2017], [2018]

# Litigating the child's right to social security

## **Exclusion of unmarried cohabitees from bereavement benefits:**

- “Inimical” to the interest of children and unlawfully discriminates against cohabitees (HC)
- Discrimination justified by objective of promoting marriage (CA)
  - *McLaughlin's Application* [2016]

## **Social sector size criteria:**

- Potential for negative impact on disabled people/DV victims
- Most cases can be satisfactorily dealt with through discretionary housing payments
  - *MA v Secretary of State for Work and Pensions* [2017]

# The two child limit on CTC/UC

- Third/subsequent children born after April 2017 ineligible for CTC.
- UC claims after April 2017 can include child element for maximum of two children; higher payment for first child abolished.
- Projected impact (Ghelani & Tonutti, 2017):
  - Additional 266,000 children in poverty by 2019/20
  - Deepened poverty for 256,000 already-poor children
  - 609,000 children move closer to poverty line

## Judicial review (GB):

- Policy discriminates against women, not against children
- Any discrimination is justified by policy objectives (HC)
  - *SC v Secretary of State for Work and Pensions* [2018]



# The two child limit on CTC/UC

## Impact in Northern Ireland

- Relatively high levels of economic inactivity and low wages → any social security cut has greater impact (Beatty & Fothergill, 2013)
- 3+ child households most common in NI and London

## Clash with devolved policy objectives?

- Undermines mitigation of benefit cap (average 3.8 children per affected household)
- Increases poverty and likely to increase social exclusion
- A threat to households' ability to meet their essential needs?

# What can be done at devolved level?

## Preventing poverty

- Power exists to raise all benefits to/above poverty line
- Major budgetary implications
- Could act to prevent further *increase* in child poverty

## Social inclusion

- Increasing benefit levels to MIS would be even more expensive

## Protecting dignity

- Benefits generally adequate to meet essential needs
- Sanctions and unclaimed entitlements major threat
- Administration of system can have important impact
- Need to shield claimants from traumatic encounters

# What can be done at devolved level?

## Mitigation of the two-child limit?

- Household with third/subsequent children born after April 2017 loses £2,780 per child
- Household with all children born after April 2017 loses £545 for first child, £2,780 for third/subsequent children
- NI – 8,000 claimant households with 3 children, 4,000 with 4+ children (23.5% of total)
- Benefit cap mitigation negated?
- Scotland – 13,000 claimant households with 3 children, 6,000 with 4+ children (18.8% of total)





# Concluding remarks

Social security has a role to play in protecting dignity, reducing poverty and tackling social exclusion

Recent reforms have reduced ability to do so

Courts defer to executive and legislature on social and economic policy

Northern Ireland and Scotland have powers to protect citizens from poverty – but finance and political will also required



# References

- Beatty & Fothergill (2013) *The impact of welfare reform on Northern Ireland*. Belfast: NICVA
- Clapham (2006) *Human rights obligations of non-state actors*. Oxford: Oxford University Press
- Department for Work and Pensions (2003) *Measuring child poverty*. London: DWP
- Edmiston (2017) 'How the other half live', *Social Policy and Society* 16(2) 315
- Fitzpatrick, Bramley, Sosenko, Blenkinsopp, Johnsen, Littlewood, Netto & Watts (2016) *Destitution in the UK*. York: Joseph Rowntree Foundation
- Ghelani, D and Tonutti, G (2017) *The impact of the two-child limit to tax credits*. London: Policy in Practice
- Jensen & Tyler (2015) 'Benefit broods', *Critical Social Policy* 34(4) 470
- McCrudden, 'Human dignity and judicial interpretation of human rights' (2008) 19(4) *European Journal of International Law* 665
- Padley & Hirsch (2017) *A minimum income standard for the UK in 2017*. York: Joseph Rowntree Foundation
- Patrick (2014) 'Working on welfare', *Journal of Social Policy* 43(4) 705
- Patrick (2016) 'Living with and responding to the "scrounger" narrative', *Journal of Poverty and Social Justice* 24(3) 245
- Simpson (2015) 'Developing constitutional principles through firefighting' *Journal of Social Security Law* 22(1) 31
- Simpson (2017) 'Renegotiating social citizenship in the age of devolution', *Journal of Law and Society* 44(4) 646
- Simpson, McKeever & Gray (2017) *Social security systems based on dignity and respect*. Glasgow: Equality and Human Rights Commission

**Funders: Equality and Human Rights Commission, Socio-Legal Studies Association, Department of Employment and Learning**





Northern Ireland  
Assembly



**QUEEN'S  
UNIVERSITY  
BELFAST**



**The Open  
University**



## Knowledge Exchange Seminar Series (KESS)

...is a forum that encourages debate on a wide range of research findings, with the overall aim of promoting evidence-based policy and law-making within Northern Ireland