

Equality and Human Rights Commission

Oral Statement at the Pre-Sessional Working Group of the UN Committee on Economic, Social and Cultural Rights

Recognising the limited time available at this session, and the expertise and jurisdiction of colleagues in other NHRIs and in NGOs, the Equality and Human Rights Commission (EHRC) would like to highlight four issues to the Committee. Of particular concern to the EHRC are the way in which the UK Government makes financial decisions, the disproportionate impact of social security reforms on disabled people, low and unequal pay, and the impact of changes to the legal aid system.

Financial decision-making

The way in which financial decisions are made by the UK and devolved Governments has a significant impact on the protection and promotion of the rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR) in the UK, in particular on the right to social security and the right to an adequate standard of living.

The UK Government's 2010 spending review contained decisions, such as the decision to implement the household benefit cap, that were not made in full compliance with the public sector equality duty, which requires Ministers to have due regard to the need to eliminate discrimination and advance equality of opportunity.

The EHRC has advised the UK Government to undertake cumulative impact assessments of its changes to policies and spending, so that disproportionate impacts on potentially vulnerable groups can be adequately assessed and mitigated.¹ The EHRC has developed a model to show how cumulative impact assessment can be carried out, produced guidance to support public bodies to comply with the law, and continues to monitor progress. The Welfare Reform and Work Bill is a recent example of proposed legislation that has the potential to impact on people's rights to an adequate standard of living and social security but where impact assessments could be strengthened in a number of ways, including by a fuller consideration of the potential adverse impacts of the measures of the Bill on people who share different protected characteristics.

Impact of social security reform on disabled people²

The transition from disability living allowance to personal independence payments is projected to result in 600,000 fewer disabled people receiving support.³ Disabled

¹ EHRC, Socio-economic rights in the UK, pp. 13-14

² EHRC, Socio-economic rights in the UK, pp. 14-19

people continue to experience long delays in the assessment and claims process, and disputed reassessment claims led to changes in awards in 43% of appeals.⁴

Two-thirds of the people affected by the under-occupation deduction from housing benefit have disabilities and need an additional bedroom for carers or equipment.⁵ Discretionary housing payments designed to address periods of temporary need are not available to all, and we do not consider that they are adequate long-term solutions.

The UK Government's Independent Living Fund, which provided support to people with severe disabilities to enable them to live independently, has been closed. The Scottish, Welsh and Northern Irish Governments have committed to continue to provide this support, at least in the short term. However, the closure means disabled people in England could be prevented from participating in education, training and employment and may force some into residential care.

Just and favourable conditions of work⁶

The UK Government has announced increases to the national minimum wage but concerns remain as to whether it actually constitutes a living wage, sufficient to meet costs of living in the UK.⁷ There is a growing concentration of migrant workers in low wage, low skill sectors, many of whom are not aware of their employment rights and are treated unfairly by employers. For example, EHRC inquiries have found low pay to be prevalent in the home care and cleaning sectors, and that some migrant workers are denied sick or holiday pay despite being permanent employees.⁸

The gender pay gap has decreased since 2008, but remains at over 19 per cent when part-time workers are taken into account.⁹ One underlying cause for this persistent gap is the impact of motherhood on women's work, particularly in the context of inadequate provision of affordable childcare, and discrimination because of pregnancy and maternity. The disability and race pay gaps have stayed the same since 2008, and lack of UK Government analysis of these gaps and their causes prevents an effective approach.

³ DWP, Personal Independence Payment: Reassessment and Impacts, December 2012, p. 8, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180964/pip-reassessments-and-impacts.pdf

⁴ DWP, Personal Independence Payment: Official Statistics to April 2015, 17 June 2015, p. 5, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434838/pip-stats-apr-2013-apr-2015.pdf

⁵ National Housing Federation, The bedroom tax: some home truths, p. 4, available at: http://s3-eu-west-1.amazonaws.com/doc.housing.org.uk/News/Bedroom_tax_home_truths.pdf http://s3-eu-west-1.amazonaws.com/doc.housing.org.uk/News/Bedroom_tax_home_truths.pdf

⁶ EHRC, Socio-economic rights in the UK, pp. 54-69

⁷ Living Wage Foundation, Living Wage Foundation response to budget 2015, 8 July 2015, available at: <http://www.livingwage.org.uk/news/living-wage-foundation-response-budget-2015>

⁸ EHRC, The Invisible Workforce: Employment Practices in the Cleaning Sector, August 2014, available at: <http://www.equalityhumanrights.com/publication/invisible-workforce-employment-practices-cleaning-sector>

EHRC, Close to home: An inquiry into older people and human rights in home care, November 2011, available at: <http://www.equalityhumanrights.com/publication/close-home-inquiry-older-people-and-human-rights-home-care>

⁹ ONS, 2014, Annual Survey of Hours and Earnings, 2014 Provisional Results, p.10, available at: http://www.ons.gov.uk/ons/dcp171778_385428.pdf

Access to civil law justice¹⁰

Restrictions in the scope of legal aid in England and Wales will have a significant impact on the ability of people to access justice when breaches of their rights under ICESCR have occurred. Reforms of the system have led to nearly a 50 per cent drop in the number of cases in which people have received initial legal advice and assistance from 782,000 in 2012/13 to 381,000 in 2013/14.¹¹

Restrictions in the scope of legal aid include increasing evidence requirements for domestic violence cases, and ending legal aid for most housing, immigration, social security, employment and education cases. The proposed residence test for civil legal aid would leave certain vulnerable groups without access to legal aid.

The way in which the legal aid system is being administered also presents obstacles to access to justice when people's rights under ICESCR are at risk. The mandatory telephone gateway for accessing legal aid may not be sufficiently accessible to disabled people. The exceptional cases funding scheme has been assessed by the High Court as not providing the human rights safety net that was promised by Ministers.¹² Changes to legal aid for judicial review could deter practitioners from taking on important ESCR cases, and employment tribunal fees, applicable across Great Britain, may have a disproportionate impact on women, ethnic minorities and disabled people.

October 2015

¹⁰ EHRC, Socio-economic rights in the UK, pp. 75-85

¹¹ Legal Aid Statistics in England and Wales: Legal Aid Agency 2013-2014, Figure 1, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366575/legal-aid-statistics-2013-14.pdf

¹² IS – v- (1) Director of Legal Aid Casework (2) Lord Chancellor [2015] EWHC 1965 (Admin)