



Discrimination in Welfare Benefits

Amplifying the disadvantage

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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 UKSC 26)

2

Indirect discrimination (s19 EQA 2010)

- benefit cap
- deductions regime
- sanctions regime

3

Failure to provide reasonable adjustments (s20 EQA 2010):

- 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

Rishi Sunak says young people are 'trapped on benefits' when they 'ought to be in the prime of their lives' amid push to get people with 'mild' mental health problems back to work

“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

Number of children in mental health crisis at record high in England

NHS data reveals more than 3,500 urgent referrals of under-18s in May, three times higher than same month in 2019



Example 2 - deductions and waiver policy

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

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**

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)



Example 3 - benefits sanctions & reasonable adjustments at jobcentres

1. Historical evidence of uneven distribution of sanctions (ethnicity, geographical areas)

2. Drivers of potential discrimination:

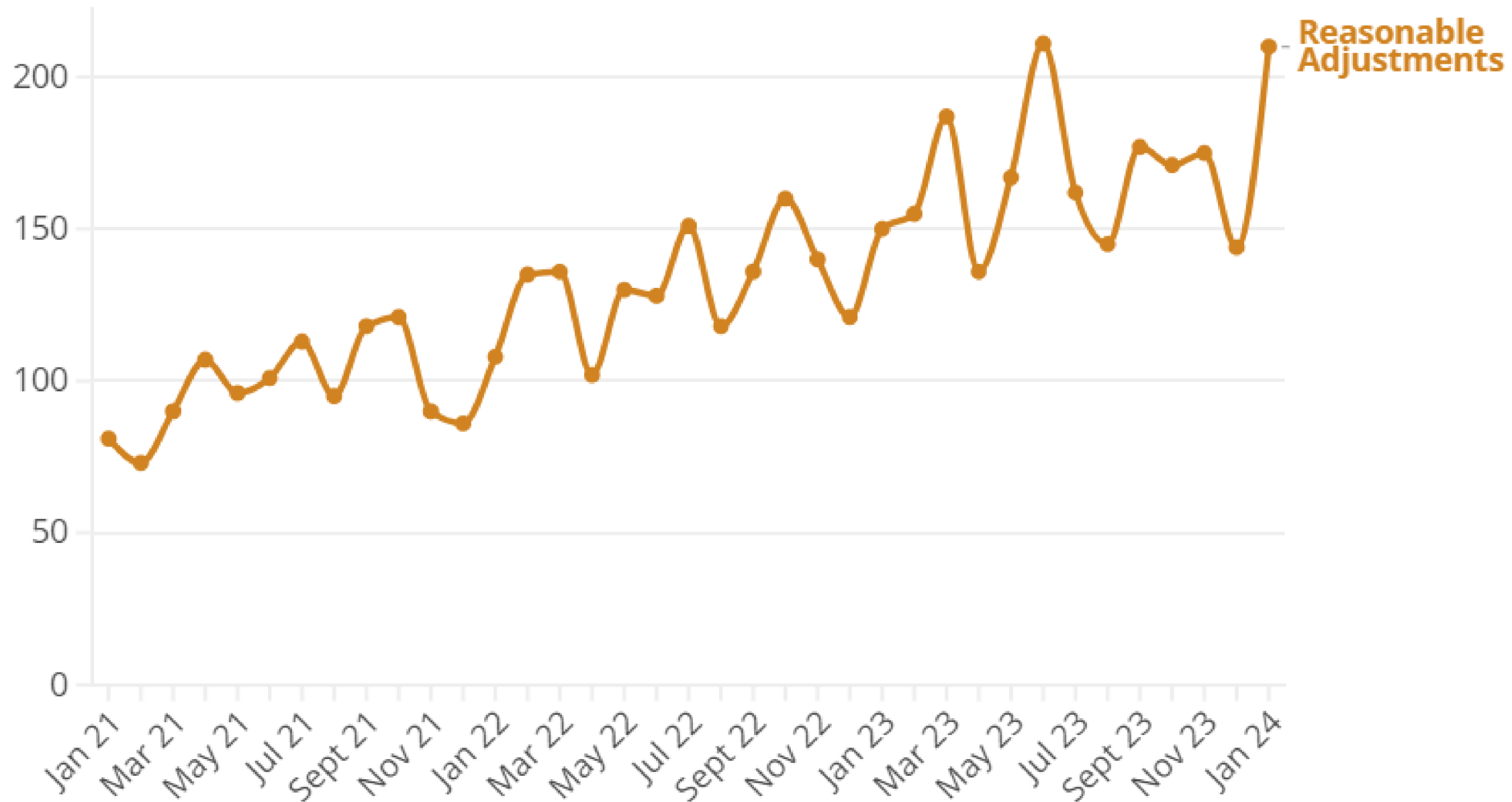
- lack of data which would enable a proper assessment of the sanction's regime.
- the gap between the official guidance and actual practices of job centres and decisionmakers
- possible decision-makers biases.

3. Potential changes in:

- negotiating claimant commitments;
- scheduling the appointments
- referring for a sanction, and
- making a decision about a sanction

Citizens Advice clients with work search-related issues

Reasonable Adjustments ▾



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Case study - *Rimmer v The Secretary of State for Work and Pensions*

- 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/>

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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