



Discrimination in Welfare Benefits

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Background issues with social security law

1

Lack of normative dimension of the legislation, for example the right to a minimum subsistence level.

2

Administrative simplicity vs. public law requirement to meaningfully exercise the discretion, considering individual merits of the case.

3

“Manifestly without reasonable foundation” test on top of proportionality assessment.

Types & examples of (possible) discrimination in the UK welfare system

1

Direct discrimination (s13 EQA 2010)

- lower benefit rates for young people
- two child limit (both direct and indirect, see: **R (SC, CB and 8 children) v SSWP [2021] UKSC 26)**)

Single parents household on Universal Credit affected by two-child policy
(April 2024) (source: PQ UIN 34406, tabled on 27 February 2025)

Female	201,000
Male	5,000

2

Indirect discrimination (s19 EQA 2010)

- benefit cap (**R (SG and ors.) v SSWP [2015] UKSC 16)**)
- deductions regime
- sanctions regime
- automated decision-making (benefit fraud investigations).

3

Failure to provide reasonable adjustments (s20 EQA 2010), e.g., work coaches appointments

Example 1 - UC and young people

Different treatment:

- lower UC rates for under 25s
- lower minimum wages
- disproportionate sanctioning

Rationale:

- removing a “perverse incentive”
- presuming other support available

“Lower Universal Credit payments for under 25s assume young people won't have the same financial commitments as other adults, in reality, many young people are paid less than those over 25, and are less likely to be considered for jobs in the first place due to having less experience.”

- adviser at Citizens Advice



Example 2: Jobcentres

1. Drivers of potential discrimination:

- the gap between the official guidance and actual practices of JC+ and decisionmakers (e.g., not accommodating individual circumstances);
- possible decision-makers biases.

2. Examples:

- negotiating claimant commitments;
- applying work-related requirements;
- scheduling the appointments;
- referring for a sanction.

Report here: <https://www.citizensadvice.org.uk/policy/publications/found-anything-yet-exploring-the-relationship-between-universal-credit/>



Example 3: Health assessments & PIP

investigation by EHRC:

- possible failure to “anticipate and make reasonable adjustments for disabled people and those with mental impairment”.
- possible failure to follow PSED

Background: examples of serious harm among the most vulnerable claimants.

**Department for Work and Pensions under investigation
for treatment of disabled benefits claimants**

Published: 22 May 2024

Example 4: Deductions system

Research: [From Pillar to Post](#), 2024

Possible discriminatory patterns:

- impact of the reduced amounts higher for people with disabilities
- people with disabilities are more likely to have a deduction applied
- barriers to claiming hardship measures aggravated from people with mental health conditions
- inflexible & scarcely applied waiver policy - lack of assessment of individual circumstances

I'm reluctant to [further pursue a waiver request] because of the impact it's going to have on my health, and at the end of the day, if I do it, there's still no guarantee that they're going to say yes, we accept it, so I could put in an awful lot of effort, put myself under an awful lot of stress, have my health [impacted], all for nothing."

R (K) v SSWP [2023] EWHC 233 (Admin)

Background:

- K (single mum and caring for two young adult disabled son) was overpaid UC by the SSWP.
- She repeatedly queried her entitlement with the DWP been incorrectly advised that her benefit was correct.

Held:

- C had a legitimate expectation relating to the entitlement;
- The SSWP failed to comply with the Public Sector Equality Duty (PSED) by not meaningfully assessing the disproportionate impact of his waiver policy on claimants with disabilities and mental health conditions.

In my judgment, s.149 of the Equality Act 2010 required the defendant, prior to promulgating or amending a waiver policy addressing how that discretion would be exercised, to have due regard to the need to eliminate discrimination on grounds of disability, and to advance equality of opportunity for those with disabilities. In order to fulfil that duty, the Secretary of State had to assess the risk and extent of any adverse impact and the ways in which such risk might be eliminated (para 210 of the judgement)

Rimmer v SSWP Case No: 1802885/2022

- Held: Discrimination in the provision of employment services (sections 15 and 29 EQA) & failure to provide reasonable adjustments (s21 EQA)
- Case concerns a profoundly deaf claimant (first language is British Sign Language (BSL)).
- Over six years, Mr Rimmer was:
 - a. refused support, such as video-conferencing services providing BSL
 - b. sanctioned following a poorly interpreted meeting at the job-centre

"A Disability Employment Adviser (DEA), who had never met Mr Rimmer, but was aware that he had made complaints about failures to provide interpreters, attempted to block the referral and suggested instead that work coaches should deal with Mr Rimmer "firmly" and with directions and sanctions—i.e. to punish him."

Full judgement here: <https://kcalc.org.uk/wp-content/uploads/Judgment-1802885.2022.pdf>

Full CA article: <https://kcalc.org.uk/research-campaigns/profoundly-deaf-man-victim-of-dwps-institutional-failure/>

The Secretary of State for Work and Pensions v MJ [2025] UKUT 035 (AAC)

- Background: MJ transitioned from ESA to UC. Together with the change of circumstances (polymyalgia diagnosis), her transitional severe disability premium element (“TSDPE”) was eroded to zero when she was found to have a LCWRA (replacing carer element). This resulted to a reduction of the award despite higher needs.
- Comparators:
 - 1) someone who is not a carer who subsequently gets LCWRA; and
 - 2) someone who is receiving a transitional element and has LCWRA, who subsequently becomes a carer.
- Held: MJ unlawfully discriminated against as a result of her TSDPE being fully eroded, in breach of her rights under Article 14 read with Article 1 to the First Protocol.
- Particular attention on the nature of SSWP’s submissions regarding justification.



R. (on the application of Jwanczuk) v SSWP *[2023] EWCA Civ 1156*

Background:

- C's wife was severely disabled and could not work.
- His application for the bereavement support payment (BSP) was refused because she never made NI contributions.

Govt's submissions:

- rewarding work through benefits system
- reducing administrative costs and flexibility

Held:

- Section 3 of HRA was used to interpret the Act in the Convention-compliant way.
- The refusal to award BSP is a violation of article 14 of ECHR together with A1P1 ECHR.

Litigating discrimination - article 14 ECHR

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- 1 Do the facts of the case fall "within the ambit" of a Convention right?
- 2 Is the alleged ground of discrimination a "status" listed or falling within article 14?
- 3 Has the claimant been treated less favourably than a class of persons whose situation is relevantly similar?
- 4 Is there an objective and reasonable justification for the difference in treatment?



Thank you!

Any questions, e-mail me at
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