

# “SHIFTING THE PLACE OF SOCIAL SECURITY”

## WELFARE REFORM AND SOCIAL RIGHTS IN THE UK

### What is this poster about?

Judicial Review challenges following the Welfare Reform Act 2012. The legislation introduced a series of controversial policies - including a cap on benefits and the so-called “bedroom tax.” The study this poster summarises analysed all of the judicial review challenges following these reforms to: (i) identify key themes in the litigation and (ii) make sense of the key changes described by LJ Laws as “Shifting the Place of Social Security in Society.”

Two key aspects are focused on here: (i) the rise of administrative discretion, and (ii) the meaning of “shifting the place of social security.”

### Where can I find out more?

To view the full national report and our blog on current developments, please visit:

**SOCIALRIGHTS.CO.UK**

## THE DISCRETIONARY Assault Course

### THE VICTORY?

Having navigated the DHP assault course, receiving a payment is unlikely to be the end of it. A claimant would be expected to re-apply next year, and with further pressure on these payments, this study finds that Local Authorities are increasingly making “partial awards” which do not cover the whole short-fall.

### SUPREME COURT CHALLENGE

The Supreme Court is currently considering these issues in a joined appeal in the leading “bedroom tax” cases (MA, Rutherford and A).

### 4. TIME LIMITED

Unlike benefits received from statutory entitlement, which are generally paid for as long as eligibility criteria are met, these discretionary payments only last for as long as the authority sees fit.

The study finds that the majority of authorities only issue awards for a maximum of one year, but many impose shorter periods in certain cases of 3 months, or as little as 6 weeks. Those in receipt of payments are then required to re-apply.

### 1. KNOWLEDGE AND REQUIREMENTS

Unlike statutory entitlement to benefits, this discretionary regime is reliant on the claimants themselves applying separately - and often make their case - for discretionary support on a case-by-case basis.

Data collected on appeal suggests that key populations, who may otherwise suffer unlawful indirect discrimination (Rutherford v SSWP and A v SSWP) are not always applying for support. The DWP's own research suggests that only 26% of those with disabilities or long-term sickness have applied for DHPs. Claimants are not sufficiently aware of the availability of these payments.

The administrative requirements from local authorities in processing these applications varies dramatically, including eligibility and evidential criteria - all adding discretionary gloss onto base-level entitlement.

The study which informs this poster highlights the growing importance of discretionary mechanisms in the social security system, particularly as a means of mitigating the impact of reform. In this sense, statutory entitlement is being displaced by these discretionary forms of welfare provision.

Discretionary Housing Payments are an example of this: a form of top-up to housing benefit worth approx £1 billion over the course of this Parliament, which have been a central factor in key cases, such as R (MA) v Secretary of State for Work and Pensions [2014] EWCA Civ 13, and R (SG) v Secretary of State for Work and Pensions [2015] UKSC 16.

As the Courts sets statutory entitlement to housing benefit against the discretionary award of “top-up” provision, this assault course looks at the issues which can arise in this alternative form of provision.

### 5. RELIANCE ON JUDICIAL REVIEW

As they fall outside of para.6 of Sch.7 to the Child Support, Pensions and Social Security Act 2000, the decision to award (or not) a DHP is outside the jurisdiction of a First-Tier Tribunal. Instead, aside from a statutory right to request a review of the decision by the local authority (s.8 Discretionary Financial Assistance Regulations 2001), there is no other recourse but judicial review.

This inherently limits the options available to effected claimants - both practically and legally. Attaining legal aid funding to bring a claim, the heavy reliance on discrimination-based challenges, the difficult relationship between central government cuts and local level responsibility, and the high bar test applied to matters of social policy, all make such a reliance problematic.

### CONDITIONALITY

The research has found that local authorities are increasingly offering short-term conditional awards based on conduct (for example, having to bid for alternative properties in a choice-based lettings system).

### 3. GEOGRAPHICAL VARIATION

The use of discretionary forms of benefit provision is tied heavily by the Government - both in political rhetoric and when justifying discrimination in legal appeals (particularly MA v SSWP [2014] EWCA) - to the idea of “localism”: decisions being taken at the local rather than the national level.

This leads to extremely variable provision. In 2015/16, North Lincolnshire spent just 16% of its DHP budget and reportedly denies payments to those who smoke or have satellite television; Stratford spent 250% with far less stringent criteria. This variability stands in stark contrast to a statutory form of exemption.

### HARD TO SCRUTINISE

Not all Local Authorities make their DHP application forms publicly available.

### 2. CASH-LIMITED BUDGETS

Within the DHP framework, Local Authorities provide support from a cash limited budget provided by the Department for Work and pensions. They can contribute money from their own budgets to supplement this amount (of up to 250% their original allocation).

In an environment of heavy local authority budget reduction, most can ill-afford to supplement provision, with the majority (>75) spending between 90-100% of their allocated budgets.

### CUMULATIVE IMPACT

Claimants are often driven to apply for DHP support due to a complex interaction of reforms; often not just because of housing benefit changes.

## WHAT'S IN AN IDEA?



### DISCRETION

The study highlights how reductions in expenditure have been accompanied by an increase in the structural role for administrative discretion. A reduction in statutory entitlement has been replaced by local-level mitigation, in the form of Discretionary Housing Payments, the Council Tax reduction scheme, the scrapping of the Independent Living Fund and so on. This has pushed responsibility for mitigating reforms downwards from the national government, but not always with adequate financial support.

### CUMULATIVE IMPACT

The study finds that the Welfare Reform Act 2012 reforms overlap on certain populations; particularly unemployed people of working age living in social housing. Overlapping and intersecting reforms are difficult for the Courts to deal with - the impact of policies can only be assessed individually and procedural obligations, such as the Public Sector Equality Duty under s.149 Equality Act 2010, deal with individual policies within silos rather than comprehensively.

### DISCRIMINATION

Overwhelmingly, challenges to the policies within the Welfare Reform Act 2012 have been through discrimination or equality focused grounds, particularly Article 14 of the ECHR, tied ordinarily with the Part One of the First Protocol (the Right to Property) or Article 8 (Right to Respect for Private and Family Life). This leads to an exercise where problematic policies are challenged through their impacts on certain populations - be it single mothers, people with disabilities or those from ethnic minority backgrounds - rather than through broader socio-economic protections.

### “AUSTERITY”

In order to justify the focus of the reforms, particularly in proportionality assessments by the Court within judicial review claims, the Government consistently invokes the idea of “austerity.” As a term, this is rarely expanded up in any detail; instead, it is generally used as a vehicular term, to encompass complex and broad articulations of “localism,” financial discipline or “fairness.” The high level of regard given to issues of social policy leads to this vague justification rarely being adequately interrogated.

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BY JED MEERS

YORK LAW SCHOOL

