“Designed to reduce people... to complete destitution”: human dignity in the active welfare state

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This paper discusses the implications for the right to a life in dignity of the “activation turn” (Kenworthy) in the welfare state, characterised by the requirement that social security claimants be available for and undertake compulsory activities intended to result in finding employment. Failure to comply may result in loss of benefit for up to three years. This paper argues that while activation of claimants is compatible with human rights law, the UK’s sanctions regime may be vulnerable to challenge. The main focus is on whether a regime Webster claims is designed to result in “complete destitution” can be compatible with human dignity. The key focus is on article 3, article 8 and P1-1 ECHR and their relationship to three elements of the protection of human dignity identified by McCrudden: prohibition of inhuman and degrading treatment, individual autonomy and satisfaction of essential needs.
Introduction

Social security\(^1\) claimants in the UK have long been subject to an obligation to “fit themselves or to keep themselves fit for service.”\(^2\) If “the balance between active and passive policies\(^3\) has ebbed and flowed” over time,\(^4\) the post-1997 “activation turn” in the welfare state\(^5\) has seen renewed emphasis on jobseeking requirements,\(^6\) for a wider range of claimant groups and backed by an escalating sanctions regime.\(^7\) The extent to and means by which conditionality is enforced have generated

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1 Social security in the UK refers to cash benefits collectively, including those means tested benefits that would in some countries be classed as social assistance – see Committee of Independent Experts, ‘Conclusions XIII-4’ (Council of Europe, 1996)

2 W Beveridge, ‘Social insurance and allied services’ (Cmd 6494, HMSO, 1942)

3 ‘Active’ benefits are those which require the claimant to be available for employment, to seek employment and increasingly to take part in other activities designed to increase employability; ‘passive’ or ‘inactive’ benefits are paid to categories of claimant who are not required to actively seek employment

4 D Freud, ‘Reducing dependency, increasing opportunity: options for the future of welfare to work’ (DWP, 2007)

5 L Kenworthy, ‘Labour market activation’ in FG Castles, S Leibfried, J Lewis, H Obinger and C Pierson (eds), The Oxford handbook of the welfare state (Oxford University Press, 2010)


7 This trend is international – see see F Dubet and A Vérétout, ‘Une « réduction » de la rationalité de l’acteur. Pourquoi sortir du RMI ?’ (2001) 42(3) Revue française de sociologie 407; K Mohr, Soziale Exklusion im Wohlfahrtsstaat: Arbeitslosensicherung und Sozialhilfe in Großbritannien und Deutschland (VS Verlag für
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considerable controversy and one unsuccessful challenge under human rights law. This paper considers the compatibility of the sanctions regime which underpins activation policies with the UK’s human rights obligations, specifically those regarded by McCrudden as key to the protection of human dignity.

A definition of ‘human dignity’ and its application in the sphere of socio-economic rights is absent from the human rights instruments and the range of interpretations in scholarship and case law has reached a “challenging level of complexity.” The paper therefore first seeks to establish a “clear statement of principle” as opposed to the tool for “judicial manipulation” the concept represents in the eyes of McCrudden. The focus then falls upon human dignity in the active welfare state.

Section 2 outlines increasing conditionality in the UK since 1997, reflecting rejection of unconditional

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9 R (on the application of Reilly and another) v SSWP [2013] UKSC 68 – although the challenge on the basis of article 4 ECHR failed, the Supreme Court found for the applicant on other grounds

10 Article 4(1) ESC; article 7(a) and 11 ICESCR; article 3 and 8 ECHR; ILO R202


social rights and the embrace of paid employment as the “key to citizenship.”\textsuperscript{13} Section 3
interrogates the extent to which sanctions respect human dignity. The severity and duration of
sanctions available in the UK post-2012 is concluded to raises questions about compliance that
demand consideration by the courts.

1. Dignity in human rights law

Human dignity is a core concept in human rights law, variously “the foundation of freedom, justice
and peace”\textsuperscript{14} and “the very essence” of ECHR.\textsuperscript{15} However, a precise definition is elusive. McCrudden
views the concept as at best context-dependent, at worst a basis for “judicial manipulation” with
greater potential to muddy than to clarify legal positions.\textsuperscript{16} While Carozza argues that the
inviolability of human dignity underpins a clearly identifiable “‘minimum’, but hard, core” of
protection from certain severe rights violations, he acknowledges that beyond this McCrudden’s
claim has some foundation.\textsuperscript{17}

\textsuperscript{13} R Lister, Citizenship: feminist perspectives (Palgrave Macmillan, 2003)

\textsuperscript{14} Preamble to Universal Declaration of Human Rights, adopted by General Assembly Resolution 217A (III) of
10 December 1948

\textsuperscript{15} Pretty v United Kingdom (app 2346/02) [2002] 35 EHRR 1 H18; Convention for the Protection of Human
Rights and Fundamental Freedoms (Rome, 4 November 1950, entry into force of current text 1 June 2010,
ETS005)

\textsuperscript{16} C McCrudden, n12

\textsuperscript{17} PG Carozza, ‘Human dignity and judicial interpretation of human rights: a reply’ (2008) 19(5) EJIL 931
Some debate exists as to whether human dignity represents a right in itself, as suggested by article 1 CFR, or an overarching concept that serves as the foundation of all human rights. This paper adopts McCrudden’s perspective of dignity as an overarching concept protected by four “substantive areas” of human rights law: prohibition of inhuman treatment, assurance of individual autonomy, protection of group identity or culture and creation of the conditions for satisfaction of essential needs. The welfare state has an obvious role to play in upholding rights under all but the third of these headings. Other authors broadly support McCrudden’s analysis. Riley stresses the fundamentality of the link between dignity and freedom from inhuman and degrading treatment, Dupre its potential to act as a “bridge” between the civil right to autonomy and the socio-economic right to satisfaction of essential needs.

International instruments are clear that socio-economic rights are crucial to the protection of human dignity; articles 22 and 23 UDHR protect rights to social security and “realisation... of the economic, social and cultural rights indispensable for... dignity” and to remuneration capable of ensuring “an existence worthy of human dignity,” supplemented by social protection if necessary. References to

18 Charter of Fundamental Rights of the European Union (2007/C 303/01) (CFR); for a critical view of human dignity as a “right-in-itself,” see M Neal, ‘Respect for human dignity as “substantive basic norm”’ (2014) 10(1) IJLC 26

19 D Mamberti, ‘Statement by Msgr Dominique Mamberti, secretary for relations with states and head of the Holy See delegation’ (High level meeting of the 67th General Assembly on the rule of law at the national and international levels, New York, September 2012) <http://www.vatican.va/roman_curia/secretariat_state/2012/documents/rc_seg-st_20120924_rule-of-law_en.html> accessed 19 May 2014; see also C Dupre, n19

20 C McCrudden, n12

21 C Dupre, n19; S Riley, ‘Human dignity: comparative and conceptual debates’ (2010) 6(2) IJLC 117
dignity also appear in ICCPR, ICESCR, UNCRC and the revised ESC, as well as in discussion of
the incorporation of socio-economic rights into ECHR. A connection can also be drawn between
dignity and an “adequate” or “decent [standard of] living” (articles 7(a) and 11 ICESCR, article 4(1)
ESC). The context-dependence of the concept highlighted by McCrudden need not be fatal to its
use in this context: the state’s socio-economic obligations to its citizens are acknowledged to depend
on “the standards prevailing” in society, “maximum available resources,” median income or the
goods deemed necessary to a normal lifestyle.

22 International Covenant on Civil and Political Rights, adopted by General Assembly Resolution 2200A (XXI) of
16 December 1966, entry into force 23 March 1976, UNTS vol 999 p171
23 International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly Resolution
2200A (XXI), 16 December 1966, entry into force 3 January 1976, UNTS vol 993 p3
24 Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of 20 November 1989,
entry into force 2 September 1990 UNTS vol 1577 p3
is not a signatory to the revised Charter
26 Working Group on Social Rights, ‘Steering committee for human rights: working group on social rights
report’ (GT-DH-SOC(2005)007, Council of Europe, 2005)
27 European Social Charter (Turin, 18 October 1961, entry into force 26 February 1965, CETS 035)
28 TH Marshall, ‘Citizenship and social class’ in TH Marshall and T Bottomore, Citizenship and Social Class (Pluto,
1992)
29 Committee for Economic, Social and Cultural Rights, ‘General comment no 3 (1990)’ in Economic and Social
30 Child Poverty Act 2010 c9 s3
31 S McKay and S Collard, ‘Developing deprivation questions for the Family Resources Survey’ (Working paper
no 13, University of Bristol, 2003); S McKay, ‘Review of the child material deprivation items in the Family
Resources Survey’ (Research report no 746, DWP, 2011)
Although human dignity is relevant to all human rights agreements, the primary focus here is on ECHR. As the only such instrument to be incorporated into the domestic law of the UK, it is on it that any legal challenge to sanctions in the welfare state would have to rely. While ratification of others signals intention that “domestic law and practice” should be “consistent with them” and requires Ministers to comply with their provisions, infringement cannot be challenged in the courts. However, the use by ECtHR of other instruments as aids to interpretation of the Convention rights means these will be drawn on in discussion. The ECHR provisions of most relevance are article 3 (prohibition of inhuman and degrading treatment), article 8 (respect for private and family life) and P1-1 (protection of property).

Although not unanimous as to the level of resources required, the various instruments are broadly in agreement that human dignity demands the resources necessary for a minimum standard of living. An approach grounded in freedom from inhuman or degrading treatment confers only a very basic level of protection, while the application of self-determination to socio-economic rights has thus far been limited in the active welfare state. Provisions relevant to the satisfaction of essential needs

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32 Human Rights Act 1998 c42


34 HM Government, ‘Ministerial code’ (Cabinet Office, 2010) para 1.2

35 *Salomon v Commissioners of Customs and Excise* [1967] 2 QB 116, 143 (Diplock LJ); *In the matter of an application by Caoimhin Mac Giolla Cathain for judicial review* [2009] NIQB 66

36 *Sidabras v Lithuania* application 55480/00, 59330/00 [2006] 42 EHRR 6; *Demir v Turkey* (app 34503/97) [2009] 48 EHRR 54 para 85
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indicate that no member of a society should have an income or access to goods and services too far removed from the norm. Whether this standard of living is within reach of benefit claimants in general can be questioned; 37 claimants subject to sanctions will inevitably find it more difficult to achieve.

2. The active welfare state

The extent to which a welfare state should provide for citizens’ decommodification – the ability to meet one’s essential needs without recourse to the labour market 38 – has long been a matter for academic debate. 39 Marshall’s view of financial support when required as a citizen’s “moral right” 40 has been interpreted as an endorsement of “unconditional entitlement to welfare,” 41 but by no means universally. Powell sees Marshall as comfortable with Beveridge’s focus on the worker-

38 JD Stephens, ‘The social rights of citizenship’ in FG Castles, S Leibfried, J Lewis, H Obinger and C Pierson (eds), The Oxford handbook of the welfare state (Oxford University Press, 2010)
40 TH Marshall, ‘The right to welfare’ in The right to welfare and other essays (Heinemann, 1981)
41 P Dwyer, ‘Creeping conditionality in the UK: from welfare rights to conditional entitlements?’ (2004) 29(2) Canadian Journal of Sociology 265
citizen, with the full benefits of the welfare state aimed at “insured persons,” while Lister stresses Marshall’s adherence to a “duty to work.”

In practice, the UK welfare state has sought to avoid decommodification and maximise labour market participation. Recent increases in emphasis on the activation of social security claimants – policies designed to move claimants from benefits to employment – can be linked with concerns about the sustainability of 20th century welfare state models in an era of globalisation, deindustrialisation, ageing and individualism. However, if the United States explicitly rations access to social assistance, European discourses have foregrounded the benefits to both the claimant and society of labour market engagement. From this perspective, paid employment not only serves as

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42 M Powell, ‘The hidden history of social citizenship’ (2002) 6(3) Citizenship Studies 229; see also R Plant, n47

43 R Lister, ‘Citizenship, exclusion and “the Third Way” in social security reform: reflections on T.H. Marshall’ (2000) 7(2) JSSL 70

44 W Beveridge, n2; M Powell, n42; Welfare Reform Act 2012 c5 s16-18

45 See, for example, Department for Work and Pensions, ‘A new deal for welfare: empowering people to work (DWP, 2006); D Freud, n4; Department for Work and Pensions, ‘Ready for work: full employment in our generation’ (Cm 7290, DWP, 2007); DWP, 2010, n6


47 Support under the Temporary Assistance for Needy Families programme is largely restricted to a maximum of five years in the lifetime – see Office of Family Assistance, ‘Major provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193)’ (HHS, 1996)

48 See, for example, Council Recommendation 92/441/EEC on common criteria concerning sufficient resources and social assistance in social protection systems; T Blair, n6; DSS, 1999, n6
the “best route out of poverty,” but supplants military service and political activity as the “key to citizenship,” the individual’s main contribution to society and the way in which he or she gains personal fulfilment and social integration.

One consequence of the construction of employment as the primary means of discharging one’s responsibilities to society has been the compulsion of a progressively wider group of claimants to actively seek employment or to engage in activities designed to improve employment prospects. Groups once “recognised as making socially valid contributions elsewhere (e.g. women engaged in informal/familial care work)” or considered too ill to be required to seek employment have been increasingly integrated into a conditionality regime that has “become central to the organisation of contemporary public welfare.” Claimants of long term sickness benefits and lone parents have been key targets. The replacement of a range of out-of-work benefits with a single universal credit emphasises the erosion of boundaries between claimant groups. A second element of the “activation turn” is the escalation of sanctions applied to claimants who without “good reason” fail

49 DWP, 2010 n6 p3
50 R Lister, 2003 n13
52 P Dwyer, n41
53 Welfare Reform Act 2007 c5 s11-16; Welfare Reform Act 2012 c5 s16, 20-21; Universal Credit Regulations 2013 no 276 reg 91A, inserted by Income Support (Work Related Activity) and Miscellaneous Amendments Regulations 2014 no 1097 reg 16; see also D Freud, n4
to comply with conditions linked to their benefit. The maximum penalty is 156 weeks’ loss of benefit, compared to six weeks before 1986.55 Meanwhile, support available to claimants subject to sanctions has become less generous.56 The table below outlines the most recent escalation of jobseeker’s allowance sanctions.

The severity of sanction that can be imposed has led Webster to describe the UK’s conditionality regime as “deliberately designed to reduce people without other resources to complete destitution” if they fail to comply with obligations attached to receipt of benefit.57 In light of this assessment, it is necessary to consider the compatibility of the system with the state’s human rights obligations.

Destitution is defined in legislation as lacking “adequate accommodation or any means of obtaining it” or “other essential living needs,” including those of a dependent.58 If Webster is correct, and the sanctions imposed on claimants who fail to fulfil set conditions do result in destitution in accordance with this definition, then human dignity as defined by McCrudden might be violated as the penalty imposed by the state would prevent the claimant meeting his or her essential needs.

Table: Escalation of jobseeker’s allowance sanctions from October 201259

55 For current legislation on conditionality and sanctions, see Jobseekers Act 1995 c18 part i; Jobseeker’s Allowance (Mandatory Work Activity) Regulations 2011 no 688; Welfare Reform Act 2012 c5 part 1 chapter 2, part 2 chapter 1-2; for information on the sanctions process, see DWP, 2014, n62
56 D Webster, ‘Independent review of jobseeker’s allowance (JSA) sanctions for claimants failing to take part in back to work schemes: evidence submitted by Dr David Webster’ (CPAG, 2014) <http://www.cpag.org.uk/sites/default/files/uploads/CPAG-David-Webster-submission-Oakley-review-Jan-14_0.pdf> accessed 19 May 2014
57 D Webster, n56
58 Immigration and Asylum Act 1999 c33 s95
59 The current sanction consists of suspension of jobseeker’s allowance payments; following the amalgamation of out-of-work benefits, the sanction will consist of suspension of the standard allowance element of universal
### Sanction Priorities

<table>
<thead>
<tr>
<th>Sanction prior to</th>
<th>Lower</th>
<th>Intermediate</th>
<th>Higher</th>
</tr>
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<tbody>
<tr>
<td>October 2012</td>
<td>1, 2, 4 or 26 weeks</td>
<td>Disallowance while failure continues; no additional sanction</td>
<td>1-26 weeks</td>
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3. **Conditional welfare and human dignity in the UK**

It is well established that compulsory measures whose objective is the movement of claimants from social security benefits to employment are compatible with claimants’ human rights, even desirable.

The Supreme Court has held that an obligation to accept an offer of employment or undertake a work placement does not violate the prohibition of forced labour in article 4 ECHR.\(^{60}\) ECtHR judgements cited emphasise that work-related obligations are a normal feature of unemployment credit, or 50% thereof in the case of joint claims, although some exceptions apply – see Universal Credit Regulations 2013 no 376 reg 111; source – Department for Work and Pensions, ‘Important changes to jobseeker’s allowance sanctions from Monday 22 October 2012’ (C&S factsheet, DWP, 2012)

\(^{60}\) *Reilly* [2013] n9
benefits. Similarly, ECSR considers that states are entitled to make social assistance conditional on compliance with “reasonable” jobseeking or training requirements and to withhold benefit payments in the event of refusal to accept an offer of suitable employment without infringing the right to free choice of occupation in article 1(2) ESC. The question for this paper, therefore, is not whether sanctions in principle violate human dignity, but whether the sanctions regime in the UK does so, given that the maximum sanction today is significantly greater than the maximum that could be imposed in the UK or Germany at the time of the reports cited.

In considering the compatibility of sanctions in the UK with human rights instruments, use will be made of McCrudden’s three “substantive areas” of human rights law. A finding of incompatibility with the first, freedom from inhuman and degrading treatment, would be the most damaging to the sanctions regime due to the impossibility of derogation or exceptions from article 3 ECHR. However, a very high threshold of destitution would have to be passed for violation to be found. The limited extent to which article 8 ECHR creates positive obligations likewise means rights to individual autonomy may only be breached in limited circumstances. There does appear to be a greater likelihood of sanctions infringing rights to access essential needs, although justiciability in the UK

61 X v Netherlands (app 7602/76) [1976] 7 DR 161; Schuitemaker v Netherlands (app 15906/08) [2010] (unreported) 4 May 2010

62 European Roma Rights Centre v Bulgaria (complaint 48/2008) [2009] 49 EHRR SE12

63 European Committee of Social Rights, ‘European Social Charter: addendum to conclusions XV-1’ (Council of Europe, 2001); European Committee of Social Rights, ‘Conclusions XVII-1’ (Council of Europe, 2004)

64 In the UK, loss of jobseeker’s allowance for 26 weeks; in Germany, a 25% reduction of benefit

65 Kuznetsov v Russia (app 22027/08) [2011] 53 EHRR SE22 para 17; see also Soering v United Kingdom (A/161) [1989] 11 EHRR 439 para 88; Chalan v United Kingdom (app 22414/93) [1996] 23 EHRR 413 para 79;
would depend on the right being grounded in a relevant ECHR provision and not only in one of the agreements on socio-economic rights.

3.1 Freedom from inhuman and degrading treatment

Article 3 ECHR has been described as the embodiment of a “collective undertaking... not to drift back into an era when... ill-treatment [was] considered an inevitable and even a respectable tool of government policy.”

Webster claims such a drift is observable in the welfare state, with sanctions “deliberately designed to reduce people without other resources to complete destitution.”

However, destitution does not always indicate inhuman or degrading treatment. To infringe article 3, sanctions would have to place the claimant in the circumstances envisaged in Limbuela, that is he or she should through the “deliberate action” of the state be “to a seriously detrimental extent” denied “the most basic needs of any human being,” notably food or shelter, with no prospect of receiving these from another source, for example familial or charitable. Dependence on charitable support is not considered degrading.

The first element of the Limbuela judgement is the requirement of “deliberate action” by the state. In Q, it was emphasised that the denial of support to asylum seekers in combination with the prohibition of paid employment (similar circumstances to those in Limbuela) constituted “positive

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67 D Webster, n56

68 R on the application of Q v SSHD [2003] EWCA Civ 364 para 59 (Lord Phillips, MR)

69 R (on the application of Limbuela) v SSHD; R (on the application of Tesema) v SSHD; R (on the application of Adam) v SSHD [2005] UKHL 66 para 7 (Lord Bingham); see also para 35 (Lord Hope); para 66-69 (Lord Scott)
action directed against asylum seekers and not... mere inaction.” It might on this basis be possible to suggest that the loss of benefits experienced by a claimant who fails to fulfil conditions results from the actions of the claimant rather than the state. However, it is argued here that the interference of the state with a proprietary right protected by P1-1 ECHR and already being enjoyed by the claimant (see section 3.2) represents a “positive action” and may therefore engage article 3.

Second, how should denial of “basic necessities” be understood? In the ordinary meaning of the phrase, it appears possible to draw parallels with McCrudden’s reference to “essential needs” (see section 3.2), with the emphasis in Limbuela placed on food and shelter. Given the existence of food banks, hardship payments to sanctioned claimants otherwise unable to meet basic needs and the fact that housing benefit is not subject to sanction, the number of cases in which such needs cannot be met might be expected to be small. Nonetheless, Webster argues that the two-week delay before a hardship payment is available, the discretionary nature of such payments and the fact that in practice housing benefit is interrupted when jobseeker’s allowance payments stop means there is a genuine possibility that some claimants will experience difficulty in satisfying these needs. The third, and crucial, point in respect of article 3 is that “basic necessities” must not merely be denied; the denial must be of sufficient severity and duration to have “seriously detrimental” effects.

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70 Q [2003] n77 para 57 (Lord Phillips, MR)

71 Trussell Trust, ‘Latest foodbank figures top 900,000: life has got worse not better for the poorest in 2013/14, and this is just the tip of the iceberg’ (Trussell Trust, 2014) <http://www.trusselltrust.org/foodbank-figures-top-900000> accessed 19 May 2014

72 Jobseeker’s Allowance Regulations 1996 no 207 reg 145; Universal Credit Regulations 2013 no 376 reg 116-118

73 D Webster, n56
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or to cause “serious suffering.”\textsuperscript{74} Case law cited refers to “actual bodily injury or intense physical or mental suffering” and to treatment that shows “a lack of respect for... human dignity or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance.”\textsuperscript{75} The factors to be discussed in section 3.2 will be of relevance to determining whether inhuman or degrading treatment takes place and whether it is caused by the actions of the state. However, whereas in the following section the key question will be whether resources necessary for the satisfaction of essential needs are provided, for the purposes of article 3 a negative answer must be followed by consideration on a case-by-case basis of whether the impact on an individual claimant of an otherwise lawful policy breaches his or her article 3 right.\textsuperscript{76}

3.2 Creation of the conditions for the satisfaction of essential needs

The creation of the conditions for satisfaction of essential needs is a concern of numerous human rights provisions. “Essential needs” are not limited to those things physically necessary for survival: in article 11 ICESCR, an “adequate standard of living,” including “adequate food,” does not merely imply a minimum of “specific nutrients,” but demands holistic consideration of “whether particular foods or diets that are accessible can be considered the most appropriate” according to criteria including social and cultural factors.\textsuperscript{77} Housing-related rights tend to be less ambitious, with article

\textsuperscript{74} Limbuela [2005] n69 para 7-8 (Lord Bingham)

\textsuperscript{75} V v United Kingdom (app 24888/94) [2000] 30 EHRR 121 para 71; Pretty [2002] n15 para 52

\textsuperscript{76} Price v United Kingdom (app 33394/96) [2004] 34 EHRR53 para 24; R (on the application of Limbuela) v SSHD; R (on the application of Tesema) v SSHD; R (on the application of Adam) v SSHD [2004] EWCA Civ 540 para 50 (Laws LJ)

\textsuperscript{77} Committee on Economic, Social and Cultural Rights, ‘General comment 12: the right to adequate food (article 11)’ (E/C.12/1999/5, United Nations, 1999)
11 ICESCR and article 8 ECHR requiring protection from unlawful or arbitrary eviction rather than the provision of housing.\(^78\)

In an urbanised society, the realisation of socio-economic rights, such as those to food and housing, depends on access to the necessary financial resources. The socio-economic rights instruments are divided as to what constitutes sufficient income for this purpose, although there is some consensus that a minimum standard, probably at least 50% of median income, exists.\(^79\) Although ECHR confers no explicit right to have essential needs met, article 8 and P1-1 are relevant to its realisation. P1-1 brings entitlement to social protection – payments designed to ensure individuals without other sources of income can satisfy their essential needs\(^80\) – within the scope of protection afforded to


property rights,\textsuperscript{81} while article 8 may create a positive obligation to provide financial support when the essential needs of children are at stake.\textsuperscript{82}

Guidance on what constitute essential needs in the UK can be found in case law on support for asylum seekers. When not provided with full board, such individuals receive furnished accommodation with council tax and utility bills paid, plus a monthly cash (or voucher) allowance.\textsuperscript{83} The allowance – £36.54 for a single person – was held in \textit{Refugee Action} to be inadequate as it had not increased between 2011 and 2014 and because of failure to consider the cost of items that might or ought to have been classed as essential needs.\textsuperscript{84} In contrast to \textit{Limbuela}, although charitable food aid had potential to alleviate the effects of destitution, it could not be considered an adequate means of meeting essential needs.\textsuperscript{85} This judgement is instructive when considering the circumstances of claimants subject to sanctions. Evidently, those without a hardship payment would be unable to meet their basic needs. For those who do receive such payments, it appears questionable whether the £43.44 payable to a single person would be sufficient, given that £36.54 was deemed insufficient for an asylum seeker supplied with furniture and not liable for utility bills.\textsuperscript{86}

\textsuperscript{81} \textit{Stec v UK} (app 65731/01, 65900/01) [2006] 43 EHRR 47; for discussion, see I Leijten, ‘From Stec to Valkov: possessions and margins in the social security case law of the European Court of Human Rights’ (2013) 13 European Human Rights Law Review 309

\textsuperscript{82} \textit{HC} [2013] n78 para 71 (Supperstone J)

\textsuperscript{83} Asylum Support Regulations 2000 no 704 reg 10-11; \textit{R on the application of Refugee Action v SSHD} [2014] EWHC 1033 (Admin) para 11 (Popplewell J)

\textsuperscript{84} \textit{Refugee Action} [2014] n83

\textsuperscript{85} \textit{Refugee Action} [2014] n83 para 147 (Popplewell J)

\textsuperscript{86} The jobseeker’s allowance hardship payment is 60\% of the normal rate in most circumstances; the normal rate of JSA is £72.40 if aged over 25, so the equivalent hardship payment would be £43.44 – see Jobseeker’s Allowance Regulations 1996 no 207 reg 145; Universal Credit Regulations 2013 no 376 reg 116-118;
The Secretary of State’s claim that a benefit intended to be temporary could legitimately be paid at a much lower level than a long-term benefit was rejected on the basis that an average claim duration of 18 months could not be regarded as “temporary” in any meaningful sense; the maximum duration of a sanction could be twice as long.\(^{87}\)

Unlike article 3 ECHR, the articles in which a right to satisfaction of essential needs might be grounded – article 8 and P1-1 – are not absolute. Justifiable interference with the right based on a claimant’s failure to abide by conditions, recognised in case law and by ECSR as a normal feature of out-of-work benefits,\(^{88}\) need not therefore violate these rights. However, the justifiability in principle of sanctions does not necessarily mean UK policy is in every respect lawful. Interference with the right to protection of property under P1-1 is only permitted in accordance with the law and public interest, while interference with the right to respect for private and family life under article 8 must be in accordance with the law and “necessary in a democratic society.”

The public interest test under P1-1 requires that any interference with the right be proportionate and non-arbitrary.\(^{89}\) Webster argues that there is a “grotesque disproportion” between the extent of

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\(^{87}\) Refugee Action [2014] n83 para 141-142 (Popplewell J); in Northern Ireland, where social security is a devolved matter, it appears likely that the maximum sanction period under universal credit will be limited to two years – see M Storey, letter to The Church Leaders Group (DSD, 2014) <http://www.dsdni.gov.uk/church-leaders-group-oct14.pdf> accessed 15 December 2014


\(^{89}\) PT Orebech, ‘From diplomatic – to human rights protection: the possessions under the 1950 European Human Rights Convention, first additional protocol article 1’ (2009) 43(1) Journal of World Trade 59
sanction available and the severity of “offence” on the part of the claimant,\textsuperscript{90} some individuals reportedly having been sanctioned for falling marginally short of the amount of jobseeking activity required, others for failure to adhere to conditions that are “literally impossible,” such as attendance at two simultaneously scheduled appointments.\textsuperscript{91} Proportionality of sanctions was considered in \textit{EUROCEF}, in which suspension of family benefit as a deterrent to truancy was held to infringe article 16 ESC (the right of the family to social, legal and economic protection) because “disproportionate to the aim pursued.” The finding of disproportionality was grounded in part in the sanctions’ questionable efficacy and likelihood of exacerbating the economic hardship and social vulnerability at the root of inability to “fulfil parental responsibilities.”\textsuperscript{92} Sanctions imposed on benefit claimants have similarly been claimed to be counterproductive as they may cause or exacerbate mental health

\textsuperscript{90} D Webster, n56

\textsuperscript{92} \textit{European Committee for Home-based Priority Action for the Child and the Family v France} (complaint 82/2012) [2013] 57 EHRR SE21 para 38-42
problems that act as a barrier to employment,\(^{93}\) or decrease quality of jobseeking as they increase its intensity.\(^{94}\)

Imposition of sanctions might in some respects be describable as arbitrary. Notably, benefit payments may be suspended while a sanction is being considered, but before a decision has actually been taken,\(^{95}\) potentially in breach of P1-1 which in some circumstances prohibits a decision affecting an individual’s enjoyment of his or her property being taken without “adversarial proceedings.”\(^{96}\) This also raises issues of compliance with article 13 ESC, which requires that social assistance be paid as of right as long as applicable conditions are met (and, presumably, as long as


\(^{94}\) J Griggs and M Evans, ‘Sanctions within conditional benefit systems: a review of evidence’ (Joseph Rowntree Foundation, 2010); G Lewis, n91


\(^{96}\) *Hentrich v France* (app 13616/88) [1994] 18 EHRR 440 para 2; *R on the application of SRM Global Master Fund LP v Commissioners of HM Treasury* [2009] EWHC 227 (Admin) para 81 (Stanley Burton LJ and Silber J)
they have not been demonstrated to be breached).\(^{97}\) Even if a pre-emptive decision to cease payments does not infringe P1-1, a decision might fail the non-arbitrariness test if affected claimants had no access to a meaningful appeal mechanism, essential to the compatibility of sanctions with article 1(2) ESC.\(^{98}\) Webster argues that this is often the case in practice, given that reasons for the sanction are not routinely offered, that claimants are not always informed of their right to appeal\(^{99}\) and the removal of entitlement to legal aid for appeals to tribunal.\(^{100}\) Although the High Court has held it would be “premature” to find that the imposition of a fee for access to an employment tribunal would hinder access to justice, despite evidence of a “deterrent effect,”\(^{101}\) it does not follow that the same would apply to the appeals process against sanctions.\(^{102}\) Reports that staff perceive

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\(^{98}\) ECSR, 2001, n63

\(^{99}\) Reconsideration is requested by 25% of sanctioned claimants, with appeals submitted by only 1.7%, despite success rates of 50% and 42% respectively – D Webster, n56; see also N Hodgkinson, Advice Network and Training Partnership, Bradford and District submission to independent review of jobseeker’s allowance (CPAG, 2014) [http://www.cpag.org.uk/sites/default/files/uploads/The%20Advice%20Network%20and%20Training%20Partnership%20Bradford.pdf] accessed 19 May 2014; Manchester CAB Service, n102

\(^{100}\) D Webster, n56

\(^{101}\) *R on the application of Unison v Lord Chancellor v Equality and HR Commission* [2014] EWHC 218 (Admin) para 45-46 (Moses LJ)

\(^{102}\) One objective underlying the introduction of charges for the employment tribunal was the promotion of conciliation, which is less likely to be an option in the case of challenges to social security decisions – see *Unison* [2014] n101 para 43 (Moses LJ)
that they are subject to targets to impose a certain number of sanctions must raise further concerns about benefits being withdrawn arbitrarily to achieve the supposed target rather than on the basis of clear failings on the part of claimants, although this would apply to individual cases rather than policy.

Article 8 seldom creates any “positive obligation to provide financial assistance to support a person’s family life,” but may be engaged in cases involving a decision on an interim payment or suspension of benefit if a claimant has dependent children. Relevant aids to interpretation here include the article 3(1) UNCRC requirement that the “best interests” of the child be a “primary consideration” in decisions affecting him or her (a provision incorporated into domestic law). ECSR has also broadly accepted that the choices or actions of a parent should not result in a child’s exposure to “unfit living conditions” or violation of “the most basic rights... such as... the right to human dignity.” Hence the impact on a claimant’s children should be a (not necessarily the) primary consideration in a decision whether to apply a sanction in a given case. Where state

103 P Wintour, ‘Jobcentre was set targets for benefit sanctions’ (Guardian, 21 March 2013) <http://www.theguardian.com/society/2013/mar/21/jobcentre-set-targets-benefit-sanctions> accessed 19 May 2014; N Couling, ‘Conditionality and sanctions: report to the Secretary of State’ (DWP, 2013)

104 HC [2013] n78 para 71 (Supperstone J)

105 Ala Anufrijeva v LB Southwark; R on the application of N v SSHD; R on the application of M v SSHD [2003] EWCA Civ 1406 para 43 (Lord Woolf); R on the application of Jamil Sanneh v SSWP, Commissioners for HMRC v Birmingham CC [2013] EWHC 793 (admin) para 44-46 (Hickinbottom J)

106 Children (Northern Ireland) Order 1995 no 755 (NI 2); Children Act 2004 c31 s11

107 Defence for Children International v Belgium (complaint 69/2011) [2013] 56 EHRR SE20 para 26, 28

108 ZH (Tanzania) v SSHD [2011] UKSC 4 para 25 (Baroness Hale); R on the application of SG and others (previously JS and others) v SSWP v Child Poverty Action Group, Shelter Children’s Legal Service [2014] EWCA Civ 156 para 100 (Lord Dyson)
support is necessary to avoid destitution and enable “family life to continue,” Ala Anufrijeva suggests there will be a particularly strong case in favour of providing such support.109

3.3 Protection of individual autonomy

Article 8 ECHR is also of relevance to the protection of individual autonomy.110 For ECtHR, a private life “includes a person's physical and psychological integrity”111 (protection of which is required by article 3(1) CFR) and “the development, without outside interference, of the personality of each individual in his relations with other human beings.” The contribution of social security to facilitating or restricting economic independence, hence autonomy, is of particular importance to domestic violence victims, whose ability to leave a relationship may depend on access to an independent income.112

109 Ala Anufrijeva [2003] n114 para 43 (Lord Woolf) – it is emphasised that article 8 only creates such a positive obligation “where the welfare of children is at stake” – where only adults are affected, article 3 must be engaged for state support to be required


111 Botta v Italy (app 21439/93) [1998] 26 EHRR 241

Policy on conditionality recognises that victims of domestic violence may be less able to meet conditions and may have a “good reason” for leaving or declining employment. Hence a claimant who has recently left an abusive relationship may be temporarily excused from jobseeking requirements. Although it was suggested during the legislative process that the exemption should be without time limit and should be available to claimants who have not left the violent relationship, the provision mitigates the potential for sanctions to pose a threat to “a person’s physical and psychological integrity” contrary to article 8 ECHR by perpetuating dependence on another. If some possibility remains, this need not necessarily infringe article 8; the state may interfere with the right “in accordance with the law and [as] necessary in a democratic society.” In this case, the Minister argued that a longer exemption than the maximum possible 24 weeks in 12 months would represent an “unacceptable” erosion of the principle that “JSA [is] a benefit for those able to seek and undertake work.” If aspects of the reformed social security system remain vulnerable to criticism that they risk entrenching an individual’s dependence on an abusive partner, the safeguards put in place in respect of conditionality clearly reduce the likelihood of the sanctions regime being held to contravene article 8 on this basis.


113 Jobseeker’s Allowance (Domestic Violence) (Amendment) Regulations 2012 no 0000 (draft) reg 2; DWP, 2014, n54

114 HL Deb 27 Feb 2012 vol 735 no 271 col GC75

115 Botta [1998] n111

116 Lord Freud, HL deb 27 Feb 2012 vol 735 no 271 col GC77

117 R Lister, 2010, n112; Women’s Budget Group, ‘Universal credit: payment to joint claimants’ (Women’s Budget Group, 2011) ; Ad-hoc Committee, n112
Conclusion and implications

While recent increases in the extent of conditionality in the UK welfare state and the severity of associated sanctions have been politically controversial, the most important legal challenge thus far has resulted in a finding of compliance with article 4 ECHR. This paper demonstrates that questions remain about the conformity of conditionality, and particularly the associated sanctions, with the UK’s human rights obligations.

The focus here has been on ECHR rights linked with three of the four elements of human dignity identified by McCrudden: prohibition of inhuman treatment (article 3), creation of the conditions for the satisfaction of essential needs (P1-1 and article 8) and assurance of individual autonomy (article 8). Although conditional benefits are not inherently incompatible with human rights law, potential for sanctions to infringe the rights focused on has been identified. Where this applies in specific cases, it might be possible for a court to find violation of an individual’s rights and provide a remedy without finding the policy as a whole incompatible. If the decision-making process or the severity of sanctions available were found incompatible with the state’s obligations, there might be a possibility of a declaration of incompatibility.118 In Northern Ireland, where social security legislation closely follows Great Britain but where separate legislation is passed at devolved level, legislative provisions that contravene the Convention Rights would be invalid.119

In summary, in some circumstances the cessation of benefit payments could through the impact on the claimant constitute inhuman and degrading treatment. However, this would depend on the

118 Human Rights Act 1998 c42 s4, 10
119 Northern Ireland Act 1998 c47 s6
claimant essentially being rendered unable to access food or shelter to such an extent and for such a period as to cause significant suffering. This probably implies individuals not awarded a hardship payment and with no accessible charitable or familial support. Given that this group is likely to be small, it is possible that any finding of violation of article 3 would be on the basis of individual circumstances rather than an unlawful policy. The protections for domestic violence victims discussed in section 3.3 may be sufficient to avoid a finding of breach of article 8 on the grounds of denial of individual autonomy.

The argument that sanctions are incompatible with the satisfaction of essential needs appears better founded. The support available even to sanctioned claimants with a hardship payment is little higher than that deemed inadequate for asylum seekers, who have important expenses (notably utility bills) paid on their behalf. Any interference with the claimant’s right to support with meeting his or her essential needs would have to be proportionate and non-arbitrary in order to comply with P1-1, compliance with which can be questioned. Article 8 provides further safeguards in respect of claimants with dependent children, whose welfare must be of equal importance to the encouragement of jobseeking, the main objective of sanctions.

To avoid the risk of an adverse judgement, policymakers should consider changes to the sanctions regime. Ensuring that housing benefit continues uninterrupted while another benefit is subject to sanction and removing discretion from the award of a hardship payment where access to food or shelter is threatened would avoid risk of violation of article 3 ECHR. The adequacy of protection for domestic violence victims might be adequate to comply with article 8, although a clear statement of the priority to be given to the best interests of any child likely to be affected by sanctions, whether in legislation or in guidance to decision makers, is required. Again, removal of discretion from the award of a hardship payment where children are affected would be desirable. To ensure compliance
with P1-1, the proportionality of the severity and duration of sanctions should be reconsidered with reference to all available evidence on their effectiveness in promoting transition from benefit to work, the suspension of benefits prior to the conclusions of the investigation into the alleged breach should be avoided and identified barriers to the appeals process addressed.

**Word count: 4,708**

**Abbreviations used:**

CESCR – Committee on Economic, Social and Cultural Rights
CFR – Charter of Fundamental Rights of the European Union
ECHR – European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR – European Court of Human Rights
ECSR – European Committee of Social Rights
ESC – European Social Charter
ICESCR – International Covenant on Economic, Social and Cultural Rights
IOL – International Labour Organisation
P1-1 – protocol one, article one (of ECHR)
UDHR – Universal Declaration of Human Rights
UNCRC – Convention on the Rights of the Child

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References

Bibliography

Ad-hoc Committee, ‘Report on whether the provisions of the Welfare Reform Bill are in conformity with the requirements for equality and observance of human rights’ (NIA 92/11-15, NI Assembly, 2013)


Beveridge, W, ‘Social insurance and allied services’ (Cmd 6494, HMSO, 1942)


Broadway and St Mungo’s, ‘Independent review of jobseeker’s allowance sanctions joint response: Broadway and St Mungo’s’ (St Mungo’s, 2014)


European Journal of International Law 931

Committee of Independent Experts, Conclusions I (Council of Europe, 1969)
Committee of Independent Experts, Conclusions XIII-4 (Council of Europe, 1996)

Committee of Independent Experts, Conclusions XIV-2 vol 1 (Council of Europe, 1998-2000)


Couling, N, ‘Conditionality and sanctions: report to the Secretary of State’ (DWP, 2013)

Culpitt, I, Welfare and citizenship: beyond the crisis of the welfare state? (Sage, 1992)


Department for Social Security, ‘Opportunity for all: tackling poverty and social exclusion’ (Cm 4445, DSS, 1999)


Department for Work and Pensions, ‘Ready for work: full employment in our generation’ (Cm 7290, DWP, 2007)

Department for Work and Pensions, ‘Universal credit: welfare that works’ (Cm 7957, 2010)

Department for Work and Pensions, ‘Sanctions’ in Decision makers’ guide: vols 4, 5, 6 and 7: jobseeker’s allowance and income support: staff guide (amendment 39, DWP, 2014)


European Committee of Social Rights, ‘Conclusions XIV-1: general introduction’ (Council of Europe, 1998)

European Committee of Social Rights, ‘European Social Charter: addendum to conclusions XV-1’ (Council of Europe, 2001)

European Committee of Social Rights, ‘Conclusions XVII-1’ (Council of Europe, 2004)


Freud, D, ‘Reducing dependency, increasing opportunity: options for the future of welfare to work’ (DWP, 2007)
Goodin, RE, Headey, B, Muffels, R and Dirven, H-J, *The real worlds of welfare capitalism* (Cambridge University Press, 1999);


HM Government, ‘Ministerial code’ (Cabinet Office, 2010)

Hansard, HL Deb 27 Feb 2012 vol 735 no 271 col GC75


Hirsch, D, ‘A minimum income standard for the UK in 2013’ (Joseph Rowntree Foundation, 2013)


Judge, L, ‘Independent review of jobseeker’s allowance sanctions: CPAG’s response to the call for information’ (CPAG, 2014)


Lewis, G, ‘Wheatley Group response to independent review of JSA sanctions’ (CPAG, 2014)

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<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmworpen/743/743we13.htm> accessed 19 May 2014

Lowe, R, The welfare state in Britain since 1945 (Macmillan, 1999)

Mamberti, D, ‘Statement by Msgr Dominique Mamberti, secretary for relations with states and head of the Holy See delegation’ (High level meeting of the 67th General Assembly on the rule of law at the national and international levels, New York, September 2012)


Marshall, TH, ‘The right to welfare’ in The right to welfare and other essays (Heinemann, 1981)


Maskivker, J, ‘He who shall not work shall eat: a case for the right to opt out of employment’ (PhD thesis, Columbia University, 2009)

McKay, S, ‘Review of the child material deprivation items in the Family Resources Survey’ (Research report no 746, DWP, 2011)


Mohr, K, Soziale Exklusion im Wohlfahrtsstaat: Arbeitslosensicherung und Sozialhilfe in Großbritannien und Deutschland (VS Verlag für Sozialwissenschaften, 2007)


Taylor-Gooby, P, Reframing social citizenship (Oxford University Press, 2009)

Trussell Trust, ‘Latest foodbank figures top 900,000: life has got worse not better for the poorest in 2013/14, and this is just the tip of the iceberg’ (Trussell Trust, 2014)


Webster, D, ‘Independent review of jobseeker’s allowance (JSA) sanctions for claimants failing to take part in back to work schemes: evidence submitted by Dr David Webster’ (CPAG, 2014)

West Dunbartonshire Citizens Advice Bureau, ‘Unjust and uncaring: a report on conditionality and benefit sanctions and their impact on clients’ (Citizens Advice Bureau, 2014)


Wintour, P, ‘Jobcentre was set targets for benefit sanctions’ (Guardian, 21 March 2013)
Women’s Budget Group, ‘Universal credit: payment to joint claimants’ (Women’s Budget Group, 2011)


Case law

*Salomon v Commissioners of Customs and Excise* [1967] 2 QB 116

*Müller v Austria* (app 5849/72) [1975] Comm Rep 1.10.75

*X v Netherlands* (app 7602/76) [1976] 7 DR 161

*Soering v United Kingdom* (A/161) [1989] 11 EHRR 439

*Chalan v United Kingdom* (app 22414/93) [1996] 23 EHRR 413

*Botta v Italy* (app 21439/93) [1998] 26 EHRR 241

*V v United Kingdom* (app 24888/94) [2000] 30 EHRR 121 para 71

*Brice and another v London Borough of Southwark* [2001] EWCA Civ 1138

*Larioshina v Russia* (app 5686/00) [2002] 23 April 2002

*Pretty v United Kingdom* (app 2346/02) [2002] 35 EHRR 1 H18

*R on the application of Q v Secretary of State for the Home Department* [2003] EWCA Civ 364 para 59 (Lord Phillips, MR)

*Ala Anufrijeva and another v London Borough of Southwark; R on the application of N v Secretary of State for the Home Department; R on the application of M v Secretary of State for the Home Department* [2003] EWCA Civ 1406

*MV and U-MS v Finland* (app 43189/98) [2003] Admissibility decision of 28 January 2003
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R (on the application of Limbuela) v Secretary of State for the Home Department; R (on the application of Tesema) v Secretary of State for the Home Department; R (on the application of Adam) v Secretary of State for the Home Department [2004] EWCA Civ 540 para 50 (Laws LJ)

Price v United Kingdom (app 33394/96) [2004] 34 EHRR53

R (on the application of Limbuela) v Secretary of State for the Home Department; R (on the application of Tesema) v Secretary of State for the Home Department; R (on the application of Adam) v Secretary of State for the Home Department [2005] UKHL 66

Kjartan Asmundsson v Iceland (app 60669/00) [2005] 41 EHRR 42

Sidabras v Lithuania (app 55480/00, 59330/00) [2006] application 42 EHRR 6

Stec and others v United Kingdom (app 65731/01, 65900/01) [2006] 43 EHRR 47

In the matter of an application by Caoimhin Mac Giolla Cathain for judicial review [2009] NIQB 66

Demir v Turkey (app 34503/97) [2009] 48 EHRR54 para 85

European Roma Rights Centre v Bulgaria (complaint 48/2008) [2009] 49 EHRR SE12

Schuitemaker v Netherlands (app 15906/08) [2010] (unreported) 4 May 2010

ZH (Tanzania) v SSHD [2011] UKSC 4

Kuznetsov v Russia (app 22027/08) [2011] 53 EHR SE22

R (on the application of Reilly and another) v Secretary of State for Work and Pensions [2013] UKSC 68


R (on the application of HC) v Secretary of State for Work and Pensions, Secretary of State for Local Government and Communities, HM Revenue and Customs v Oldham Metropolitan Borough Council [2013] EWHC 3874 (Admin)

Defence for Children International v Belgium (complaint 69/2011) [2013] 56 EHR SE20
This is a pre-copyedited, author-produced version of an article accepted for publication in the European Human Rights Law Review following peer review. The definitive published version (M Simpson, “Designed to reduce people... to complete destitution”: human dignity in the active welfare state’ (2015) 1 EHRLR 66 is available online on Westlaw UK or from Thomson Reuters DocDel service.

European Committee for Home-based Priority Action for the Child and the Family v France (complaint 82/2012) [2013] 57 EHRR SE21

R on the application of SG and others (previously JS and others) v Secretary of State for Work and Pensions v Child Poverty Action Group, Shelter Children’s Legal Service [2014] EWCA Civ 156

R on the application of Unison v The Lord Chancellor v The Equality and Human Rights Commission [2014] EWHC 218

R on the application of Refugee Action v Secretary of State for the Home Department [2014] EWHC 1033 (Admin)

Statutes, statutory instruments and recommendations

Council Recommendation 92/441/EEC on common criteria concerning sufficient resources and social assistance in social protection systems

Jobseekers Act 1995 c18

Children (Northern Ireland) Order 1995 no 755 (NI 2)

Jobseeker’s Allowance Regulations 1996 no 207

Human Rights Act 1998 c42

Northern Ireland Act 1998 c47

Immigration and Asylum Act 1999 c33

Asylum Support Regulations 2000 no 704

Children Act 2004 c31

Welfare Reform Act 2007 c5

Child Poverty Act 2010 c9

European Parliament resolution of 20 October 2010 on the role of minimum income in combating poverty and promoting an inclusive society in Europe (2010/2039(INI))

Jobseeker’s Allowance (Mandatory Work Activity) Regulations 2011 no 688

Welfare Reform Act 2012 c5
Jobseeker’s Allowance (Domestic Violence) (Amendment) Regulations 2012 no 0000 (draft)

Universal Credit Regulations 2013 no 376

Jobseeker’s Allowance Regulations 2013 no 378

Welfare Benefits Up-rating Order 2014 no 147

Income Support (Work Related Activity) and Miscellaneous Amendments Regulations 2014 no 1097

**International agreements and declarations**

Universal Declaration of Human Rights, adopted by General Assembly Resolution 217A (III) of 10 December 1948 (UDHR)

Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950, entry into force of current text 1 June 2010, ETS005)


European Social Charter (Turin, 18 October 1961, entry into force 26 February 1965, CETS 035)


International Covenant on Civil and Political Rights, adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, UNTS vol 999 p171


European Social Charter (revised) (Strasbourg, 3 May 1996, entry into force 1 July 1999, CETS 163)