

WELFARE STATE, WAGES & WORK

Disintegration or Renewal?

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Executive Summary

The welfare system has been under attack for nearly a decade from austerity-driven cuts, mismanaged and under-funded schemes, and regulatory failures. Key areas are failing badly, with some programmes and services at risk of completely falling apart.

This paper considers the challenges, focusing on work-related support from both sides of what is referred to as the work-welfare interface.

Much of the impact of the system's failures has been on labour market participants, particularly in the bottom 30% of the wage distribution. Most people in this group depend on a combination of wages and occupational benefits from their employer (the 'work' side of the interface) and income and other support from the State (the 'welfare' side). Shortcomings and system failures on both sides are leaving many people in poverty. After the 2018 Budget the Joseph Rowntree Foundation (JRF) described the 'rising tide' of in-work poverty as 'the problem of our times'. The Institute for Fiscal Studies reached the same conclusion, calling it the 'big issue' and identifying low earnings growth, poor productivity, and a rise in part-time work as causes. Although tax credits and income transfers from the State 'flatten' and mitigate the impact of income inequalities between households, cuts to State support since 2015 have transformed that position for the worse.

Low earnings and wage subsidisation owe much to the legacy of neo-liberal policies and the deregulation of the labour, housing, and social markets. Those challenges coupled with inadequate regulation of the employment and protection, highlighted by successive TUC reports since *Hard Work, Hidden Lives* (2007a), weakened collective bargaining, and removal of sectoral wage-setting by the wages councils mean that there is little or no pressure on employers to pay above national minimum wage rates. Low productivity has been exacerbated by the lack of investment in training and skills development, and insufficient opportunities for career and wage progression, particularly in the low pay sectors. Employers benefit from massive levels of wage subsidisation but there is little reciprocity for that assistance.

Against this background, there is a powerful case for reconstructing the wages floor with the aid of regulated collective bargaining, as proposed by the Institute of Employment Rights, while maintaining a national minimum wage aligned to the Real Living Wage as a safety-net. The IER's *Rolling Out the Manifesto for Labour Law* sets out a detailed case for this. From a 'welfare' perspective this would also deliver a range of other attractive features, including better opportunities for wage progression and reduced reliance on benefits as wage top-ups (what has become, in effect, a State second wage).

On the welfare side, the national roll-out of Universal Credit needs to be stopped to enable fundamental flaws to be rectified. In particular, the value of in-work UC must be restored by lifting the freeze on annual up-ratings; and the original eligibility criteria for work allowances need to be reinstated (with full restoration of the allowances' value). The operation of the earnings taper needs to be reviewed and reduced from its current high level. In the meantime, as advisers and union delegates pointed out at the Welfare Reform Summit 2018, there are serious concerns about the transition from tax credits and other legacy benefits to UC. Advisers are seeing a massive rise in debt, repossessions, and delays in accessing key support like childcare expenses.

Other features will require longer-term remedial action.

A key design feature of UC was to give a substantial State subsidy to low hours, low-paid, mini jobs. The aim was to raise the employment rate by following a similar policy to that deployed in Germany's Harz IV labour market reforms (part of Gerhard Schröder's *Agenda 2010* changes). But there are big differences. German employers are more closely regulated in terms of the quality of such employment – for example through Germany's labour inspectorate system (something which the UK lacks). Furthermore, they are subject to social insurance requirements, including national retirement pension insurance and health insurance payments, and wage taxes. Most UK mini jobs paid at minimum wage rates are increasingly likely to operate outside the National Insurance scheme. Together with the subsidy from UC, this creates a potent incentive for employers to create such work and to then *keep* wages below the Lower Earnings Limit for NI contributions (which is also the threshold at which benefits like SSP, SMP, SAP, etc become payable). This is an area of both Labour Law and Social Security Law policy that needs revisiting.

In general, the scope for rebuilding the contributory part of the social security system needs to be explored, and measures taken to reverse the damaging effects of rises in the cost of National Insurance contributions, and cuts to the value of benefits. This has been described by Kate Bell and Declan Gaffney as the 'nothing for something' effect in the TUC's *Making a Contribution: Social Security for the Future*. The long-term trend towards increasing reliance on means-tested in-work benefits should be reversed, particularly given the negative impact of poverty traps and the see-saw effect whereby, as wages rise, benefits are withdrawn. The problem of such traps also operates at a secondary level, for example when wages rise and support from sources like school meals and childcare vouchers is withdrawn (Children's Society, 2017).

Reform must also focus on childcare. Current deficiencies in the support provided to working parents who claim UC and receive the UC childcare costs element, and in the government's scheme for reimbursing childcare users with a portion of their costs, including a requirement that childcare costs must be paid up-front (and only later reimbursed), should be addressed. Inadequate support for private childcare providers also needs attention. Policy initiatives for a more comprehensive, universal childcare regime, need to be started.

In the key area of support for housing costs the crisis has been intensifying. The abolition of the scheme for helping with mortgage interest costs in 2018, and its replacement by a system of loans, is likely to be just the opening shot in a series of wider-ranging cutbacks affecting housing. As a result of low wage growth, rising living costs, and the way rent increases have outpaced wage rises, the number of workers having to claim Housing Benefit or UC housing costs element has risen dramatically. At the same time, a JRF analysis in 2018 of rents and wages across English districts shows that rental costs are now more than a third of full-time local pay in over half those districts (after the least expensive quarter of private rents was compared to earnings of the lowest paid quarter of employees). Using the same comparison, rent was more than *half* of local full-time pay in parts of London and the South-East.

Yet rather than trying to tackle the problem this key part of the housing crisis, the government's response has largely been confined to making it harder for people to qualify for support, reducing the value of support, or imposing caps like the Bedroom Tax.

It will be necessary to start addressing the root causes of the housing crisis. These include the lack of affordable housing (for buying and renting), inadequate investment in social housing and support for local authorities' programmes, and the absence of any kind of rent controls of the kind in operation in Ireland, Germany, and the USA.

In the UK controls were abolished by the Housing Act 1980 as part of Conservative deregulation policies. The result has been a deepening housing crisis, and a massive fiscal burden for the community to have to bear.

Clearly, there is a need to defend our welfare services, stop further disintegration, and reverse the threat to national and local services that collectively deliver an important social wage for millions of workers and their families. Going forward, renewal of the system is required to meet newer challenges, including the systemic rise in underemployment and likely impact of automation and artificial intelligence on employment – particularly in unskilled and semi-skilled work which is prone to displacement by artificial intelligence. These factors, and the increasing likelihood that there may, in time, simply be insufficient paid employment available, have been spurring debate as to whether a universal 'basic income' may provide better solutions than a continuing expansion of the in-work social security system.

CHAPTER ONE

Introduction & Overview

Austerity, Cuts & 'Welfare'

Despite the Chancellor of the Exchequer declaring in the 2018 Budget that austerity is 'coming to an end' there is every sign that it is far from over. All the key social security benefits including in-work Universal Credit (UC) and Housing Benefit (HB) remain firmly frozen from April 2019 rather than being uprated. Other agencies like local authority social services continue to report cuts to their services. Despite such challenges, which have continued since 2010 when the Coalition government declared that the welfare system was 'unsustainable' with 'costs spiralling out of control...' (DWP, 2010a: ch. 2, paras. 3-5), and the very real threat of complete disintegration of programmes like Universal Credit (UC), the Welfare State¹ struggles on. In doing so it still delivers support to millions of citizens, providing a sizeable social wage in return for a hefty investment by the community. This still accounts for over a third of government spending (ONS, 2016). Nevertheless, in spite of the scale of that investment – much of it the product of failing social policies - it would be foolish to imagine that the cumulative impact of cuts is not affecting the quality of support. In the period since 2010 the Local Government Association estimates that councils will have lost 60 pence in every pound of funding for services, and as a result of projected cuts it projects that there will be a funding gap of £8 billion by 2025 (LGA, 2019a).

Modern programmes still map on, broadly, to Beveridge's Five Giants of Want, Disease, Ignorance, Idleness, and Squalor (Beveridge, 1942): but the intervening period has seen some sizeable extensions of support in areas like Community Care and local services². But by far the biggest, and arguably most important, expansion has been in-work social security benefits.

The current social security system is now pervaded by means-tested benefits with the primary function of supplementing low pay through earnings top-ups and other forms of support (housing and childcare costs, disability needs, and family-specific needs, as costs that would otherwise have to be paid for out of wages). Much of that support is delivered through benefits like Working Tax Credit, Universal Credit (UC), Housing Benefit, and local and national services for workers who have been injured at work³. The system is particularly important for workers in the bottom three deciles of the wage distribution where those in low pay are located. Depending on which definition of low pay is used this means between 5 and 6 million workers. When the growing number of 'self-employed' labour market participants are added to the figure it gets closer to 30 per cent of the distribution⁴. As the Institute of Employment Rights *Rolling Out the Manifesto for Labour Law* has rightly pointed out 'Wages are so low that that most people receiving State benefits in the UK are actually in work' (Ewing et al, 2018: 3). In practice, people may get support from social security benefits *and* other State welfare schemes such as the community care system - typically after an accident at work, or when groups like working claimants with a disability, parents with a child with special needs, or carers need to access support after a Care Act 2014 assessment, or through the Access to Work scheme.

Deregulation & Wage Subsidisation

The scale of in-work assistance, which is currently growing exponentially as a result of the UC scheme's support of the low hours, low-paid 'mini jobs' (which it was, in fact, designed to be able to support such work), highlights how State wage subsidisation has become an integral part of the remuneration system. The government's success in encouraging such employment has been noted by the Social Security Advisory Committee. It also observed how the roll-out of UC has been accompanied by a 'dramatic rise in part-time and more flexible patterns of working' (SSAC, 2017). That dependency is now a feature of low pay in most sectors, but it is particularly prevalent in the ten or so primary low-pay sectors of the UK (IPPR, 2016) where the national minimum wage becoming a 'going rate' and 'ceiling' (rather than the 'minimum' originally intended): this is in spite of fact that sectors like Retail and Accommodation and Food Services include employers which are among the largest, most profitable corporations in the world. Wider afield, State subsidisation of low-wage employment and self-employment through the in-work social security system in *all* sectors has been developing hand in hand with a fast-evolving gig economy (De Stefano, 2016; Broughton and Richards, 2016)) and in conjunction with a growth in precarious working conditions (TUC, 2017b).

As this paper considers, the scale of low pay is putting an intense burden on welfare schemes and has been transferring much of the cost of the risks of low pay and poor working conditions away from employers and on to the community. A major cause of this, and in the widescale return to wage subsidisation since the 1980s, has been the legacy of neo-liberal, deregulation policies of the 1980s and 1990s (Martinez Lucio et al, 2017: 6): policies which weakened collective bargaining, wages councils, and other redistributive mechanisms in the labour market, producing a fall in earnings and the wages floor. The issue is explored later in this paper (in *chapter 3*), but the link between deregulation and a return to wage subsidisation through the social security system started to become clear when in-work benefits like Family Credit (FC) and Earnings Top-Up were being used to make up for wages falls in the aftermath of abolition of the wages councils - particularly in the low pay sectors where wages council orders had previously maintained a minimum wage floor and provided for grade structures and progression routes to higher wage rates and improved conditions (Puttick, 2018). Indeed, this developing role for the social security system was recognised by the Department of Employment well ahead of the wages councils' final abolition in 1993 (Department of Employment, 1988). By 1999 schemes like Family Credit, its predecessor, Family Income Supplement, and Working Families Tax Credit were delivering a substantial supplement to earning (IFS, 1999) with awards in some cases representing as much as 40% of low-paid women's earnings. In fiscal terms, the figures speak volumes in identifying trends. Real spending on tax credits and equivalents rose from £7bn per year in the mid-1990s, and then peaked at £32bn in 2011 in the period after the financial crisis and recession, and is currently £25bn (Joyce, 2018).

Other factors have also been in play, including labour market transformations which have produced a proliferation of on-call and zero hours contracted employment, and other forms of 'flexible work' which may often not generate enough earnings to make it sustainable – at least without State top-ups. The in-work tax credits system (now being replaced by UC) has not just provided employers with a system to relieve them of a sizeable portion of their labour costs, and the need to pay a living wage: it has also created the conditions for the casualisation of employment conditions in general (Adams and Deakin, 2014: 20-22).

Casualisation and by-products like low pay, minimal occupational benefits, and poor progression opportunities have been long-standing issues that continue to impact disproportionately on women's pay and conditions, and their ability to progress to better work (Costa Dias and Elming, 2016).

Renewal at the Work-Welfare Interface

This is explored later in the paper and brought together in the Welfare Futures chapter, but structural changes to redistributive mechanisms on both sides of the work-welfare interface are needed, including minimum wage, collective bargaining, and equalities legislation on the work side, and social security schemes like UC and support for housing and childcare costs on the welfare side. This will be essential in order to deal with what the Joseph Rowntree Foundation has called the 'rising tide' of in-work poverty and 'the problem of our times'. It observes that despite record employment rates, the number of people in poverty in working families has risen by over one million, with nearly 3 million of the children in poverty now in a working family: a situation which JRF says is 'set to worsen further in future'. A re-design of UC is clearly necessary as a 'first step' so that it can boost the incomes of almost 10 million parents and children in low pay households (JRF, 2018a)⁵. A similar analysis was also provided by the Institute for Fiscal Studies at the end of 2018. The IFS also identifies the 'big issue' as the growth in the number of people who are in poverty, pointing out that 57% of people in poverty are children or working-age adults living in a household where someone is in paid work (up from 35% in 1994-95) (Joyce, 2018).

The IFS has gone much further, though, in identifying the causes of low pay and working poverty and commenting on changing demographics. 'Dismal productivity performance' and low earnings growth are key factors. However, the more immediate driver has been a rise in earnings inequalities among men, something that has been caused in large part by the rise in men working part-time hours. A quarter of men on low hourly wages are now more likely to be working part-time, with a quarter of them working below 30 hours a week. Although the rise in cash transfers from tax credits, and UC has managed to keep the inequality in net incomes between working households 'flat', the position has been transformed since 2015 by the value of cash transfers being cut back as part of a 'fiscal consolidation'. Translated, that means spending on tax credits and in-work support is falling in real terms as a result of government cuts. According to the IFS, the 'major policy lever' that the government now favours as a means of 'propping up low earners' is the minimum wage. This has seen growth at the bottom of the hourly wage distribution that is higher than in previous years - but the problem remains that support from the in-work social security system has been reducing.

However, there are still significant problems to be addressed, even with improvements in the level at which the NLW is pitched. As things stand, to start to secure a minimum income standard which could begin to obviate the need for State support, the NLW would need to be raised to at least the level of Living Wage Foundation's Real Living Wage. That would make a significant difference in comparison with the position for workers on the NLW. The current position is that even when two workers in the same family are working full-time, and earning at the level of the NLW, their combined earnings would still fall well short of a household income that their family group requires to get through the week, according to research in 2018 commissioned by the Child Poverty Action Group (Hirsch, 2018). This highlights the importance of the call in *Rolling Out the Manifesto for Labour Law* to introduce the Real Living Wage.

In September 2018 the Shadow Chancellor of the Exchequer, John McDonnell MP, confirmed his support for a £10 an hour Real Living Wage at the Labour Party Conference (McDonnell, 2018); and he later repeated this in his response to the Budget in 2018.

Advice Work Challenges

The scale of current challenges provides little comfort for advisers who assist clients with complex advice needs including better off/worse off options and help with adjudication and appeals problems – particularly at a time of considerable uncertainty about the many structural weaknesses of UC as it continues to be rolled out. As at the start of 2019 sizeable numbers of claimants, including working claimants are still receiving ‘legacy’ benefits like Working Tax Credit, and are yet to migrate from legacy benefits like Working Tax Credit to UC. Indeed, the process is estimated to affect over 12 million households through until 2022. Unsurprisingly, food banks are busier than ever and stretched to capacity in the face of delayed payments (Trussell Trust, 2018). Worse, the government’s promised ‘Universal Support’ – a system of measures which is supposed to be helping the transition process – has not been much in evidence, leaving hard-pressed advisers, unions helping their members, and voluntary organisations to cope (Jitendra, 2018: 6). The advice role has never been tougher as delegates from advice organisations, charities, and unions concluded at the *Welfare Reform Summit 2018* at Staffordshire University which was funded by the Social Policy Association and organised in collaboration with the Child Poverty Action Group (Machin et al, 2018: 10-13).

Future Prospects

Going forward, the prospects are anything but good. They look set to remain unchanged into the tax and benefits year 2019-20 and beyond unless effective mechanisms are introduced to raise the wage floor and structurally improve Universal Credit. The projected negative impacts from tax and benefits changes through to 2021-22 (when the current Parliament is due to end, assuming it runs its full course). This was charted comprehensively in a 2018 report for the Equality and Human Rights Commission (Portes and Reed, 2018). It laid out a catalogue of horrors in terms of the expected effects of current policies. Pointing out that changes to taxes, benefits, tax credits and Universal Credit (UC) since 2010 have been largely regressive - however measured - with the largest impacts being felt by those on the lowest earnings and incomes, it concludes that those in the bottom two deciles of the wage and income distribution are projected to lose, on average, approximately 10% of their net income. Further up the distribution, groups like the ‘just about managing’ (JAMS), who must rely increasingly on benefits and support from sources like Housing Benefit and UC housing costs, are not spared. Much of the ‘gain’ from NLW rises is off-set by benefits cuts (Finch, 2018).

Despite the promise of some additional funding to ‘ease the transition from legacy benefits and tax credits to UC’ announced in the Autumn Budget in October 2018 (Budget 2018), no substantive changes are expected to be made to the UC scheme itself until the national roll-out is completed. That could still be five years away. A major concern is the reduction since 2015 in the value of UC work allowances, the continuing refusal to extend allowances to second earners in a household, and the low value of support from UC. Although there is to be a partial reversal of the cuts to work allowances for several groups from April 2019 (discussed further in ‘April 2019 Rises’ in the section *Assessing the Award* in ch.6), the changes fall well short of a full reinstatement of all the cuts made to the system

since 2015 (Turner, 2018). Whilst promises to make funding available to ease the transition from legacy benefits to UC are welcome, there is no sign yet of any significant changes to the structure of the scheme.

In political terms there is not much doubt that the crises linked to UC could prove to be what a previous Conservative Prime Minister, John Major, has called the government's 'poll tax moment'. That view was supported by the Director of the IFS when commenting on the complex challenges the DWP faces in managing the millions of transfers to UC during the transition process (Johnson/IFS, 2018). Another former Prime Minister, Gordon Brown – the architect of the tax credits regime which UC is replacing – has called for a halt to the UC 'experiment'. He described it as 'cruel and vindictive beyond austerity' (Brown, 2018). He added that the safety-net was no longer the Welfare State but had become food banks and charities.

As this paper argues, there is a clear need to defend our welfare services, stop further disintegration, and reverse the threat to national and local services. The social security system is not the only part of the Welfare State in crisis. Local services, too, are under siege as programmes and services are run down, and funding is projected to be massively cut (LGA, 2017). Besides saving existing programmes and schemes, it will be necessary to commit to *renewal* in the form of a new generation of policies with adequate funding for much-needed programmes like universal childcare, and local care services. These are the kinds of areas which the General Secretary of the TUC, Frances O'Grady, has said should become 'a new pillar of the Welfare State' (O'Grady, 2012). However, they are only two of a much wider range of core areas for reform where a combination of new legislative interventions, regulatory measures, and properly-funded programmes are needed.

For reasons which are explored in this paper, there is every reason to doubt government claims that current policies are making work pay, lifting people out of benefits dependency, or transforming the UK from being 'a low wage, high tax, high welfare economy' into a 'higher wage, lower tax, lower welfare' one (as a former Chancellor, George Osborne MP said could be expected in his 2015 Budget speech (Budget 2015).

Clearly, the goal of achieving higher wages and improved working conditions, coupled with a reduced dependency on the State welfare system, should also be a project for a progressive incoming government committed to a programme of renewal of Welfare State institutions and programmes. But this is only likely to be achieved through the adoption of an altogether different set of policy objectives, including measures to stimulate productivity and growth, secure investment in training and progression opportunities [6](#), and reconstruct collective bargaining. It will also be necessary to adopt a new generation of schemes and regulatory powers to rebuild the social protection floor.

In the rest of this paper the scheme is as follows:

Chapter 2 examines more closely the specific ways in which the State welfare system delivers support, including regulatory interventions, benefits, and services.

Chapter 3 tracks the transition from a predominantly insurance-based welfare system to one that is dominated by means-tested benefits one which subsidises a sizeable and growing section of the labour market which is in work paid at subsistence and below-subsistence wages.

Chapter 4 looks at the growth of ‘make work pay’ schemes and specific modes of delivering support, including tax-based schemes.

Chapter 5 considers the effectiveness of the current minimum wage, equalities, and other interventions for maintaining the wages and conditions floor.

Chapter 6 provides a commentary on the Universal Credit scheme and other forms of in-work support.

Chapter 7 concludes with a discussion of welfare futures and points for a renewal agenda.

CHAPTER 2

The 'Welfare' in Welfare State

Introduction

State support for people's welfare has a long history reaching back to well before Beveridge and the post-World War II Welfare State. Early social insurance in pre-State systems took a variety of forms including the pooling of community assets and risks, and redistribution on solidarity and insurance principles as an extension of different levels of reciprocity and types of 'exchange' (Lee, 1998; Sahlins, 2004: 191-204). Newer forms of insecurity, risk, and 'welfare' came with the transition to a market economy and development of the State, particularly for those engaged in wage labour and dependent on a job and wages for subsistence (Polanyi (1944), 2001). In Britain the Poor Law marked the start of State welfare system, at least as a national scheme operating within a framework of national legislation, even if it was largely funded and managed at a parish level. For present purposes, a key function under the 'old' poor Law was the support it gave working claimants, including early forms of wage subsidisation. In particular, it could extend support to low-paid workers as 'outdoor relief', 'allowances in aid of wages', and in other forms (Hollen Lees, 1997: 60-64; Mitchison, 2000) – typically as support for seasonal workers in out-of-season periods, or when wages reduced or stopped altogether. Under the Speenhamland system the parish - having supplied workers to employers - could make up the difference between what the employer paid and what was deemed to be an appropriate level of minimum subsistence income (Deakin and Wilkinson, 2005: 126-130). In many ways this mirrors the approach taken in the calculation of modern means-tested benefits like Income Support, Jobseeker's Allowance (income-based), Working Tax Credit, and Universal Credit (for example when the claimant's needs in the form of her 'maximum amount' is compared to her income, and then support makes up any deficit month by month): a system discussed in *chapter 6*.

This form of Poor Law support was curtailed, however, after 1834.¹ Nevertheless, the labour market by this time had started to depend on an 'efficient and ubiquitous welfare system' (Deakin and Wilkinson, 2005: 20-22). Since then, the social security system has continued to grow and develop in different directions, with newer schemes based on a mix of insurance, universalism, and solidarity principles. However, the specific function of wage subsidisation using publicly-funded resources did not make a comeback until the 1970s. When it did, with benefits like Family Income Supplement, and Family Credit and Earnings Top-Up, it was mostly due to the limitations in coverage by the national insurance system, and the impact of labour market transformations - particularly the expansion of low-paid, part-time work, weakened collective bargaining and unions, and the abolition of other redistributive mechanisms like the wages councils. With the introduction of Universal Credit, the State now delivers a sizeable wage subsidy and package of childcare, housing, and other support to those working in low hours, low-paid 'mini jobs'.

Before looking more closely at key components of the current legal regime dealing with low pay – minimum wage-setting, collective bargaining, and in-work UC – it is necessary to look more holistically at the wider welfare system to see how 'welfare' is delivered to labour market participants.

Delivering 'Welfare'

Broadly, in-work welfare currently depends on these sources:

- (1) The courts and tribunals
- (2) Legislative interventions and regulation
- (3) The regulated social market
- (4) Social security schemes

All are important, but each presents its own challenges.

(1) The Courts & Tribunals

Traditionally, the contract of employment, as developed by the courts, provided (and still provides) a degree of regulation and allocation of legal responsibilities. In 'welfare' terms the allocation of responsibilities to employers has been important, and no more so than the Common Law 'duty to pay wages' and to maintain wages during temporary earnings interruptions. The employment contract also provided the means of channelling a wider range of risks and support through collective bargaining as well as a conduit for support for workers through social insurance schemes and public welfare services (Deakin and Wilkinson, 2005: 15, 16).

The limitations of the employment contract can be seen, however, in court decisions on the scope of implied contractual responsibilities like the duty to pay wages. These can be curtailed or dispensed with altogether – typically after an employer reserves a power to unilaterally modify terms and conditions. This is something which has produced some startling results in favour of employers, for example in leading cases like *Bateman* where Asda Stores was able to rely on a clause in the staff handbook enabling changes to terms and conditions to be made unilaterally.² The ability of employers to deploy their bargaining power to force a re-structuring of wages systems - for example by the introduction of collectively agreed annualised hours agreements which displace rights to overtime pay or shift premia or make eligibility more restrictive - also highlights the problem.³ In areas like contractual sick pay – an important source of assistance, particularly for groups like the low-paid or self-employed who may be ineligible for State incapacity benefits like Statutory Sick Pay (SSP) or Employment and Support Allowance (ESA) - the courts and tribunals can be reluctant to fall back on mechanisms like implied duties to require normal wages or sick pay to be paid. The absence of a Labour Inspectorate to which workers can turn for help, and the problem of lack of specialist legal advice and representation (Legal Aid is unavailable in employment and social security cases), is compounded by the difficulties of getting employers to comply with tribunal orders - something the TUC has warned about for some while (TUC, 2007). This could get worse if, as expected, the government reintroduces tribunal fees in 2019.

The courts also play a decisive role in the Public Law sphere when it comes to determining the scope of the State's liability to deliver or maintain welfare support. This generally entails hearing appeals in jurisdictions like support for working parents with children with special needs, or disabled workers who may be in dispute with local authority social services. In general, the courts have been supportive

of local authorities who in a time of austerity have to plead a 'lack of resources' as a defence to claims. Perversely, that means that even when the claimant's needs are visibly going *up*, the courts have been ready to accept that as a result of government cutbacks, and a local authority's reduced resources, a person's support from the State may go *down*. Furthermore, human rights have not been allowed to get in the way of this harsh reality⁵.

(2) Legislative Interventions and Regulation

Legislation like minimum wage-setting and equalities law operates by modifying the contractual obligations of employers in order to secure welfare services (Kronman, 1980: 5). For present purposes, the most important interventions, as these help to raise the wages floor, are the National Minimum Wage Act 1998 and regulations, the Working Time Regulations 1998, and equal pay requirements in the Equality Act 2010. For workers who are single parents the ability to secure child maintenance as a result of interventions like the Child Support Act 1991 and the Child Maintenance and Other Payments Act 2008 which reformed the child support formula are important in providing a potentially valuable income stream in addition to their wages and social security income (Puttick, 2003). In order to maximise the financial take from such sources, particularly in the face of an in-work support system that is pervaded by means-testing, the system has to deliver effective income 'disregards' or other forms of ring-fencing to maintain the value of such sources. This is something that the new Universal Credit regime has signally failed to do, for example by removing the income disregard for spousal maintenance.

The ability of these and other regulatory interventions to raise the wage floor is important. However, in practical terms, for workers on means-tested benefits like Working Tax Credit or Universal Credit, the value of any gains from schemes like the NMW or Equality Act 2010 is immediately off-set as a result of the way means-testing works. Subject to any 'disregards' being available, or assistance from the UC work allowance – a mechanism which has been massively limited since 2015 – the see-saw effect whereby as wages go up, welfare support goes down, operates as a significant limitation on the value of such interventions.

In a number of other key areas which impact on workers' welfare, such as housing costs, the current regime is unable to intervene to regulate rents (as it did until the Housing Act 1980 'deregulated' the rented property sector and rent controls). Workers currently pay a sizeable proportion of their wages in rent as recent studies have shown (JRF, 2018). The issue is considered further in *chapter 6*.

Collective Bargaining

Collective bargaining at all levels – national, sectoral, enterprise - is a form of regulation in itself, providing a legal framework for the work bargain, and at the same time delivering collectively agreed wages and occupational benefits - secured through the medium of the individual contract of employment. Many of those benefits obviate (or reduce) the need for workers to access State social security benefits – especially as they may overlap in dealing with the same contingencies: sickness, pension, and other entitlements. One of the negative features of moving towards a gig economy in which workers are outside the scope of such bargaining, and protection, is that the State welfare system has to pick up the costs of such regulatory failures.

A major problem that has resulted from the decline in bargaining coverage is that there are now some significant areas of the labour market, including low pay sectors with little or no union presence or representative bodies from either side – employees or employers - where there is minimal provision of work-related benefits. That problem has also extended into newer, and fast-growing areas like the gig economy and self-employment. There are an estimated 7.7 million people who are self-employed or in the gig economy and paid for short-term or task work through digital platforms. Inevitably, this means added pressure on State social security systems, contributing to what this paper considers later, which is a crisis of coverage and a fiscal crisis.

Furthermore, there is a danger that the longer this challenge is left unattended this is a space that will be filled by private provision, much of it inadequately unregulated. From the private providers' perspective this lacuna provides some significant business opportunities (Papadatou, 2018).⁶

Collective bargaining institutions are themselves the product of regulation by the State (Ewing and Hendy, 2017). As this paper argues later, the State's ability to regulate facilitates newer approaches to the challenge of how to construct systems of bargaining that can make a better, more meaningful impact on the wages and conditions floor. Indeed, many of the recommendations set out in the IER's *Rolling Out the Manifesto for Labour Law* (Ewing et al, 2018) will depend on effective new regulatory measures like the Manifesto's proposed Collective Bargaining Act (ibid, pp.18-27).

(3) The Regulated 'Social Market'

In theory, State involvement in social welfare is unnecessary in a society in which the market could cater for citizens' welfare needs by developing and providing financial services products, and through savings, investment, and borrowing. If functioning effectively this would, in theory, obviate the need for State provision (Barr, 2001: 11, 12). In general, the marketeers would claim that the market can deliver most things, except for some groups like the 'lifetime poor' who are unable to save or borrow, and who might therefore struggle to get assistance from anywhere other than the family, community, or State-managed sources (Barr, 2001: 11,12). Legal philosophers like Joseph Nozick do not just criticise the Welfare State but most kinds of welfare-led intervention or 'forced distribution' unless delivered as an 'exchange' (Nozick, 1974).

The reality, however, is vastly at odds with the theory. It is not necessary to look much further than market failures in action, whether it is private pension scheme failures, the Maxwell, BHS, and Carillion scandals, and the on-going failures of the Pension Regulator. Wider afield, the failure of privatised services in areas like probation (which in 2018 were the subject of highly negative criticisms in the annual reports of HM Inspectorate of Probation). Other problem areas with a direct impact on workers have included the scheme for assisting users of private childcare services, organised around the government's commitment to refund 20 per cent of their costs. Despite its importance, the system has had significant problems since it started, as reported in the BBC's Radio 4 programme *Money Box* on 17th November 2018.

Governments since the 1990s have experimented with the idea of a 'better regulated' social market. New Labour developed its Third Way approach to a semi-privatised model of the Welfare State, declaring in the *New Welfare Contract* (New Ambitions, 1998: 80) that 'one of the duties of government' was to 'regulate effectively so that people can be confident that private pensions and insurance products are secure' (New Ambitions, 1998: 80). Legislation like the Financial Services and Markets Act 2000 followed, deploying a complex mix of self-regulation and light touch interventions. In terms of securing safe investments and insurance products it would be fair to say that any evidence of success has been decidedly mixed, particularly in the light of company pensions management failures and product mis-selling scandals. The current government undertook in its 2017 election manifesto to maintain effective regulation while at the same time promising organisations that it was committed to reducing the costs of regulation, through controversial schemes like the Red Tape Challenge and One-In-Two-Out initiatives (Conservative Manifesto, 2017:15). Based on the evidence of the failure of regulation in this key area of welfare, the Nobel Laureate Joseph Stiglitz was warning about the risks of allowing State pensions in the USA to be privatised. He cited the failures of the UK pensions market as an excellent reason for *not* doing so (Stiglitz, 2010: 89).

A decade after *New Ambitions* and the legislation in 2000, a new threat came from another quarter. At the same time as local authority community care and social services schemes were being hit by budget cuts – the start of austerity - the Prime Minister, David Cameron MP, announced a new initiative, the Big Society project. On the face of it this seemed to be a clear call for the voluntary sector to take on roles which had traditionally been seen as functions of the State and the welfare system, aided by some State pump-priming. This was widely seen signalling a major downsizing of the Welfare State. On the face of it, such a pro-active use of State resources to kick-start community-based social capital, volunteering, etc, seemed to be at odds with a neo-liberal political agenda that was largely hostile to the whole idea of State-managed and publicly resourced 'welfare' (Ferragina and Arrigoni, 2018).

Perhaps a much more significant concern has been with the creeping privatisation of healthcare and local services – particularly since the NHS and Community Care Act 1990 did much to develop the internal markets in both health and social care. It was certainly a major step in making the system a services 'enabler' rather than just a direct provider. The Health and Social Care Act 2012 and Care Act 2014 then took the scope for further privatisation of the health and care sectors considerably further. That risk increased considerably with the 2012 Act's schemes, as the NHS Consultants Association co-chairman, Clive Peedell, warned would happen in the British Medical Journal (Peedell, 2011: 342).

Elsewhere, the failures of the Office of the Rail Regulator to improve the quality of service, and constrain fare rises – something that has an immediate impact on the workers' ability to get to and from work, and not be subject to exploitative fares – is perhaps the best testament to the perils of allowing a utility as important as the rail network to be in the private sector, and under the auspices of such a poor system of regulation. The idea of the State as a regulator rather than as a provider has been a controversial feature of welfare discourse for as long as the Welfare State came into existence in its modern form. Indeed, commentators like the social historian Asa Briggs, in *The Welfare State in Historical Perspective*, described the ability of the State to use its power, including the law, to 'modify the play of market forces', provide people with sufficient income, and enable them to meet key 'social contingencies' (Briggs, 1961: 221). This begs the question, though, how much longer privatised utilities

like the rail franchises should be allowed to continue when regulation of the quality of services and fares has been failing for so long.

(4) Social Security Schemes

State welfare schemes, as managed by governmental agencies, feature strongly in the redistributive process, and are at the heart of the modern welfare system. The schemes are not just complex, they are expensive to fund. In the financial year ending 2017 £264 billion was spent on welfare, which was 34% of all government spending (ONS, 2016). If the spending on all Welfare State schemes and services is added to social security costs, for example social services and social housing, the figure rises to an estimated £484 billion (about 25 per cent of GDP) (OBR, 2018a).

The system relies on different forms of support with claimants, typically, drawing on one or more of the three main types of benefits: contributory, non-contributory/universal, and means-tested. Each scheme within the typology is funded differently, and operates in distinctive ways, with its own frequently complex eligibility criteria, claims and payment processes⁷. To that extent, the move to consolidate six of the most complex schemes into Universal Credit was a praiseworthy initiative, even if the process has been mismanaged and is unravelling badly.

As far as **contributory** benefits are concerned, the main benefits catered for by the Social Security Contributions and Benefits Act 1992 (SSCBA1992) Part II and regulations include the biggest area of welfare 'spend', State Retirement Pension (OBR, 2018a). Although benefits like Jobseeker's Allowance and Employment and Support Allowance can be claimed on a contributions basis, they are hybrid contributory/means-tested benefits – and in practice the means-tested part of the system is now the pervasive part of the system. For claimants who may be ineligible for contributory benefits as a result of a lack of sufficient NI contributions or credits, there is generally scope to receive support from a means-tested benefit, subject to eligibility and 'means'; or to access support in other ways on a non-contributory basis. The point is an important one for workers and their dependants in various situations. For example, incapacity benefits like ESA can be claimed by younger workers who have accidents or incapacitating illness before they are able to build up a sufficient contributions record (SSCBA s.30A), and bereavement benefits can be claimed on a non-contributory basis by the surviving spouse of a worker who dies in an industrial accident or from a prescribed industrial disease.

The decline of the contributory principle is considered further in the next chapter.

The second group in the typology, **non-contributory/universal**, are described in the SSCBA and detailed in Part III of the Act and regulations for each benefit. They include important sources of State support like Statutory Sick Pay, Statutory Maternity Pay, Personal Independence Payment, Carer's Allowance, and Industrial Injuries Scheme Benefits. The fact that they are not contributory is helpful to groups working in the kind of employment in which it is difficult to build up adequate National Insurance contributions to qualify for contribution-based support, as is the absence of a means-test for groups that may be ineligible on 'means'. Nevertheless, they are subject to increasingly tough

eligibility criteria and in some cases tough medical, other requirements, and on-going review processes. Claimants may be subject to a range of administrative procedures for monitoring ongoing entitlement, including medical examinations, postal checks and questionnaires, and in some cases home visits. There are also potent employment status criteria, so that non-employees are barred from schemes like SSP and SMP. If there is doubt as to eligibility, decision makers are likely to suspend support first and carry out checks later while further information is requested and checked to establish if claimants are still entitled to support. In an adjudication system that is currently massively under-resourced and under pressure – particularly as UC is rolled out – delays can be lengthy.

The benefits in the *means-tested/income-related* benefit group, in practice now the most important of the three groups in the typology, are also catered for in the SSCBA, legislation like the Jobseekers Act 1995, or the Welfare Reform Act 2012 (as it deals with UC), and scheme-specific regulations. Benefits which are particularly relevant in the in-work support context include Income Support and Jobseeker's Allowance (Income-Based) as they are still being paid to workers working below the 16-hours a week threshold (24 hours a week if they are part of a couple) pending their migration to Universal Credit. Tax credits (notably Working Tax Credit and Child Tax Credit) are also still being paid as 'legacy benefits'.

Various negative features are associated with the way means-tested in-work benefits operate. One of these is a 'see-saw' effect whereby, as wages rise, means-tested benefits income generally *falls* (and a fall in wages will generally mean a *rise* in benefit income). Subject to the operation of any available disregards, or work allowances in the case of UC, this can leave workers in a constant trap. It can also wipe out much, if not all, of any gains from pay rises, or equal pay awards. For workers on variable hours and, therefore, earnings, the experience of being on in-work benefits can be more like a roller coaster ride. The problem has been aggravated since 2015 by the exclusion of groups like single workers from the work allowances system, and reductions in the value of allowances for others. For low-paid workers who are dependent on State benefits there is little or no chance of escape unless they can enter employment that is paid at a level which takes them out of the trap. Other parts of a worker's overall package of State support can also be affected by earnings traps. For example Housing Benefit as it is still being paid to claimants on tax credits will rise and fall in a similar fashion; and with the government's introduction of mean-testing of school meals and childcare vouchers in 2018 workers in low-paid jobs who qualify can lose it as soon as their earnings rise above the prescribed thresholds above which that support is withdrawn (Children's Society, 2018).

Broadly, means-testing means that eligibility, and the amount of benefit paid, is determined by identifying the claimant's needs (and those of his/her dependants', if any) – as determined by reference to prescribed allowances, premia, housing costs, etc – and then comparing these with 'income' and other assessable resources, or what the law *treats* as an available resource. If the claimant's needs exceed their resources, the difference will be the subject of State support through schemes like tax credits or UC. Controversially a benefits 'cap' operates to reduce the overall amount of income coming into the claimant's household, subject to exemptions.⁸

A further feature of the system has been the intensification of requirements that claimants should 'progress' and take up additional hours or better-paid work so that the cost of their support is

minimised. This aspect of the system can impact in many negative ways on vulnerable groups. As the Child Poverty Action Group has been arguing in test cases, the expectation that groups like single parents with young children, should have to increase their work-load to 16 hours a week in order to meet the demands of their Claimant Commitment, and thereby avoid the imposition of the benefits cap *and* at the same time meet their parenting responsibilities, is both irrational and an infringement of their rights as parents and workers. This was the view, too, of a High Court judge in 2017 in a case in which a lone parent with two young children objected to having her benefits cut back. This was as a result of not securing employment at or above the 16-hours threshold at which the cap on support is lifted. The decision of the Supreme Court will either vindicate the government's whole approach to progression or drive a coach and horses through the entire policy position⁹.

Together with people with a disability and older labour market returnees, lone parents are often among the groups which can accurately be described as in working poverty. These are among the groups the UN Special Rapporteur for Extreme Poverty and Human Rights had in his sights in his report on poverty in the UK when he observed that 'being in employment does not magically overcome poverty'. The report painted an unremittingly bleak picture of poverty in the UK, including working poverty (Alston, 2018; IER News Brief 16/11/18).

Unfortunately, as considered in *chapter 4*, prospects for those on UC, or due to be migrated to UC, and who are in low hours, low-paid mini jobs are not going to get any better any time soon.

Complexity, Adjudication & Advice

A key problem with the current social security system is its complexity, coupled with the overriding point that many benefits are no longer being paid at a level which is needed. A person may be eligible for one or more of the first two groups outlined above – contributory and non-contributory/universal – but still have insufficient support from these to be able to get through the week without the additional support from means-tested schemes. The contributory part of the system has been in decline for some while. As a result, reliance on means-tested support has grown exponentially. The point is readily illustrated by the State Retirement Pension. Largely as a result of labour market transformations, increasing numbers of RP claimants may have little or no support from a private pension and only qualify for a much-reduced level of State pension as a result of gaps in their NI records: something which then requires top ups from Pension Credit.¹⁰

This can also affect other groups like long-term incapacitated and disabled people, or their carers who receive benefits like ESA, PIP, or Carers Allowance, paid at levels which often still need further 'topping up' from means-tested benefits. In practice, most claims by employed claimants must now be organised around a 'lead' means-tested benefit like Income Support, JSA (income based), Working Tax Credit, or UC. Establishing eligibility, navigating through the barriers that vulnerable members of the claimant community can experience, and suffering while protracted processes like 'mandatory reconsideration' and appeal are played out, have been accurately portrayed in films like *I Daniel Blake* (Daniel Blake, 2016).

Rising Costs

These trends have played a major part in the rising costs of the social security system. It is certainly the case that spending has increased fourfold in cash terms over the past 30 years, and has more than doubled in real terms, after adjusting for inflation (OBR, 2018b). This has been exacerbated by changing demographics. For example, spending on State Retirement Pension has been ‘pushed higher’ according to the OBR by the proportion of adults over State Pension Age. With a rising share of the population renting rather than owning their home, there is also a rise in the take-up of Housing Benefit. That problem has been amplified by a sizeable shift in the claimant population from social housing to the private-rented sector where rents are higher, and subsidy for rents is also therefore higher. With stagnating wages in the bottom three deciles of the wage distribution, more HB claims (as well as claims for in-work benefits generally) have been partly responsible for the system’s rising costs. As the OBR has also pointed out, changes in inflation typically drive the uprating of most welfare payments. If inflation is higher than earnings growth, the social security bill will generally rise relative to national income – something which can be offset by government decisions on matters like up-rating: and that has certainly been seen with recent government cutbacks and freezes to benefits up-ratings.

Benefits are now being paid at an extremely low level. As organisations like the Child Poverty Action Group have been saying for more than a decade this leaves many families struggling well below the official poverty line, and certainly below an acceptable minimum standard that is sufficient to constitute an effective safety net (CPAG, 2009: 6). This is also borne out by reports like ‘Jobless in Wolverhampton’ recounting the lived experience of groups like unemployed claimants trying to get by on benefits like JSA, and the difficulties they have in getting through the week on a level of income that bears little or no resemblance to what is needed (BBC/Will Self, 2018).

In the next chapter consideration is given to how Social Security has transitioned from a system of collective social insurance, organised predominantly around the contribution principle and contributory benefits, to one now dominated by means-testing, and with wage subsidisation at its heart.

It also looks at how that system has been adapted to support a new generation of low hours, low-paid work.

CHAPTER 3

From Collective Insurance to Means-Testing & Wage Subsidisation

Introduction

Arguably, one of the most problematic challenges facing the Social Security system has been the move away from contribution-based benefits as the dominant form of social security in the typology considered in the last chapter, and to a pervasive system of means-tested regime funded out of taxation and borrowing. The centre-piece of the new order is Universal Credit. Once UC has been fully rolled out, it will represent a massive expansion of dependency on the State by workers in millions of low hours, low-paid mini jobs, many of them displaying the characteristics of short-term, precarious, and poor-quality work (as considered in *chapter 6*). Clearly, the UC scheme is tailor-made to fuel the government's ambitions for maintaining its much-vaunted 'record low unemployment' – but it is coming at a considerable fiscal cost to the community. If the analysis of the Office of Budget Responsibility is correct, it may, in fact, offer little by way of fiscal savings (OBR, 2018b). What it will risk, however, is an increasingly dysfunctional labour market accompanied by some sizeable transformations in the nature of work. As the Social Security Advisory Committee has noted, UC's roll-out is coinciding with a 'dramatic growth in the part-time and more flexible patterns of working' (SSAC, 2017). In fact, the UC system is now facilitating this by adding to existing tax, National Insurance, and other systemic incentives for employers to create such employment.

One of the main characteristics of this development is that many of the workers in part-time, often short-term work, are unlikely to be able to accrue a National Insurance contributions record that will give them the security of having access to contributory benefits like a full State Retirement Pension. For that reason, it is worth considering the scope for a how a reformed contributions-based system might alter that position, particularly through ways which might bring groups like low hours, low-paid part-timers into the contributory benefits sphere.

Before exploring this further, consideration is given to the way the contributory principle and contribution-based benefits have evolved and have been affected by later developments and labour market transformations.

The Contributory System

Insurance principles occupied an important place in 19th century provision, particularly through mutual associations and friendly societies, including trade union insurance schemes. This was well ahead of the non-contributory pension introduced in 1908 – often seen as the start of the modern State welfare system. A concern not to lose popular support for necessary health and unemployment measures prompted the Liberal government to design much of the provision in the National Insurance Act 1911 on a contributory basis. The scheme was based on contributions from employers, workers, and the taxpayer rather than simply being funded out of taxation. This tripartite model catered for partial income replacement for wage earners during time-limited periods of sickness absence from work. The attraction of such collective insurance, organised and managed by the State for the first time through contributions forwarded to a National Insurance Fund, was that for a modest payment of 4 pence a week the scheme gave people something entirely new: a degree of income security for anything up to 26 weeks. The Prime Minister, Lloyd George, at the time proclaimed the scheme as the '9 pence for 4

pence dawn of hope'. Even more novel was that for a small weekly contribution - supplemented by payments from the employer and taxpayer - workers could get unemployment insurance in the form of a payment for up to 15 weeks a year.

A combination of contributory and non-contributory support after World War 1 was available for the unemployed and other claimant groups - but this became increasingly restrictive under successive Unemployed Insurance Acts through until 1930, and after the depression took hold and demands on the system grew. An era of austerity ushered in by cuts to benefits (including the infamous cut to unemployment benefit imposed by the National Government led by Ramsay Macdonald under the National Economy Act 1931) was followed by an intensification of means-testing through measures like family means-testing. The notorious National Government Means Test marked the start of the kinds of stigma which are still associated with claiming means-tested support.² At the height of the depression, when there were insufficient jobs for the unemployed, claimants could be expected to attend training camps as a condition of take-up: an early taster for the kinds of mandatory activities now catered under measures like the 'work-related requirements' for JSA, the accompanying 'claimant commitment', and sanctioning for non-compliance.³

By the end of the 1930s and the start of World War II State provision consisted of a mix of social insurance covering the major causes of income loss, but only provided benefits at a flat rate 'survival' level. This was combined with some residual means-tested support. That approach remained largely unaltered by the programme of reforms introduced after 1946 which gave effect to the recommendations by the Beveridge Report (Beveridge, 1942), but with a focus on 'subsistence' rather than 'survival', more comprehensive provision, and a re-affirmation of the 'primacy of social insurance'. The aim was to establish a system of 'benefits in return for contributions' rather than 'free allowances from the State'. That meant, initially at least, flat-rate benefits for flat-rate contributions instead of earnings-related support of the kind provided on the Continent (Wikeley, Ogus and Barendt, 2002: 4). Whilst a parallel system of National Assistance was available for those not covered by contributory benefits, the expectation of near-full employment meant the need for large-scale publicly-funded, means-tested schemes could be avoided. No doubt this played a part in gaining the government's support.⁴

The post-World War II system, through until the 1970s, was helped by labour market conditions in which most sectors had a generally stable wages and occupational benefits floor, helped by functioning redistributive mechanisms like collective bargaining, National Joint Industrial Council terms and conditions, and wages councils' orders setting minimum wages and conditions in the low pay sectors. Much of this period, at least until the depression of the 1930s, met Beveridge's key assumption which was 'full employment'. Furthermore, in a key expectation first signalled by Beveridge in *Full Employment in a Free Society* – unemployment periods were usually short, and claimants could expect advertised jobs to be at 'fair wages, and of such a kind, and so located that [they] could reasonably be expected to take them' (Beveridge (1944), 2017: 18). Unemployed claimants could be expected to be available for work but had important rights in the process - particularly in comparison with today's JSA claimants. The main one was that work opportunities which they were asked to consider generally had to meet 'suitability' criteria. This meant that within limits they could decline work opportunities that fell below prevailing wage rates in their area, having regard to relevant industry or local conditions by 'good employers' – even if National Insurance officers

and adjudicators had some discretion in determining what was, or was not, in line with the terms offered by 'good employers' for these purposes (for example under National Insurance Act 1946 s.13(5)). This undoubtedly helped to maintain labour market conditions, particularly by not seeing them undermined by new entrants being expected to accept conditions below prevailing rates. Unlike today, unions were sufficiently strong to be able to 'police' sectoral conditions in which collective agreements operated. A stark contrast with current labour market conditions.

Most out-of-work claimants, while they relied on State support, could expect income replacement to be provided at a rate which bore some resemblance to what they had been earning – at least in the initial phase of their benefits award; and which was an advance on the 'survival' rates of the dole in the 1930s. It was, to that extent, an insurance-based system. In the bigger picture it could be said that the system was 'made to serve the wider goals of labour market regulation and the preservation of labour market standards' (Deakin and Wilkinson, 2005: 167).

Weaknesses in the Contributory System

There were some systemic weaknesses, too, in the model. By the 1960s and 1970s cracks in the system's ability to deliver support were appearing. A system of flat-rate NI contributions, set at rates which were low enough for all contributor groups to afford, produced a system that was under-funded (at least without Treasury top-ups for the National Insurance Fund, which governments were reluctant to provide). This meant that benefits rates had to be set at low levels, putting in doubt one of Beveridge's central claims which was that the system would improve on the previous schemes' ability to provide 'survival'-level benefits, and secure a universal level of 'subsistence' support. The later introduction of earnings-related components helped to ease the problem, but this came at the price of additional complexity and differentiation between claimant groups.⁵

As significant in terms of the long-term implications, there were some sizeable groups on the periphery of the labour market who found it difficult to integrate into mainstream, settled employment, and who as a result of gaps in their contributions record remained on the edges of the contributory system. These included the disabled, long-term incapacitated, carers, and single parent families. These were among the groups who had to look to the default scheme provided by the National Assistance scheme for support (or additional support) from new non-contributory, non-means-tested schemes like Mobility Allowance and Invalid Carers Allowance (later becoming Disability Living Allowance, Attendance Allowance, and Carers Allowance).

In time, means-tested schemes like Supplementary Benefit (later Income Support) had to provide a low-level, income safety-net for a range of groups unable to access contributory benefits or who were unable to access them at a level that was sufficient to guarantee 'subsistence'. Like today's means-tested schemes they were funded out of taxation and borrowing rather than through NICs-based eligibility. Single parent households by the 1970s were faring badly, even after the expansion of family allowances. They certainly featured strongly in poverty studies, including those of Peter Townsend's *Poverty in the UK* and earlier LSE-based research in which he was involved (Townsend, 1979). Having been refused the support Beveridge identified as necessary⁶, by the 1970s they were still largely dependent on a combination of voluntary sources, non-contributory benefits like Supplementary Benefit, and precarious child and spousal maintenance regimes. Unsurprisingly, by 1974 they were, as

a group, on the radar of review bodies like the Finer Committee and figured strongly in recommendations for improved support (Finer Report, 1974).⁷

The Expansion of Means-Tested Benefits

Family Income Supplement (FIS) marked the start of an expansion of means-tested support which targeted low-income working families, including single parents. However, there was only mixed success as a result of poor take-up, and high withdrawal rates when recipients tried to progress to better-paid work. Nevertheless, despite resistance by sections of the government, some unions, and organisations like the Child Poverty Action Group which favoured adapting and improving National Insurance and universal benefits like family allowances, FIS undoubtedly paved the way for later intensification of means-testing with Family Credit and Earnings Top-Up (and, in time, tax credits and Universal Credit). Although schemes like FIS were adapted in the UK, and variants were introduced in Ireland (continuing until their recent replacement by Working Parent Payment), they were seen as expensive to resource.

Single parents were among a number of groups, including disabled and longer-term incapacitated claimants), who could experience significant problems from the social security system. The system did little to encourage or support the take-up of employment – not least because of a lack of childcare support to facilitate this. But the system operated to discourage take-up of employment in other ways. This included having to run the gauntlet of sanctioning mechanisms like the ‘voluntary leaving’ and ‘industrial misconduct’ rules. By the mid-1970s sanctioning for these infringements was increasingly common, as borne out in the literature of Claimants Union groups.⁸ Such disincentives meant that employment could often just be for short-term periods in the labour market. This, in turn, impacted on the ability to build up a National Insurance record, or access contributory benefits.

The transition away from national insurance was also accompanied by labour market changes throughout the 1980s. These saw a sustained attack on redistributive mechanisms like collective bargaining, rescission of the Fair Wages Resolution (Bercusson, 1982), and the abolition of wages councils which set minimum wages in low pay sectors. Unsurprisingly, dependency on in-work support increased as wages fell. But there were other changes which served to undermine the contributory principle, and which also weakened labour market standards. Among other things, a duty to ‘seek work actively’ as a condition for getting and maintaining support had been progressively reintroduced from earlier periods and started to occupy an important role in the process of claiming benefits, and particularly out-of-work benefits. This was seen, for example, with the plethora of requirements linked to the Claimant Commitment with Jobseeker’s Allowance (changes which began when conditionality was intensified for both contribution and income-based versions of JSA by the Jobseekers Act 1995 and regulations). The Act reconfigured the two main conditions for eligibility for out-of-work support, notably the ‘market conditions’ of being available for work and actively seeking work.⁹ It also shortened the periods before a claimant had to re-qualify for support and ensured that ‘good cause’ reasons for not pursuing or taking up job offers could no longer include an objection to the level of remuneration on offer.

Such changes were undoubtedly a further cause of the wages and conditions floor, and labour market standards, being weakened – adding to the impact of deregulation of the Labour Law system, and deteriorating wage levels. As well as expecting jobseekers to enter a labour market which was seeing

a progressive decline in earnings levels, jobcentres could also expect them to take up increasingly insecure forms of employment like work on ‘on call’ and zero hours contract terms, with little or no reference to *qualitative* aspects of that work (either in terms of wages, hours, or other conditions). Indeed, this has been seen as a ‘major factor’ in the growth of such precarious work (Adams and Deakin, 2014: 19).

Post-1997 Changes

The election of a New Labour government in 1997 did not lead to any significant moves to reverse such deregulatory policies or *re-regulate*, as might perhaps have been expected (for example by restoring the wages councils or reviving other schemes for raising the wages floor). Reforms were largely confined to the introduction of the national living wage as a safety-net for the poorest groups; and improvements to the unfair dismissal regime, new family-friendly working measures, and an improved statutory recognition regime. The latter initiatives came as part of the objective of building workplace ‘fairness’: changes set out in New Labour’s *Fairness at Work* White Paper in 1998. On the social security side, however, some of the changes were transformative, directed for the most part at constructing a new edifice of welfare-to-work and in-work support schemes in support of ‘active’ labour market approaches (Puttick, 1999). The chosen instrument for moving large numbers of out-of-work benefits claimants, including sizeable groups like lone parents, longer-term incapacitated workers, and older labour market returnees, into work was the tax credit. With the introduction of a new suite of tax credits – Working Tax Credit and Child Tax Credit since the Tax Credits Act 2002 - much of the social security system has been reengineered to promote welfare-to-work transitions, and to support retention in low-paid jobs which would otherwise be unsustainable. Much of that approach has been retained or replicated in the UC system.

At the same time, qualification for support from other benefits on a contributions basis has become progressively harder as a result of the introduction of tougher eligibility criteria, time-limiting of contribution-based benefits, and switching people to means-tested variants of the same benefit. Eligibility criteria for contributory JSA, for example, has been ratcheted up by successive changes since 1995 so that now a plethora of complex conditions operate.¹¹ Even where benefits like Jobseeker’s Allowance (JSA) or Universal Credit can be claimed on a contributory basis, periods of take-up of the contributory versions of support have been drastically shortened. As a result, notwithstanding what may be a lengthy NI contributions record, recipients are typically given no choice but to switch to a mix of non-contributory support and means-tested, income-based variants after short periods of support (generally with an accompanying intensification of ‘conditionality’ as well as demanding conditions for retaining eligibility).

Concern about the curtailment of eligibility for contribution-based incapacity benefits like Employment and Support Allowance, as it has been replacing Incapacity Benefit (IB), coupled with the system’s tougher review processes – the antithesis of what the contributory principle was intended to do for people who have already paid their NICs, and established eligibility - has been wide-ranging. It has been particularly evident from the evidence provided by those forced to migrate from IB to ESA. A particularly enlightening account was provided by a long-term IB claimant, Tricia Long, writing about her experiences in her ‘Diary of a Benefit Scrounger’ (Long, 2013). Among other things the process meant that after receiving contributory ESA for 365 days she was automatically transferred to the income-related version of ESA. This made her ineligible for ESA support while living with someone

working above a weekly maximum threshold of 24 hours. Despite having a serious and debilitating epilepsy condition she was, like many others in her position, put straight into the work-related activity group (WRAG) which assumed an ability to take up employment 'with support'.

Other negative features of the transition away from a contribution-based insurance style system have been described by Kate Bell and Declan Gaffney in *Making a Contribution: Social Security for the Future* (Bell and Gaffney, 2012). As they point out, the relative rise in costs of participation in the NI system, with almost a doubling of contribution costs, has not resulted in an increase in entitlements. In fact, quite the opposite, with what they describe as a 'nothing for something' Welfare State given the 'successive cuts' in NI benefits. Despite this, they see scope for an important continuing role for the contributory principle, particularly in helping to rebuild support for the social security system. The authors advocated newer approaches, including options for earnings or contributions-based top-ups for other benefits, and 'crediting-in' schemes to enfranchise workers earning below the Lower Earning Limit for NI contributions, coupled with increasing contributions from employers for those in short hours jobs – something which would not just extend coverage but offset excessive incentives to offer lower working hours jobs (Bell and Gaffney, 2012: 4-8, 29-35).

In practice, much of the changes to the benefits system, including moves towards means-tested in-work benefits like WTC and UC, have been taking place against a back-drop of labour market transformations that have seen a range of challenges associated with the rise of the gig economy, and an expansion of low hours, low-paid and insecure work.

This has dictated a need for significant reforms to the Labour Law regime. But it also points to an urgent review of social security policies and schemes like UC, and policy approaches to 'making work pay'. This is considered in the next chapter.

CHAPTER 4

Making Work Pay

Introduction

Gaps in coverage by the contributory system, the low levels at which contributory benefits were paid, and growing evidence of poverty in the 1960s and 1970s (Townsend, 1979), were among the catalysts for the development of newer, primarily means-tested types of benefit. Out of this came an intensification in the use of schemes specifically designed to 'make work pay'. MWP benefits operate by supplementing the earnings of low-paid workers – mainly through support from in-work benefits, in combination with tax-based mechanisms. The growth of such support represents, by far, the biggest expansion of the modern Welfare State in recent times, assisting millions of workers in the bottom thirty per cent of the wage distribution and their families. This can also be measured in terms of the rising costs of tax credits and linked support. These rose from £7 billion a year in the mid-1990s to £32 billion in 2011 (Joyce, 2018). The peak in 2011 reflected the rise in claims during the financial and economic crises after 2007 - a period when it has been said the system was 'propping up' a sizeable part of the labour market as hours and wages were cut, wage rises frozen, and workplace reorganisations were a common response to the recession (WERS, 2011: 7).

Once the rising number of claims (and cost) of in-work Housing Benefit is factored in, it is not difficult to see how reliant the labour market has become on State support, well after the crises. By 2015 the number of such claims was *still* rising, even though claims from the rest of the HB cohort were falling ('Housing Benefit Claimants' in JRF/MacInnes et al, 2015).

There have been various policy rationales for successive governments' use of MWPs, particularly when promoting the idea that a job is the 'best route out of poverty' for those on out-of-work benefits, and the 'best form of welfare' for those being encouraged to take up *more* employment if they are to come out of the kind of low hours, low paid, and often insecure mini-jobs now being seen across the labour market. The most important one is that it is more cost-effective to support people who are in work rather than unemployed – not least because the unemployed will have a wider range of needs (and costs) to be met.

However, there are other considerations. By subsidising low wages through the Social Security system, the State is also supporting another key stakeholder, employers. State support reduces employers' labour costs and other costs and on-costs employers would otherwise have to meet. Tax credit payments from schemes like WTC and UC supplement other areas of expenditure like childcare which would otherwise have to be paid for by workers from their taxed wages. The system is less pre-occupied with welfare-to-work transitions than it once was. Nevertheless, this is still an area in which schemes like UC have attractions from a policy perspective, and for employers. Fiscal transfers to new staff reduce employers' start-up costs and on-going employment costs. They also mean minimum wage rates can be set at a lower level than would otherwise be necessary (HM Treasury, 2000: 16). However, tax credits can also produce a range of other effects, not all of them beneficial: for example employing organisations are given a powerful disincentive to raise the contractual wage, and bargain with staff on pay and employment conditions – something that is likely to be particularly relevant in the ten or so low-pay sectors where there is systemic low pay, poor working conditions, and high levels

of take-up of tax credits and other in-work State support. Furthermore, wages can reduce to below previously established 'going rates' as a result of the State's subsidy.

Having massively expanded the support for low hours, low-paid work through UC, it was perhaps inevitable that the system would be modified to put in-work UC recipients under pressure to take on more hours and better-paid work in order to try to contain the costs involved. This has been done by extending conditionality (and potential sanctioning) to this group. Under the 'mandatory in-work progression' scheme workers are generally expected to increase their hours or take on better-paid work to the point where they reach their prescribed Conditionality Earnings Threshold: this usually equates to a 35-hour week at NLW (Puttick, 2018).

For the self-employed, mandatory progression takes another form. Although UC provides a valuable resource, especially for nascent operations in which the person (or group) may be struggling to establish a sustainable level of self-employed earnings, the State's support comes with conditions. The main one is that once the DWP accepts the operation is viable, and an award of UC is made, the claimant will be assumed to be earning at a level that aligns with what the DWP decides should be the prescribed earnings threshold. The award is calculated on the basis of the Minimum Income Floor provisions in the UC Regulations, and an award made on the basis of earnings that are presumed to be earned (even if in reality the claimant may be earning considerably less). Despite the obvious shortcomings (and injustice) of this approach the MIF scheme is now a core component in the whole UC edifice.

Making Work Pay and Tax

MWP schemes now operate in many countries, and take different forms (Adireksombat and Jinjarak, 2008) including tax, in-work benefits, welfare-led regulatory interventions, and minimum wage-setting. Tax mechanisms range from simple schemes like tax allowances or minimum thresholds at which liability of low earners begins - or which confer 'credits' on taxpayers in ways that perform a similar function¹ - to more sophisticated schemes that extend to repayments of tax already paid. Examples include the Earned Income Tax Credit in the USA which assists earners on a low to moderate income and reduces the amount of tax they pay or provides refunds (or both).² The UK has, at different times, developed new approaches to the use of the tax regime as a means of delivering support, but with mixed success. The Conservative government of Edward Heath, in the face of mounting evidence of in-work poverty and the failure of Family Income Supplement, wanted to introduce a tax credit scheme which would enable employers to reduce the amount of tax deducted from wages for employees with 'credits', and make cash payments to those with unused credits (with a default power of the Inland Revenue to make payments and reimbursements if the employer did not do so).

The scheme was not, in the end, implemented. This was mainly on account of its cost, the likely need to raise income tax or VAT to pay for it, and the Heath government's preoccupation with the miners by the winter of 1973/4: something which had 'cast social policy into the shadows' (Sloman, 2015: 13).

Later landmarks in the use of the tax system to direct support to the low-paid included Gordon Brown's '10 pence starting rate'. The controversial decision to jettison this in order to finance a 2-pence cut in the basic rate of income tax was politically very damaging. As the Institute for Fiscal Studies has observed, it is often a mistake to try to make a snap judgment about the impact of such changes – particularly when other changes have been made to mitigate their impact (Chote/IFS, 2008). Closer scrutiny by the IFS showed how, in fact, it was the poorest third of the population which emerged as 'the biggest winners', overall, once tax credit and other changes were factored in.⁴

The current regime for tackling low pay still looks to the personal tax allowance as a way of delivering support. However, in fiscal terms it is not cheap. For example, in 2018 the Office for Budget Responsibility estimated that it would cost £1.4 billion to raise the PTA to £12,500; and this prompted the Joseph Rowntree Foundation to argue convincingly that 'this money would be better spent helping to pay the lion's share of increased work allowances' (JRF, 2018a: 2).

Tax Credits and UC

In the UK the most important element within the range of MWP mechanisms currently in use is the tax credit, now being progressively replaced by 'credits' under the UC system.⁵ Tax credits have been a major feature of the system since New Labour made it a core 'Duty of Government' in the *New Welfare Contract* to ensure that work should always pay (DSS, 1998a). The Coalition and later Conservative governments followed suite in 2010 and 2017 by committing to the idea and to the system (DWP, 2010a; DWP, 2010b; Conservative Manifesto, 2017: 16). It is a combination of three measures – the national living wage, tax allowances, and tax credits - which determines the precise income 'take' of a low-paid worker from their employer and the State. Unsurprisingly, perhaps, the culmination of the Budget 2018 speech of the Chancellor of the Exchequer, Philip Hammond, came with his example of the impact of the changes made through the PTA, benefits rates, and NLW on a single parent working part-time. He said:

'As a result of the announcements I have made today a single parent, receiving Universal Credit, and working 25 hours a week on National Living Wage will benefit by £890 next year. The hard work of the British people paying off in hard cash in their pockets. We have turned an important corner now we must pull together to build the bright, prosperous future that is within Britain's grasp if we choose to seize it, embracing change not hiding from it, building on the inherent strength of the British economy and the indomitable spirit of the British people...austerity is coming to an end'.

In the UK it is the fiscal payments made by HMRC and the DWP to workers and the self-employed under the Working Tax Credit (WTC) or Universal Credit (UC) schemes that are, in value terms, the most important component in the UK's MWP system. It is certainly the primary means of supplementing earnings and is likely to remain to remain so - at least until other redistributive mechanisms can be developed which will reduce dependency on them.

Although they are described as 'credits', payments are, conceptually, simply payments made to workers by the relevant welfare agency: HMRC (in the case of tax credits) or the DWP if it is UC. Like any other means-tested benefit they are assessed by comparing the worker's income (mainly net

earnings, but also any other available 'income', including a partner's) with the elements, allowances, amounts, etc for which the claimant is eligible (and taking into account any prescribed income 'disregards' for which claimants may be eligible). Transfers are made by HMRC (or in the case of UC, the DWP) straight into people's bank accounts.⁶ As with other income-related benefits the amount of support, including assistance with childcare, housing costs, etc then change from time to time in response to the recipient's changing needs earnings, income, and capital resources – but also their needs.

Support from Universal Credit

The desire to mimic wages in the way such payments are made – previously a feature with early forms of WTC - has been carried over into UC, often with highly negative consequences. This can be seen, for example, in the monthly intervals at which UC payments are made, supposedly replicating the way wages are paid. Under UC, this starts with a delay in paying the first instalment of UC for at least a month (mirroring a 'wage in hand' approach that would be taken with monthly paid workers). This has led to the build-up of serious debt problems for both job starters and in-work recipients, which has necessitated the introduction of loans to claimants facing hardship. The issue featured strongly in a House of Commons debate in October 2017 when MPs called for a suspension of the system's national roll-out. In the course of the debate they reported that many of their constituents were experiencing debt problems and arrears of unpaid rent, putting their housing at risk, and causing increased reliance on food banks. There have been a lot of concerns with UC – but this was certainly a major factor that led to the government's defeat at the end of the debate. Other problems concerned the delays in payment of rent to landlords. Again, to mirror the world of work claimants are required to pay their rent from the amount of UC they receive (rather than, as before with Housing Benefit, having their rent paid directly to the landlord by the local authority). Apart from the difficulties this can cause for budgeting purposes, if mistakes are made there is a huge scope for claimants to go into arrears of unpaid rent, leaving them vulnerable to eviction. The issues were highlighted in the BBC's Panorama programme *The Universal Credit Crisis*.⁸

With the introduction of UC, the system is being massively expanded to encompass a whole new generation of 'mini-jobs', by extending eligibility for in-work support to jobs which are below the 16 hours a week minimum threshold for Working Tax Credit. The concern with this has been that the system is, in fact, helping to spawn such employment - much of it which is not just low-paid, but short-term and subject to poor working conditions. This was a concern for the Commons Select Committee on Work and Pensions⁹, and organisations like the Institute for Fiscal Studies and Resolution Foundation which provided the evidence on which the committee's conclusions were based. Nevertheless, this aspect of UC is still seen by policy makers as a vital one in supporting the government's job creation strategy of creating and sustaining such new work, coupled with expectations that, with 'support', the job-holders will progress to better things. As discussed in *chapter 6*, that 'progression' is generally mandatory, with job-holders being required to take on additional hours or better-paid employment until the prescribed Conditionality Earnings Threshold has been reached.

Interestingly, other countries like the Republic of Ireland which have been developing MWP programmes, in conjunction with schemes to set sectoral minimum wage floors in their low pay

sectors, have avoided going down the path of providing State subsidisation of low hours work. The Working Family Payment scheme not only requires an initial eligibility criterion of 38 hours a fortnight as the minimum threshold of weekly working hours, it also prescribes that awards will automatically end if working hours fall below that threshold. The scheme operates, effectively, as an incentive for employers to maintain a stable pattern of hours, and also limits the scheme to those who are employees. Periods of 'self-employment' do not count and cannot be aggregated with periods of employment in order to meet the 38- hours threshold.¹⁰

Tax Credits & UC: Building Up the Floor?

Before returning to consider the minimum wage and UC schemes in more detail, it is necessary to look, first, at the policy objectives for each scheme, and how they inter-act. Conceptually, successive governments' approach since the National Minimum Wage Act 1998 came into operation has been to use the NMW to raise the floor to what the Low Pay Commission determines year-by-year is an affordable minimum level of earnings, with employers paying above that minimum when they can afford to do so. However, it is the tax credits system which operates as the more distinctive 'welfare' measure (HM Treasury, 2002; Simpson, 2004: 24). A further difference between the two mechanisms' aims must also be understood, particularly regarding the way distinct groups are targeted for support. The primary purpose of the NMW is to secure a higher basic wage for low-paid workers through a legal intervention in their contracts of employment. It is, in effect, just a means of increasing the recipient's contractual wage, but without prescribing any wider redistributive welfare function. How wages are managed or redistributed by workers, and within their families (and as between dependants) is generally a matter for their own arrangements, with minimal intervention by the law (Pahl, 1990).

Schemes like tax credits and UC are able to target resources according to claimants' and families' needs, including family size and characteristics – even if in recent years schemes have been constrained by limitations like the benefits cap and bar on support through the UC child element for more than two children¹¹: a controversial change, and one that the government sought to justify on the basis that it was needed in order to deliver 'a fair deal to the taxpayer' and to 'incentivise work' (Machin, 2017: 7). The restriction was made by the Welfare Reform and Work Act 2016, s.13, and all the surrounding information about the change was that it was, quite simply, a cut to benefits expenditure driven by austerity priorities. The impact assessment said that the change would affect over half a million families.

One of the distinct disadvantages of using means-tested benefit schemes like tax credits and UC as a way of topping up earnings is that recipients can be caught in a poverty trap which requires measures like the work allowances scheme to raise the level at which benefits start to be withdrawn, in conjunction with tapers which prescribe the *rate* of that withdrawal. The difficulties associated with both mechanisms are considered more fully in *chapter 6*.

Before examining that further, consideration is given to national minimum wage-setting, and its strengths and limitations in providing the pay and conditions floor on which benefits are meant to build.

CHAPTER 5

Raising the Wages Floor? The NMW and Regulated Collective Bargaining

Introduction

One of the primary functions of a modern social protection system is to insure people against employment-related risks including a lack of ‘basic income security’, and to counter that insecurity. To do this, the International Labour Organisation (ILO) sees it as necessary to provide measures like social transfers (in cash or kind) or employment guarantees and services which can extend to the ‘working poor’ (Bachelet Report, 2011: Executive Summary p.xii). Like the Organisation for Economic Co-Operation and Development (OECD) the ILO supports minimum wage-setting systems as part of its Decent Work agenda and Conventions.¹ A more recent focus has been on examining the reasons why such mechanisms, in themselves, are not achieving the progress which the ILO would like to see in addressing areas as workplace inequalities (particularly as they affect women), and in raising wages and securing Decent Work standards in sectors like the gig economy (ILO, 2018).

Practice varies between countries in the way minimum wage-setting operates, and the ILO produced a survey of national schemes in 2014 (ILO, 2014).² Informed by the survey and national reports on employment conditions, minimum wage-setting is regarded as valuable in a range of contexts – but particularly where systems like collective bargaining are not operating effectively or have weakened, and where a general minimum wage floor is required. Germany opted for a national minimum wage in 2015 for those reasons. Until then, the German government saw the adoption of a general minimum wage as unnecessary as it had a well-developed system of sectoral bargaining and other arrangements in place. The position had been changing, however, and pressure for a national minimum wage came from the Deutscher Gewerkschaftsbund (DGB), the German Confederation of Trade Unions, and the SPD, the government’s coalition partner. Both the SPD and the DGB argued that this was needed to create a national ‘safety net’ and to help to prevent the continuing erosion of wages in sectors where existing wage-setting arrangements were not working – either because of the reluctance of social partners to negotiate, or as a result of the existing system’s ‘shrinking coverage’ (ILO, 2014:186).³

In the UK’s case wage regulation has long been a double-edged sword with pay *constraint* playing as big a role as systems to raise the wages floor, and with restrictions going back as far as the Ordinance of Labourers 1349. This was introduced after the Black Death decimated the population, and the impact on the workforce produced a rise in labour costs. More recently, the ability of the government to impose pay freezes, including restrictions on public sector pay, was seen with the public sector pay cap. That ‘cap’ only began to be withdrawn in 2018, paving the way for an NHS pay award 5. Mechanisms to *raise* pay levels have developed in piecemeal ways, and have included collective bargaining, National Joint Industrial Council agreements, wages councils’ orders, Fair Wages Resolutions, and ‘living wage’ clauses in the public procurement process⁶. However, most of those measures have either been abolished or, as in the case of collective bargaining, operate within a highly restrictive legal environment. The National Minimum Wage (NMW), introduced in 1998, has been the only significant new redistributive intervention in the last 20 years.⁷

With the decline of collective bargaining, and the abolition of regulated sectoral bargaining and wage-setting when the wages councils were finally abolished in 1993 – a decision that flew in the face of evidence of the important role they were still performing (Dickens et al, 1993) - the system’s two main

redistributive mechanisms in areas of the labour market not covered by collective agreements are just the minimum wage and State in-work benefits. Yet despite innovations like the introduction of the NLW, coupled with a sizeable investment in tax credits, UC, and Housing Benefit/UC housing costs the system is still failing to halt the rise in low paid work and in-work poverty.

With these points in mind, consideration can be given to the minimum wage system, and to proposals for new approaches to raising the wage floor, including ideas for sectoral wage-setting and the introduction of regulated collective bargaining.

The NMW's Role

The UK's minimum wage system was introduced in 1998 in the aftermath of deregulation of the labour market, and a weakened wages floor – particularly as a result of the assault on collective bargaining and the abolition of wages councils as they set wage minima in low pay sectors. Much of the challenge then, as now, was on how a 'fair minimum standard of pay' could be produced on the back of the new statutory minimum wage floor. The Treasury's view was that this could be achieved in conjunction with five other mechanisms for dealing with low pay, namely a low rate of income tax; measures to take low earners out of National Insurance liability; tax credits; childcare costs paid with tax credits (rather than as a separate income 'disregard' as had been the position with Family Income Supplement and Family Credit); and assistance with mortgage and rental costs (HM Treasury, 2000: 8). Since then, successive governments have continued to regard all these mechanisms as important. A lot less attention has been given to the potential that a return to sectoral wage-setting could play in addressing the considerable variations there are between conditions in different sectors: a point recognised by, among others, the General Secretary of the TUC when she called for a return to wages councils (O'Grady, 2013). Nor has the continuing potential for collective bargaining, at all levels, received the attention it needs: an issue which is picked up again later.

Besides 'fairness', the case for the minimum wage rests on some significant economic arguments, and a narrative about the negative impact of low pay on productivity, public finances, and fiscal costs. The key concerns are that the availability of under-valued labour has negative influences on organisations, for example by enabling them to maintain organisational and other management inefficiencies, delay the scrapping of obsolete equipment, and engage in 'destructive price competition': besides that, low pay has negative obvious consequences for public finances as social security spending rises, as it did after labour market deregulation and the decline in wage levels after 1979 (Deakin and Wilkinson, 1996). In their analysis the authors argued that 'Wage subsidisation encourages employers to pay lower wages and the means-tested Family Credit discourages workers from pressing for or seeking out higher wages by imposing a high marginal tax rate on any increases they secure'.

Such considerations remain very relevant in identifying current policy priorities: but at the same time there are several discernible tasks for the NMW. First, to provide a national minimum earnings floor on which in-work welfare schemes can then build. Second, to set that minimum floor at a level which establishes a fair division of responsibility between employers and the community. It was observed by the government in 2002 in its evidence to the Low Pay Commission that the NMW was not intended to operate in isolation as a 'welfare' mechanism. It was, essentially, just meant to be a minimum on

which employers could improve; and which the State could supplement with tax credits.⁸ To that extent, schemes like in-work UC perform part of the ‘basic income security’ function envisaged by ILO principles.

In fixing the floor the Low Pay Commission is mindful about factors like the potential impact of excessive rises on employers’ ability to pay, and the implications for job creation and on wage progression. There are a number of points which the LPC takes into account in carrying out its research ahead of minimum wage recommendations going to the Secretary of State each year. In 2018, a year in which Brexit became an additional concern for the process, the focus stayed firmly on the likely impact of a rise on working hours, wages, recruitment – but also the economic outlook. Brexit was just one of several issues for consideration. One of the concerns with the minimum wage system, currently, is with the phenomenon of wage compression at the bottom of the distribution. This is where staff on low pay tend to be concentrated around the minimum prescribed rate, which then tends to become a ‘going rate’ at the bottom of the wage distribution – particularly if there are no other incentives to prompt employers to pay above that level. This, in turn, may mean employers make less resources available to fund progression to higher rates. Such ‘compression’ has already been a notable feature of pay in several low pay sectors like Accommodation and Food Services where almost half the workforce is on, or close to, the minimum pay rate (Resolution Foundation, 2016: 10).

More recently, austerity and a roll-back in the value of in-work social security, has meant that the National Living Wage (NLW) – introduced in 2015 to coincide with the start of cuts to the value of tax credits - is now set to play a bigger role in raising the wages floor. The NLW has some negative features, however. It operates as a modification to the original NMW scheme, paying an enhanced rate to eligible adults aged 25 and over (£7.83 at 2018-19 rates): but it then differentiates on age grounds by setting lower rates, even though younger workers may be doing exactly the same job⁹. Unions like USDAW, representing low-paid staff, have campaigned against this highly negative aspect of the scheme¹⁰. The Institute of Fiscal Studies has gone as far as to describe a larger than expected rise in the minimum wage as a ‘major policy lever’ that is being pulled to try to prop up low earners: something which has produced a higher growth at the bottom of the hourly wage distribution than in past years (Joyce, 2018). But they will certainly need it. Groups like the ‘just about managing’ (JAMS) have been among those hardest-hit by cuts to in-work support and benefits, and the prospects in 2019 and beyond do not look bright (Finch, 2018).

Clearly there is a need for new approaches, including the introduction of sectoral pay bargaining in sectors where the NMW and NLW are not working effectively or being paid at a level that is sufficient to avoid having to claim in-work benefits. The care sector is an example where the challenges can be at their greatest. Dr Lydia Hayes of Cardiff University has argued convincingly that introducing collective bargaining into this sector would offer the best means of preventing the exploitation of care workers and carers. At the same time, a better remunerated workforce, working to improved conditions, would also help to improve the care standards experienced by the care system’s users (Hayes, 2017).

In the meantime, homecare workers continue to experience major issues of non-compliance with the minimum wage legislation. Among other problems, workers are routinely underpaid for the hours that they work, and at times when the NMW system clearly stipulates they must be paid, including periods

spent travelling between home appointments. Measures like the Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018, SI 2018/147 from 6th April 2019, will go some way towards dealing with how pay is made up. However, this does not eliminate all the problems that have been causing workers in this sector to be short-changed, as a commentary on the problem and the Order by Kate Ewing has explained (Ewing, 2018). In a presentation at an IER conference 'Access to Justice' (8th February 2017) she referred to some of the reasons why care workers do not receive their full entitlements under the NMW Act, including vulnerability and isolation of the workforce and low awareness of their rights. As she noted, the system for calculating hourly pay is very complicated. Routes to enforcement, whether through a tribunal or HMRC, also remain highly problematic. Unison are among the unions campaigning to get improvements to these and other aspects of the system.

Meanwhile, there are plenty of other areas of the NMW scheme where there is still significant non-compliance, for example the position over NMW remuneration when workers are expected to 'sleep in' and be 'available for work' rather than actually working. In the latter case they can expect to be paid at the NMW rate for the whole of the shift, whereas according to recent court decisions they cannot¹¹. Decisions like this add to the financial pressures on workers and mean that they are even more likely to be reliant on State earnings 'top-ups' from tax credits or UC if the jobs are to be sustainable. There are also some significant compliance issues with groups like agency workers who may still not receive the information they are entitled to in regulations that can be as important as the NMW Regulations: typically, when they need to know what shifts and hours they will be working, and therefore what pay they can expect on particular days or nights.

Low Hours & 'Progression' Challenges

Despite regulatory interventions from the NMW there is still a sizeable cohort of workers who simply do not work sufficient hours to generate enough pay to make their work sustainable without State support. Typically, this includes parents having to combine a job with childcare responsibilities, carers with responsibilities for disabled or older family members, older returnees to the labour market, and disabled and incapacitated workers who are limited in their ability to work longer hours. Besides such groups who have always had difficulties working a standard full-time week, the labour market is currently seeing a more general expansion of low hours, part-time jobs; and this is coinciding with the roll-out of Universal Credit a system of support, that has been tailor-made to support such employment (SSAC, 2017). In the absence of any expectation that employers should be under pressure to pay above NMW rates for low hours employment, and with the availability of support for such employment from the Universal Credit system, it is axiomatic that employers will be massively incentivised to create more and more of this kind of work. The problem, however, as a House of Commons committee has observed, is that this kind of mini-job is often associated with poor conditions and career prospects (Work and Pensions Committee, 2016: 4) – as it was informed by evidence from the Institute of Fiscal Studies and Resolution Foundation (IFS, 2016; Resolution Foundation, 2014a). Assisted by the evidence from the Joseph Rowntree Foundation, it also noted how there is a 'strong correlation between low pay and job insecurity' (JRF/Thompson, 2015: 4; JRF/Tinson et al, 2016). Fast turnover was seen as a further feature of such work, with four in ten people in low paid employment having at least one period of joblessness within the subsequent four years.

The problem is that Universal Credit is clearly helping to create and maintain such highly subsidised work, while it is not delivering the kind of support that many of the workers in such employment actually need.

The ability to subsidise low hours, low paid work was one of the primary policy drivers for UC when it was being designed, as will be considered in the next chapter. In order to counter the incentives for people to stay 'parked' in such work the government developed mandatory progression as an integral component in the UC scheme, with workers being expected under their Claimant Commitment to 'progress' to further work, or better-paid work, until they have finally attained their prescribed conditionality earnings threshold (CET). In most cases this usually equates to 35 hours a week at the NLW rate. It is not entirely clear when that policy was dreamt up. The 'why' is better understood. The idea has been that if only people working limited hours and in poorly-paid work could be sufficiently incentivised to find work with more hours and, ideally, better pay, the problem could be overcome (Department for Business, 2015: 5). Thus was born the 'duty to progress', backed up by formalised in-work benefits conditionality and sanctioning.

Plainly, the minimum pay scheme is not flexible enough to address such variable hours and 'progression' problems. Nor can it, as schemes like wages council orders used to do (and could stipulate), require employers to construct and maintain pay grade systems, or set the qualifications and other criteria for intra-grade progression. Indeed, one of the basic problems with the NMW is that it requires very little from an employer besides delivery of a level of pay which is barely above subsistence. This means, in practical terms, it is the State welfare system that has to do most of the heavy lifting in terms of bearing the resulting costs and on-costs of securing a basic subsistence level 'wage'. It does nothing, in itself, to facilitate wage progression. In comparison, the model provided by the wages council system, and still maintained by several of the remaining Agricultural Wages Boards, has the potential to require employers to go much further. The Agricultural Wages (Wales) Order 2018, Part 2, for example, lays down a series of rates which then provides the basis for a grade structure that offers progression. This is linked to the acquisition of qualifications and experience necessitating investment in training and education¹³. Other schemes such as the Scottish Agricultural Wages Order 2018¹⁴ provide for a universal rate for all workers, but then caters for additional amounts linked to appropriate qualifications. As important for some groups, unlike the NMW scheme the orders prescribe minimum overtime rates for all workers which are substantially higher than the basic rates. That said, the basic rates are general fixed in line with the National Minimum Wage (£7.83 in 2018/19)¹⁵.

NMW: Successes and Failures

The NMW has been successful in reducing – but not completely abolishing - extreme low pay. Without the basic safety-net it maintains a sizeable section of the bottom end of the wage distribution would be in 'absolute poverty'. It is also the case that minimum wage -setting coupled with well targeted and adequately resourced schemes provide an important base-line from which wages and structures further up the distribution can be developed. This was evident in the ways some European social security systems worked more effectively than others in the financial crisis after 2007 (Mai, 2008: 11-15); and it is also the case that maintaining minimum wage mechanisms in conjunction with benefits

and other State interventions and support plays an essential part in countering the effects that low wages can have in depressing household consumption and maintaining demand in the economy (Bonnet et al, 2012; Stiglitz, 2009).

Beyond that, however, the UK's scheme has some significant limitations. In the first place it is not currently pitched at a high enough level to even ensure that a couple with two children, both adults in full-time work in jobs on the NLW, has sufficient money each week to reach a 'no frills' basic standard of living. That standard is based on the Minimum Income Standard, a set of criteria produced by the Centre for Research in Policy at Loughborough University: it is based on essential items like accommodation, clothing, and food and the cost of 'taking part in society' (Padley and Hirsch, 2017).

The criteria have also helped to inform the costs of bringing up children. In doing so, they have done a lot to highlight the limitations of the current low pay regime. According to the Child Poverty Action Group, which uses the criteria to analyse current trends, despite the introduction of the NLW the earnings have largely been clawed back as a result of benefits and tax credits freezes. More precisely, a family with two children with both adults working full time at NLW levels is still 11% (£49 per week) short of the standard. The cumulative effect of cuts, frozen benefit rates, and tax measures have hit lone parents even harder, according to the CPAG (CPAG, 2018b). Even if they are in a reasonably paid job, on median earnings, this group will still be, on average, 15% (£56 per week) short of an adequate income (mainly as a result of the high cost of childcare). A lone parent employed full-time on the NLW will be 20% (£74 per week) short of what is needed for a minimum standard of living. The position is worse, however, for a lone parent relying *solely* on benefits as opposed to just getting benefit top-ups from tax credits or UC. It is estimated that they will be as much as 40% short of what is needed (CPAG, 2018b).

Other studies in 2018 have been showing that interventions like the NMW and NLW coupled with general economic conditions, have not been making any discernible impact on earnings. In 2017-18 the Resolution Foundation estimated that typical incomes increased by just 0.9 per cent (after housing costs), which it described as 'extremely weak' and representing less than half the average annual growth rate between 1994 and 2007. A combination of a benefit freeze and above-target inflation meant that real household incomes fell by 0.5 per cent to 1.5 per cent among households in the bottom third of the income distribution (Corlett et al/Resolution Foundation, 2018). Over a longer term, namely between 2003 and 2016-17, wage stagnation has been a feature of income in the lower half of the incomes range. One of the outcomes of the Foundation's audit was a picture of 'generalised stagnation for many', with 'lower income households actually going backwards'.

A further concern is with the NMW's inability to respond to the wide range of differing conditions within the different sectors of the UK labour market – even within the ten or so low pay sectors (IPPR, 2018), let alone the wider labour market. For that reason, the General Secretary of the TUC, Frances O'Grady - a former member of the Low Pay Commission (LPC) – has proposed a return to legally enforceable minimum wages to be set for different sectors (O'Grady, 2013). Although there are no doubt differing views on the wisdom of a return to a wages council system - indeed the trade union movement has in the past had a lot of differing views on their worth (Keevash, 1985) - there are some significant arguments in favour of considering such a 'return'.

From a fiscal perspective it makes little sense to continue with just a general safety-net that sets minima for all sectors, and all enterprises within sectors, particularly when some organisations may be perfectly capable of paying better wages and conditions.

The Minimum Floor, Wage Ceilings & Reciprocity

Other shortcomings in the present regime have become glaringly obvious, including the propensity of the NMW to become a 'going rate' rather than a minimum. The intention in 1998 was to set a *minimum* rate. However, by 2013 it was evident that for many employers the NMW had become, effectively, both a wages floor *and* a ceiling (Plunkett and Hurrell, 2013). Clearly, not much is required of employers in terms of reciprocity for what they get. In a sizeable wage subsidy and substantial help from the community with their operating costs. Neither system requires much in terms of commitment by an employer to training or structuring of pay schemes that can help with pay and career progression. Above all it provides 'very little upward pressure on employers who could afford to pay more' (Ibid, p.6).

These and other weaknesses in the NMW system featured strongly in the final report of a review led by the founding Chair of the LPC, Sir George Bain (Resolution Foundation, 2014b). Bain had been concerned for some while that the minimum wage system had become something of a 'blunt tool' and was in need of overhaul. In particular, he considered that what was needed was a mechanism which was more efficient and responsive to employers' ability to pay. The way he explained this in a *Guardian* article in 2013 was that

'With a single rate, it will always be hard to raise the rate because you're worried about employment in vulnerable areas. But minimum wages are ill-fitting garments, pinching hard in some places and leaving room in others. We need to ask whether there's more we could do to push up pay in sectors that could afford it' (Bain, 2013).

The report itself raised the question whether the current challenges facing the NMW regime meant it was time to debate a move away from the current 'single legal wage floor' towards sector-focused options. It suggested that these could be informed by evidence from the government and Low Pay Commission about the affordability of higher minimum rates in sectors where the evidence indicated this was affordable.

Bain Report: Conclusions

The report reached several conclusions about the scope for moving away from the current system of wage-setting. In general, it proposed making it an explicit long-term ambition of economic policy to reduce the incidence of low pay, specifically by setting out a plan to reduce the share of employees who earn below two-thirds of the hourly median wage. It concluded that an 'ambitious but achievable long-term goal was to reduce the UK's high incidence of low pay from 21 per cent to 17 per cent. This, it said, would be a 'reasonable goal against international bench-marks'. Furthermore, as a single legal wage-floor would always be a blunt tool, a key role for the Low Pay Commission should be to 'encourage a debate over when employers could go further than the statutory NMW'. The report considered that the proper arena for the debate should be civil society - not Whitehall - although the

State could help to shift the terms of debate by publishing information. The report's analysis suggested that industrial sectors would be a good way to start, with the Secretary of State for Business asking the LPC to publish analysis to show which sectors of the economy could afford to pay more than its recommended NMW. Last, it rejected the idea of regional minimum wages, but believed that there was a case for London being a special case with a single reference rate: basically, a 'non-mandatory minimum wage creating, in effect, a London-weighting for the NMW.

The analysis put forward by Bain was valuable and highlighted the very real limitations of the current NWM scheme. The proposals put forward by Bain, however, were limited in their scope, and for the most part were confined to proposing an extension of the existing NMW structure to sectors where there might be evidence that in some sectors employers could be paying above the national minimum.

IER: Sectoral Collective Bargaining

In contrast with Bain, the proposals for wage-setting made by the Institute of Employment Rights (Ewing et al, 2018: 12-27) form part of a wider-ranging set of detailed proposals for setting up a new collective bargaining framework in accordance with a new Collective Bargaining Act. This could operate in one workplace or one employer (enterprise-level bargaining, or across a whole sector (sectoral bargaining). The system would not remove the need for minimum standards to be set down in legislation, which means that the existing minimum wage safety-net and other floor of rights legislation would be maintained. As important, the system would cater for a wide variety of aspects of the employment relationship, pay being just one. It would extend to matters like pensions, hours, holidays, and equal opportunities. Interestingly, the scheme envisages a diminution in the need for a 'vast array of legislation currently regulating work' and diminish the number of cases in which workers are 'forced to litigate' over entitlements (para. 3.8). It should also start to redress the imbalance of power between employers and non-union, 'unorganised' workers described by Anna Pollert in 'The Unorganised Worker: The Decline in Collectivism and New Hurdles to Individual Rights (Pollert, 2005).

Once operational, the scheme should assist in reversing the fall in wages which has led to the rise of in-work State benefits and wage subsidisation (para. 3.9).

The proposals proceed on the basis that a 'roll-out of collective bargaining can only be achieved by law and sustained government policy' and could not just be left to the 'labour market'. To achieve collective bargaining and collective agreements on a sectoral basis would necessitate legislation, namely a Collective Bargaining Act which would facilitate the establishment of sectoral joint committees (National Joint Industrial Committees), appointed by a Secretary of State for Labour, with the possible inclusion of three additional members appointed by the Secretary of State. These would negotiate and set minimum terms and conditions across each sector, and the resulting terms would apply by operation of law to all workers and employers in the sectors covered (Ewing et al, 2018: 12-27).

Employers' Attitudes to the Minimum Wage/NLW

Interestingly, when the NLW was introduced, a large majority of employers gave little indication that they were having any difficulties in paying the additional costs involved (D'Arcy and Whitaker, 2016:

10); and the few that were engaging in avoidance actions designed to make savings to fund the additional costs did not change that overall picture. The problem merely highlighted the lack of measures accompanying the introduction of the NLW: eg mechanisms to secure compliance and dissuade employers from taking actions to recoup NLW implementation costs, such as reducing overtime, removing premia for week-end and unsocial working, and otherwise making cuts to remuneration packages and occupational benefits (Butler, 2016). There was also some evidence of moves to employ younger staff to gain the benefit of the lower NLW rates for those aged under 25. HR organisations questioned whether, even if it was 'legal' to finance the NLW through cuts to 'perks', it was *fair* (Faragher, 2016).

Issues around the behaviour of a minority of employers at the time of the introduction of the NLW also raised the question whether and to what extent employers have played ball with government hopes and expectations that there should be greater efforts to invest in training and create better career and wage progression opportunities. The issue is, of course, central to the considerable productivity challenges the country faces. But it also links to the worries the government has about its 'mandatory progression' strategy. Without sufficient jobs for those in highly subsidised low hours, or low paid mini jobs to progress to better-remunerated employment, the whole strategy is clearly at risk. As revisited in the next chapter, the government's approach has been to rely on a high degree of compulsion, with a significant extension of conditionality and sanctioning directed at employed recipients of UC. This has been focused on trying to manage the fiscal costs of a high take-up of UC among low hours, low paid workers and the self-employed. Mandatory Progression is undoubtedly a vital strand in the plans for managing UC as the national roll-out continues.

Much will depend on employers' co-operation and support for most aspects of the progression strategy. Unfortunately, there is every reason to be concerned about many employers' readiness (or willingness) on this score. Employers can and do invest in training. However, this tends to be skewed away from those areas of the wages and grade spectrum where investment is needed if the policy of trying to move people on low hours, low paid work into the higher-paid work is to succeed. A hollowing-out effect is discernible in the middle range of jobs when it comes to opportunities for career and wage progression (Gardiner and Corlett, 2015). HR professionals also see financial barriers, not least because of the lack of funds for training for parts of the organisation that are not regarded as a priority (CIPD, 2014). From the perspective of workers who are also tax credit and UC claimants – the group which will come under increasing pressure to take on work opportunities to raise their 'conditionality earnings threshold' – particularly in sectors where low hours and low pay are the norm – employers may be reluctant to offer more hours when these are requested. There are a range of reasons for this, but a key consideration is that low hours, part-time work may be the dominant, standard kind of work (Judge/CPAG, 2015: 28).

Expecting employers to change their practices may prove difficult for DWP Work Coaches – particularly in the face of potent tax and National Insurance incentives for employers to maintain part-time work. At a political level, dismantling the panoply of incentives would be seen as jeopardising the government's drive to increase the employment rate – much of it made up of such employment.

In this context it is difficult to see how the government's wider 'progression' agenda, including the mandatory In-Work Progression scheme – an integral part of the Universal Credit system - is going to be developed as effectively as the government, somewhat naively, envisages.

With these considerations in mind closer attention can now be given to detailed aspects of Universal Credit, the role now being played by in-work means-tested benefits like tax credits and UC, and 'progression' expectations.

CHAPTER SIX

In-Work Support

Introduction

True to their promise to carry out the ‘biggest shake up of the welfare and benefits system for sixty years’, with Universal Credit as the centrepiece of the reforms, the UC proposals in *21st Century Welfare* (DWP, 2010a) and *Universal Credit: Welfare that Works* (DWP, 2010b) were implemented by the Welfare Reform Act 2012 Part 1 and the Universal Credit Regulations 2013. Initial support for UC design features was quite strong, particularly given the promise of a simplified means-tested benefits scheme. Among the features put forward were clearer eligibility criteria, and improved claims and adjudication processes that could track pay and hours changes in ‘real time’ (Puttick, 2012a; 2012b). Since then the scheme has been affected by significant cuts and changes, and unfortunately has degenerated into a quagmire of failure on just about every front. Unsurprisingly, unions have been calling for UC to be scrapped or ‘stopped’¹. The Commons Public Accounts Committee has described the DWP as having a ‘fortress mentality’ - and demanded it jettisons its ‘systemic culture of denial and defensiveness’ (PAC, 2018)². A former Prime Minister, Gordon Brown (one of the architects of the tax credit system), has called for an immediate halt to the UC ‘experiment’, describing the scheme as ‘cruel and vindictive beyond austerity’ (Brown, 2018)³. Another ex-Prime Minister, John Major, has warned that UC could well prove to be the government’s ‘poll tax moment’. That view was echoed by the director of the Institute of Fiscal Studies, particularly given his concern that there could be ‘millions of winners and losers’ in the transition process (Johnson, 2018).

UC is, in many ways, the most visible testament to the disintegration of current welfare programmes, particularly in-work support. This is all the more concerning given that the promise to ‘make work pay’, using effective in-work social security schemes, has been central to every government’s election commitments since 1997, including all Conservative and Conservative-led governments since 2010. Gordon Brown’s critique went on to make the connection between the rise in child poverty and the flaws in UC, pointing out that two-thirds of those children have a parent in work, but who were earning too little to be able to lift them out of poverty. In many ways this simply highlights one of the features of in-work means-tested support, which is the low levels at which the benefit is paid and the ease with which low-paid recipients can slip in and out of relative poverty levels. In fact, the inability of in-work benefits systems’ inability to ensure that working claimants remain above the ‘poverty zone’, instead of at or near subsistence-level earnings, has been a feature of low pay and means-tested in-work support almost since its inception. Among the key issues highlighted by a study in 2010 conducted for the DWP was that over half of those coming out of the official definition of relative poverty by moving above the 60% median income level - helped by Working Tax Credit wage supplements - only *just* managed to edge their way into the next level (the ‘60-70% bracket’) (Browne and Paull, 2010). The flip side to this was it did not take very much in terms of an income fall - perhaps a small cut in hours or cut in overtime opportunities - to prompt an early return to ‘poverty’ (Browne and Paull, 2010).

Unsurprisingly, the Coalition government, in the face of such evidence, was keen in 2010 to try to move to a reformed system that could address such problems (Puttick, 2012b). Given the increasing likelihood of workers being in variable hours (and therefore variable pay) jobs – something facilitated by the rise in on-call, zero hours, and other flexible contracts - it is not difficult to see that the system

is likely to continue facing such challenges unless more radical solutions can be found on the 'work' side of the work-welfare interface. In particular, measures are needed to take workers completely out of subsistence or below-subsistence wage levels and avoid the need to rely on State benefits.

The National Roll-Out. The scale of UC's continuing national roll-out from 2019 onwards is enormous. Seven million households and a sizeable cohort of 'self-employed' are affected. For the first time, people in work face the prospect of losing money, or having their benefits stopped altogether, if they cannot demonstrate to their Jobcentre that they are searching for better paid work and taking up employment opportunities that will reduce their take-up of State support. This can be the case even when the new (or additional) employment may not fit in with their family and other commitments - or is conspicuously less advantageous in terms of factors like travel and other costs and on-costs. For that reason, the Commons Public Accounts Committee in one of its key recommendations said it was seriously concerned about the DWP's ability to transfer an estimated 4 million people from existing 'legacy' benefits like Working Tax Credit to Universal Credit without causing significant hardship (PAC, 2018).

The Unite campaign against UC has been drawing attention to these and other highly negative features, some of which are currently shared with other benefits. Others are UC-specific. The system has certainly led to growing opposition given the plethora of problems it has generated (Unite, 2018).⁴ These include delays in processing claims, with claimants experiencing long waits before they receive money - a point borne out by the National Audit Office's report, observing that one in five UC claimants experience delays in getting the full amount of benefit to which they are entitled. The reliance on on-line claims puts a lot of people at a disadvantage, increasing the risk of delays still further. Furthermore, a system aimed at reducing the stigma associated with benefits has actually been made worse. The system's sheer inefficiency, and inability to deliver support in a timely way, also has practical consequences. For example, landlords are now less willing to rent properties to UC claimants given that, with some exceptions, rent support is paid to tenants as part of their UC rather than, as before, directly to landlords. That, in turn, has meant some agencies and letting agents refusing to deal with those on UC. To some extent this is just an extension of an existing problem faced by Housing Benefit claimants who experience discrimination by letting agencies. The government has made some modifications to this, for example by enabling payments to be made to landlords if this is in the tenant's interest, or as part of a discretionary alternative payment arrangement (and in cases where there has been a build-up of arrears of at least two months, and the landlord has requested a change which the DWP accepts). Otherwise, the issue remains highly problematic, particularly for low-paid workers who may already have serious debt problems.

Payment Intervals. Once payments are made there is now, in most cases, a lengthy gap of four weeks between payments. In terms of household budgeting that can be highly problematic for those who are weekly paid, and used to budgeting on the basis of payments coming in to the household each week. Recognising this, and the need to give people alternatives, Northern Ireland and Scotland have given UC recipients the option of being paid *twice* monthly.

At a Welfare Reform Summit in April 2018 at Staffordshire University welfare advisers, union delegates, and academics shared information about UC and debated a range of problems affecting claimants. Much of the focus was on eligibility, take-up, and the many issues linked to migration to UC

from legacy benefits. There is considerable concern about the challenges posed for claimants having to navigate DWP on-line systems and information, often having to make decisions with little or no specialist advice to hand. Despite government assurances to the contrary there is little evidence that the DWP's 'Universal Support' initiative has been working. There was also a concern about the UC conditionality and sanctioning regime. It was clear from the evidence of participants that the sanctions typically being imposed can be considerably longer than those applied with other benefits like JSA and Employment and Support Allowance. This has a propensity to impact particularly hard on groups with disability or housing problems. It was suggested that this has been making a sanction 'almost inevitable' for some groups of more vulnerable system users. In practice, failures are often due to claimants struggling to understand some of the scheme's intricacies.

Sanctions, when imposed, are contributing to rising household debt; and in many respects they are also operating unfairly. Nor do they seem to have any purpose to them, especially if those affected still do not get the support they may need: a conclusion which is also reflected in research by a number of universities that has been looking at the effectiveness of conditionality and sanctioning in the benefits system⁵.

UC Payments. The fact that UC may only be paid to one member of the household, unless alternative payment arrangements can be agreed with the DWP, is also proving to be problematic – especially when there are disputes between couples over finances. In practice couples might only receive a single joint payment paid into a single account which is the claimant's or partner's name; or paid into a joint account into both names, but which in practice can be drawn upon by either account holder in an unrestricted way. DWP guidance includes points about the advantages and disadvantages of having UC payment made into a joint account, with examples of 'when a joint account might not be a good idea' (notably when 'one of you has a problem with over-spending and finds it difficult to stick with a budget' or a partner has a poor credit history): issues considered in the DWP's guide *Should you manage your money jointly or separately?* The scope for problems and disputes, and even domestic violence in its different forms, has certainly increased: a problem exacerbated as the levels of support provided by UC have reduced. Women's Aid has pointed out that financial problems, including a lack of resources during the monthly periods when couples have to budget carefully and run out of money, can be a potent source of violence in some households. Katie Ghose, Chief Executive of Women's Aid has explained the design of UC did not have survivors of domestic abuse in mind; and abusers certainly have opportunities to exploit the single household payments system (Women's Aid, 2018). Besides such problems, the system is clearly not delivering support at the levels required. This much is obvious from the evidence that reliance on food banks by UC claimants has been increasing (Trussell Trust, 2018).⁶

Despite its many problems and design faults, the Office of Budget Responsibility has said that it would be hugely expensive to abandon the project now that roll-out is so far advanced (OBR, 2018b). The Social Security Advisory Committee has said that the system is now set to be the 'dominant landmark on the benefit skyline for many years to come', albeit with many challenges, including the problem that the scheme's roll-out is coinciding with a 'dramatic growth in part-time and more flexible patterns of working' (SSAC, 2017).

The system is clearly broken. The only question is whether an incoming government committed to reforming this key area of the Welfare State should maintain the UC system, but with some radical restructuring, or abandon it altogether and start again.

UC: Scheme Specifics

The UC scheme follows a similar model to earlier means-tested benefits, including processes by which awards are assessed on means. Basically, a comparison is made between 'needs', ie what the State says a person can live on week-to-week (or in UC's case month-to-month), and the income resources and other notional resources which that person is treated as having. In the case of an employed claimant their main income resource will be 'earnings' and other benefits which are not specifically 'disregarded' (for example awards of Personal Independence Payment, which are ring-fenced). Their needs are gauged by reference to their UC 'maximum amount'. This is made up of eligible allowances and elements. UC payments make up the difference between that maximum amount and the person's total income resources.

Having made the needs-resources comparison, awards are made. Payments are generally paid monthly in one sum, which can be problematic for recipients who may be used to receiving wages and benefits more frequently. Nevertheless, those designing UC decided that UC payments should be part of an approach that 'mimicked' the world of work and monthly-paid salary (DWP, 2011; Puttick, 2012b: 239)⁷. The idea was also to encourage recipients to budget carefully and manage their money better, including payments of rent. As already noted, under the UC system this generally has to be done by recipients from their awards, rather than through direct payments of rent to landlords (as was done with previous housing costs schemes like Housing Benefit).

In the face of evidence of rising debt and arrears of unpaid rent, the government has made some modifications: for example by enabling payments to be made to landlords, exceptionally, if this is in the tenant's interest - or as part of a discretionary alternative payment arrangement (and in cases where there has been a build-up of arrears of at least two months, and the landlord has requested a change which the DWP accepts).

Otherwise, the issue remains highly problematic, particularly for low-paid workers who may already have serious debt problems.

What follows is an outline of how steps in the UC assessment process work – something that will highlight the difficulties claimants can face.

Assessing the Award

The assessment process involves five 'steps' culminating in a UC award at Step 5 based on a comparison of the 'maximum amount' and 'total income' (CPAG, 2018a: 35-38)

Step 1

Maximum Amount

This requires the following allowances and elements, for which the claimant may be eligible, to be identified and aggregated:

- *Standard Allowance* (Couple or Single Claimant), with an additional amount for an ill or disabled claimant or partner
- *Child Element* for up to 2 children, with extra amounts for disabled children (paid at lower or higher monthly amounts): controversially now capped at two (Machin, 2017)
- *Limited Capability for Work Element* (this was abolished for new claims made on or after 3rd April 2017, but some claimants may still be receiving this, subject to transitional rights and exceptions; or a *Limited Capability for Work-Related Activity Element* for those incapacitated and unable to work
- *Carer Element* if 'regular and substantial' caring responsibilities are undertaken for a severely disabled person
- *Childcare Costs Element* for those in paid work who are paying for formal childcare
- *Housing Costs Element* for rent or service charges

Housing Costs Restrictions. The housing costs element has been restricted in two ways:

- If there is one more bedroom than allowed the housing costs element is cut by 14% of the rent, and 25% for two more additional rooms (the 'bedroom tax')
- After 6th April 2018 support for mortgage costs or repair loans ended: instead the DWP may offer a loan - but limited to interest on mortgage repayments⁸.

Step 2

Earned Income

Net earnings from employment are used, ie a net figure after tax, National Insurance, and contributions to an occupational pension scheme. NB Employers are responsible for providing workers' real time information to HMRC, and the self-employed must report their own earnings monthly. The self-employed can be deemed to have higher earnings than they, in fact, have as part of the Minimum Income Floor rules in the UC Regulations.

Work Allowance. If the claimant is entitled to a work allowance the earnings are compared to the work allowance; and if they are less than the allowance all earnings are disregarded as income. If the earnings exceed the work allowance, then a 63% taper is applied to the excess to produce the amount that is used.

If there is no eligibility for an allowance, then *all* earnings are included in the UC calculation. Currently, there is only a work allowance available if claimants are responsible for a child or have limited capability for work; and the amount varies depending on whether the UC claim includes a housing costs element.

At 2019/20 rates the amounts are:

- Lower work allowance (one or more dependent children or limited capability to work): £287
- Higher work allowance (no housing amount, and one or more dependent children or limited capability to work): £503

April 2019 Rises. From April 2019 the government will increase the level of work allowances for families with children and those with a disability who have limited capability for work. Details will be known later in 2019: but it is estimated that this could assist claimants who rent, and have a housing costs element, by up to £630 a year. The change is less advantageous to those without a housing costs element, and the changes will do nothing for other groups excluded in 2015.

Overall the changes fall well short of reversing all the cuts to the system made since 2015 (Tucker, 2018).

UC, Earned Income, and Trade Disputes. In the case of employed UC recipients who have withdrawn their labour in furtherance of a trade dispute, they are to be 'assumed to have employed earnings at the same level they would have had were it not for the trade dispute.' (UC Regulations 2013, reg. 56). The practical impact is to ascribe a fictitiously high level of earned income at Step 2 to such claimants, so that when their wages are stopped (or reduced) by the employer during the dispute there will be no rise in their UC. Normally when earnings or other income goes down, UC is recalculated, and it goes up to reflect the claimant's and dependants' rising needs.

As the TUC rightly predicted during consultations with the Social Security Advisory Committee in 2012, the change imposes considerable hardship on claimants' families during disputes.

Plainly the change has made the State even less 'neutral' during industrial disputes than it was (supposedly) before the change.

Step 3

Other Income

This includes most other forms of earned or unearned income, but with some 'disregards'. Unlike earned income this *will* count in full, pound for pound, in the calculation. 'Tariff' income must also be taken into account, including £4.35 per month for every slice of £250, or part of it, above £6000.

Capital above £16,000 including realisable capital assets that are not specifically 'disregarded' in the legislation – for example the value of a person's home – generally counts as 'capital'.

Step 4

Total Income

Net earnings and income at Steps 2 and 3 are aggregated to produce an overall income figure .

Step 5

Calculate UC

To get the final amount payable the income identified at Step 4 is deducted from the maximum amount at Step 1.

Claimants migrating from means-tested benefits like WTC to UC are entitled to transitional protection, ie through payments which are needed to maintain their previous level of support. Given that support for some groups is likely to be smaller than the amounts received under legacy benefits this is an important aspect of the transition process accompanying the national roll-out.

UC Re-Assessment

Once an award has been processed and is up and running, which may take anything up to five weeks (and in practice may be longer), it is then subject to change after a re-calculation. The essential feature of previous means-tested benefits schemes has been maintained, which is that as earnings or other income (including 'notional income') *rise* the UC award goes *down*, and if it reduces the award will generally go *up*: a kind of see-saw effect. For workers with variable hours (or no set hours, as with zero hours, on-call contracts, and other 'flexible working' variants), the experience can be extremely difficult. Indeed, can be more like a roller coaster ride, with considerable scope for errors, delays, and overpayments or under-payments (Puttick, 2018).

The overall effect can be to leave low-paid workers on benefits like WTC or UC little better off after events like a pay rise or winning an equal pay claim, although the precise impact will depend on factors like the extent to which benefit income is withdrawn. That, in turn, depends on the recipient's eligibility for a work allowance to mitigate the impact of the rise, and the operation of the taper, when the UC award is recalculated.

The problem can be seen if a WTC or UC claimant has had a successful equal pay claim. The resulting pay rise will lead to a recalculation of the claimant's benefits, with a higher net wage informing a re-assessment of the UC. A rise in earnings on the work side of their income sources will generate a reduction on the welfare side, producing a largely Pyrrhic victory (Puttick, 2018:). Worse effects can sometimes follow. If a settlement is reached on the equal pay claim, and a capital sum is paid, the DWP or local authority in the case of Housing Benefit can treat the payment as a recoverable 'overpayment'⁹.

Budget 2015: UC Cuts

As a result of cuts made in the Budget 2015, the value of in-work benefits to working UC claimants eroded massively. On top of a four-year freeze on up-ratings to UC rates which is set to continue for a further year after April 2019, work allowances have been removed for any workers or couples not responsible for children, or who do not have limited capability for work (a category which has in any case been removed, subject to exceptions and transitional arrangements). The value of the work allowances which are still available has been cut back, and although there is the prospect of rises from April 2019 (as noted in the section 'Assessing the Award', above) the increases fall well short of what is needed. As has been pointed out by CPAG in their commentary, given that £37bn is being cut from social security each year, and that around £3bn was taken in the work allowance cuts alone, the government's decision to put just £1.7bn a year back into UC is hardly generous (Tucker, 2019).

The overall effect of cuts to the social security budget has been to reduce the income of workers and families, and immediately increase the dependency of low wage workers and their families on short-term loans, food banks, and alternative sources. The conclusion of the Institute for Fiscal Studies in its *IFS Green Budget 2016* was that the changes had 'significantly cut' the amount of support that UC could give to low-income working families, and it also affected 'progression' opportunities (IFS, 2016: ch. 10). Other concerns have been directed at the taper rate which at 63% is still seen as inordinately high. It is set to continue at that level without any sign of changes in the immediate future. In the view of the Resolution Foundation the failure to lower it and take it back towards the level that was originally intended (40%), has not just helped to impoverish low-paid workers. It has also worsened progression incentives. In the aftermath of the 2015 changes it was estimated that by 2020 a worker with a work allowance would reach that allowance and start to be hit by the taper after working just five hours a week at the NLW rate (and ten hours if they have the higher rate of someone with a housing costs element in their UC maximum amount) (Finch, 2016: 21). Since then the government has been promising easements - but it remains to be seen what the impact of these will be, once they are made.

Housing Costs & Rent Controls

Besides the impact of cuts to in-work support in the form of the wage supplements provided through UC, there are also wider problems that have affected in-work support, notably in the housing market. As a result of the abolition by the Housing Act 1980 of rent controls in the private rental sector of the housing market landlords have been largely unhindered in their ability to raise rents for the last four decades: a problem made worse by the sell-off of council homes and a shortage of affordable housing. These policies also served to push up rents and house prices. Aggravated by low wage growth, escalating living costs, and the pace of rent rises outpacing wage rises, the number of workers and their families forced to rely on Housing Benefit (or the housing costs element paid with UC) has risen dramatically (JRF, 2018). The scale of the problem can be gauged from an analysis in 2018 of rents and pay across English districts. This shows that rent levels are more than a third of full-time local pay in over half of those districts when the least expensive quarter of private rents is compared to the earnings of the lowest paid quarter of employees. Using the same rent-wages comparison, rent is more than *half* of local full-time pay in some parts of Greater London and the South-East.

More affordable areas are located, primarily, in the North – but even there - as the study highlights - there are also parts of Greater Manchester and North Yorkshire where rent levels exceed a third of full-time pay (JRF, 2018).

The scale of the crisis in this area of the welfare system cannot be overstated. Housing Benefit currently comes with a hefty price tag. At over £27 billion a year it is one of the biggest and fastest-growing parts of the welfare bill – in fact more than the combined cost of the police, roads and defence. That amount continues to increase as the numbers of tenants, and rent levels rise. As, Paul Johnson, Director of the Institute for Fiscal Studies, has said on these points, the problem is not just with the HB system itself: it is with ‘the whole of housing policy...We urgently need to build more houses, public and private. But we also need a radical overhaul of the way we tax housing and approach housing policy more generally.’(IFS/Johnson, 2015).

Despite such calls, the government’s main response has been, mainly, to focus on making the eligibility criteria for HB support tougher and reducing the value of support. As well as benefit caps, and measures like the Bedroom Tax limit (now operating within the UC housing costs element, as discussed above), the system has become increasingly restrictive in what it can provide, whether this is through UC or HB (as the main benefit still supporting most working claimants on Working Tax Credit).¹⁰

State support for housing is an important component in the overall subsidy for workers, defraying costs which would otherwise have to be met from a low wage. For that reason, the relentless rise in rent levels begs the question whether it is now time to revert to some kind of rent controls - perhaps drawing on some of the models offered in other countries like Ireland, Germany and the USA where schemes to either control rents (setting limits on how much may be charged) or introduce stability measures (whereby limits are set on how much rents may be raised over specified periods) (Economist, 2015) appear to operate successfully. Without this there will come a time when the only other alternative will be to start restricting the amount of rent subsidy that is provided or withdraw support altogether. The government has already ended support for home owners through the abolition of mortgage interest costs relief (Morgan, 2018).

As with regulation of the wages floor, State support for the housing costs of low-paid workers is an area of the welfare system which the government may have little choice but to start regulating again, and soon.

The Duty to Work, Mandatory ‘Progression’ and the ‘3 Way Relationship’

Expectations that benefits claimants should take steps to find paid work have been a feature of a ‘duty to work’ for some while (Deakin and Wilkinson: 110-199). By the 1970s, however, that duty had intensified incrementally, extending to a duty to *maintain* work and not leave employment and claim out-of-work benefits: an expectation reinforced by benefits sanctioning for infringing the ‘industrial misconduct’ rule – invoked, typically, after a dismissal for misconduct; and the ‘voluntarily leaving’ rule. Since then sanctioning is not just deployed against those voluntarily relinquishing paid work, and then claiming benefits. Under the Welfare Reform Act 2012 it can penalise, at the highest level of sanctioning in terms of amounts and duration, those who choose to reduce their pay ‘for no good reason’ and become an unnecessary ‘burden’ on the community (DWP, 2017).

With the introduction of UC has come the most wide-ranging extension and contentious extension of that duty, namely a duty to seek *further* work directed at employed UC claimants under the In-Work Progression scheme (IWP). The policy intention is 'incentivise' workers to raise their earnings until they reach a 'Conditionality Earnings Threshold' (CET). The measure is, again, reinforced by possible sanctioning for non-compliance with their Claimant Commitment. The CET is generally set at a level which aligns to a 35-hour working week paid at National Living Wage (NLW).

Self-employed labour market participants with low earnings are eligible for UC, but they are also subject to measures to incentivise them to raise those earnings. However, this is done in a very different way, under the 'minimum income floor' (MIF) provisions of the UC Regulations (regs.62-64). These presume that self-employed UC claimants are earning at the level of their 'individual threshold'- essentially an earnings target that is comparable to the CET set for the employed. Their level of support only rises if their earnings increase. The system leaves self-employed UC claimants much worse off than employed claimants, as research by the Social Market Foundation has found (Social Market Foundation, 2016). This has concluded that about a fifth of families with a person in self-employment already being supported by tax credits and housing benefit have been migrating to UC. Just under 40% of that group are estimated to be earning below the MIF income 'floor'.

Besides the controversies around the introduction of this novel extension of conditionality and sanctioning there are other controversial aspects to IWP. In particular, the closer working between DWP Work Coaches and employers as part of the process achieved considerable publicity (and notoriety) when the (then) Employment Minister, Pritti Patel MP, in her evidence to the Commons Work and Pensions Committee Inquiry into mandatory progression (Work and Pensions Committee, 2016: 41), referred to the 'three-way relationship' between employers, DWP work coaches, and workers and the scope for the coaches to pick up the phone and say to the employer 'This claimant has only been working X hours right now. He or she now feels they are ready to work more hours or develop or be supported into a new role'. There are a number of scenarios in which a worker could come under pressure from an employer to take on additional work. In some cases the employer may be entitled to do this under the contract, and may well be able to take disciplinary action if staff refuse. Typically, this may be where workers can be expected to cover additional shifts or periods of 'cover' for colleagues on sick leave, and as a result of requirements under the contract to work flexibly. On the other hand, the employer may *not* have such power. With the roll-out of IWP, and the pressure on Work Coaches to achieve results in 'progressing' staff to additional work, there will be increasing pressure on employed UC claimants from the DWP to take up such opportunities.

Despite the IWP legal regime being in place for some while it is far from clear what limits there are on the DWP's powers in Social Security Law - especially as clearer guidance on this which the Work and Pensions Committee requested in 2016 (Work and Pensions Committee, 2016: para. 59) has still not been forthcoming.

For organisations like the Child Poverty Action Group and Gingerbread (an organisation representing single parents) the need for a fair balance between work commitment and family responsibilities in this area has never been more obvious. For example, CPAG's view is that the IWP system should not operate in a way that requires workers to give up 'predictable shifts that fit in with family life', or be expected to upset existing childcare arrangements; and the protection of the needs of workers' families and children should be put on a 'statutory footing', rather than just left to Work Coaches and

DWP decision-makers' discretion and administrative guidance (CPAG Submission IWO0023 to the Committee's Inquiry).

Gingerbread's view is that workers with parental responsibilities should not have to immediately accede to Work Coaches' requests to take on new work or change their existing patterns of work. Furthermore, they should be entitled to hold out for jobs which, as well as matching their skills and experience, are 'sustainable' and can lead to improved working conditions - rather than simply complying with the government's 'work first' approach under which the first priority is to increase hours and pay, irrespective of their family's rights and needs (Gingerbread Submission IWO0026 to the Committee's Inquiry). In another area of the system, the DWP's expectation that UC recipients with responsibilities for young children should take up work opportunities which will get them to a 16-hours a week threshold to avoid the imposition of the 'benefits cap' (which penalises them financially) raises the question whether ECHR Convention rights are engaged, and if the DWP is acting lawfully. In principle they are not, given the combined effects of ECHR Article 8 on family life and the United Nations Convention on the Rights of the Child 1989 Article 3(1). This requires that 'in all actions concerning children...the best interests of the child shall be a primary consideration'. A test case on the point came before the Supreme Court in July 2018. The seven judges in the case were still due to give judgment at the time of writing.¹¹

Conclusions

To say that the current in-work welfare system is in crisis is a massive understatement. In-work means tested benefits schemes, including parts of the system dealing with key areas like housing and childcare costs, are beset by problems, many of which are due to austerity and cuts.

The most pressing concern, however, relates to the Universal Credit system. The scheme in its present state – pending either radical reform or replacement – is highly dysfunctional as a result of flawed design features, adjudication problems and the failure of the government's promised 'Universal Support' package.

CHAPTER SEVEN

Welfare Futures & Conclusions

Scarcely a week goes by without evidence of the damage done by cuts to benefits and services, the impact of poorly managed reforms and schemes, and the rise in in-work poverty. In the face of such evidence there is a clear need to reverse the decline and stop further disintegration. Beyond that, renewal and a new generation of policies are needed if the welfare system is to be fit for purpose.

An essential component in any effective floor of social protection is work, with systems in place to secure that it can deliver fair wages and otherwise meets Decent Work and established international standards (ILO, 2011). In the UK's case there are some significant shortcomings on the 'work' side of the work-welfare interface, not least as a result of weak collective bargaining and a lack of effective redistributive mechanisms. This, in turn, has produced a higher than necessary reliance on State support in the form of wage subsidisation through the social security system. Rather than diminishing, though, this is set to grow exponentially, fuelled by the 'dramatic growth' in part-time and more flexible patterns of working (SSAC, 2017). Schemes like Universal Credit, which have been specifically designed to support low hours, low paid work, marks a new low in the growth in wage subsidisation. As this paper has discussed, much of that dependency is the legacy of neo-liberal, deregulatory policies that began in the 1980s with the assault on collective bargaining and the abolition of the wages councils and other redistributive mechanisms producing a weakened wages floor. This has also been instrumental in undermining the contributions-based social insurance system and the contributory principle (Bell and Gaffney, 2012) which, together with collective bargaining, has in the past played an essential role in maintaining labour standards.

New approaches to establishing and maintaining an effective floor of protection and restoring this key area of the Welfare State will require new approaches. The Bain Report provided an important analysis of the shortcomings of the minimum wage 'single rate', and its inability to do much more than provide a one size fits all regime (Bain Commission, 2014). This is clearly a major limitation, particularly in sectors where employers can afford to be paying above NMW/NLW rates, and where there is little pressure on employers to do so. The scheme also does nothing to assist career and wage progression, for example by requiring employers to put in place grade scales, or otherwise provide opportunities to take on better-paid work, assisted by investment in training. The former wages councils could do that, and there is still a basic model for such grade progression provided by the Agricultural Wages Board, notably in the grade rates and categories in the Agricultural Wages (Wales) Order 2018 (which also secures key matters like overtime and sick pay, training and leave entitlements, and so forth).

The scheme for collective bargaining in the IER's *Manifesto for Labour Law*, if implemented, would enable such necessary elements to be brought back into many workplaces where they have been missing – but also deliver much more besides. It offers a valuable blue-print for improving pay at workplace, enterprise, and sectoral levels, and securing minimum entitlements across a wide range of workplace issues including working hours, holidays, pensions, and equal opportunities. In doing so it would certainly diminish the need for the 'vast array of legislation' that currently regulates work and requires workers to litigate to obtain entitlements (IER, 2018: 13). It also has the potential for reducing the current heavy reliance on the State to prop up low wages and poor conditions as these affect workers in the bottom three deciles of the wage distribution.

Equalities and equal opportunities are a particularly important feature in the *Manifesto*, not least given the current issues around women's pay and progression (Costas Dias and Elming, 2016; Lyonette, 2015). It is also important for groups like disabled workers, given the scale of the disability pay gap. According to research published by the TUC ahead of the TUC Disabled Workers Conference in 2018 that gap now stands at 15%: a difference that brings into question the effectiveness of current equalities legislation (TUC, 2018). A big concern is with the statistic that, despite increases in the number of disabled people now employed, the unemployment rate for disabled people is still 50 per cent higher than for non-disabled people.

Implementation of a system of collective bargaining which can, in time, raise the wages floor would have other important spin-offs, not least in helping to reverse the rise in in-work claims for Housing Benefit (and the UC housing costs element). Low wages and the pace of rent rises which have been outpacing wage rises means that the number of workers forced to rely on Housing Benefit (or the housing costs element paid with UC) has risen dramatically (JRF, 2018). This has been made worse by an inadequate supply of affordable housing (IFS/Johnson, 2015). The scale of the problem was highlighted by JRF studies in 2018 of rent and pay across English districts. This highlighted how rent levels are now often more than a third of full-time local pay in over half of those districts surveyed (when the least expensive quarter of private rents was compared with the earnings of the lowest-paid quarter of employees). Using the same rent-wages comparison, rent levels in parts of Greater London and the South-East were even higher: *half* of local full-time pay in some areas of Greater London, Manchester, and Yorkshire. This begs the question whether it is now time to revert to some kind of rent controls, drawing on the experience of rent controls or rent stabilisation measures of the kind operating in countries like Germany, Ireland, and the USA, but factoring in the some of the risks this may pose to the supply of housing if any new measures are not managed effectively.

There are other significant areas of 'renewal' which any incoming government with progressive policies will need to consider. These include the need to go much further with support for childcare, indeed moving to a reliable scheme of universal childcare – a priority put forward six years ago by the TUC's General Secretary, Frances O'Grady, calling it one of the 'new pillars of the Welfare State' (O'Grady, 2012). Without this, it is unlikely that progress can be made in enabling many women, and particularly those with young children, to join the labour market, and progressing on equal terms with men. As TUC research has found, many women are effectively 'locked out' of employment. This is reflected in participation rates: 64% of women of mothers with children under the age of five are in paid employment compared to 93% of men. Women's ability to stay in work is also clearly affected by regional differences in the availability of childcare, as well as wider factors such as transport, housing costs, and the quality of employment ('Pay and Parenthood', TUC/IPPR, September 2016). Threats to key provision like maintained nurseries are also under threat from insecure funding from central government (LGA, 2019b).

In another key area of equalities, social security for workers from abroad, access to support already depends on complex 'residence' requirements and barriers (Ryan, 2005). EU workers and their family members (including non-EU nationals) currently have a right to work in the UK, but also a right of 'equal treatment' on social security matters under Directive 2004/38 on free movement, the Immigration (EEA) Regulations 2016, and Regulation 883/2004 on Social Security Co-ordination. Post-Brexit, however, such rights would depend on UK legislation *maintaining* that position, and it is clear

from legislation like the Immigration and Social Security Co-ordination Bill 2019 that this will come under the control of ministers under delegated powers, subject to new arrangements made with the EU. Given the past history of calls for tougher restrictions on 'welfare tourism', and an increasingly hostile environment for migrant workers in the past, it is not difficult to anticipate major challenges ahead in this area of the social security regime. Indeed, it is not so long ago that the government was calling for tougher restrictions on EU workers' access to in-work benefits: something that would be part of a new regime of 'economic integration', with similar proposals coming from two other major parties including the Opposition. If this had been implemented, it would have quickly led to a labour market of 'two teams': Team A, made of UK nationals and workers with settled status, enjoying full access to in-work support; and Team B, made up of EU and non-EU workers, receiving significantly less favourable treatment in terms of such access (Puttick, 2015).

Going forward, there will also need to be a renewed focus on the increasing challenges to work itself resulting from the rapid transformations being brought about by new technology and automation. This raises the question whether a basic income for all citizens might in the future deliver a better, more secure source of support than the current social security system. At present, the scope for automation and artificial intelligence systems (AI) to displace jobs - especially unskilled and semi-skilled work - has prompted questions about how this trend will impact on levels of pay; and how the State will need to deliver support in sectors of the labour market where opportunities for new employment support are reducing, and under-employment is growing. Much of the concern links to issues like the potential impact of minimum wage interventions as employers make decisions on investment in automation and consider trade-offs between new jobs or automation when this is available (Eliot, 2018). Much of the wider debate, though, is also around the desirability in the future of phasing out the social security system, in time, and replacing it with a 'basic income'. According to a Royal Society of Arts study this is a system capable of delivering a regular, unconditional payment to every adult and child which would not be means-tested and withdrawn as earnings rise. One of the arguments put forward by proponents is that the system would eliminate most of the complexity associated with the current means-tested system, as well as tackle the challenges of both in-work and out-of-work poverty more effectively (Painter and Thong/RSA, 2015: 8-41).

The Shadow Chancellor, John McDonnell MP, has said that Labour intends to include a plan for universal basic income in its next General Election manifesto. But there are still a lot of issues for consideration, and it remains to be seen what comes out of pre-election policy discussions. Among other things it will need to address one of the main arguments against it, which is that the social security system is better-placed to deliver targeted support that can meet the specific needs of groups like workers and their families. Furthermore, the debate needs to factor in the views of those who see a restoration (or partial restoration) of the contributory principle as a preferred way forward for meeting new contingencies, and which would help to re-build trust in social security system and reduce the stigmatisation of welfare take-up. The chances of this are better, so the argument goes, if 'insurance' principles are restored. One of the attractions of the contributory principle is that it does, indeed, define the welfare system in terms of an insurance policy. The focus is on a relationship between what people put in and take out. That principle has been damaged by a number of factors, including the rising cost of NI contributions in recent years, and the poor 'return' often seen from contribution-based benefits (as discussed in *chapter 2*): what has been described as the 'nothing for something' problem (Bell and Gaffney, 2012: 4).

There is certainly considerable mileage in revisiting the advantages of contribution-based models. There is evidence, for example, that countries with the strongest 'contributory' components in their schemes produce the best wage replacement rates, coupled with better public attitudes towards the idea of State 'welfare' (O'Leary/Demos, 2018). There are also attractions in the idea of rebuilding support for social insurance around a new generation of benefits which could deliver innovative and popular schemes and enable people to make provision for career breaks, planned leave periods, and extended parental leave. There is scope, too, for modifying the insurance-based part of the social security system to help in addressing one of the core design weaknesses of Universal Credit: this is that it incentivises the creation of low hours mini-jobs paid at earnings below the Lower Earnings Limit (LEL) for NI contributions. This does not just distort the labour market by exempting employers from NI contributions and taking employees out of the scope of social protection afforded by contributory and non-contributory benefits: it does so at a considerable cost to the Treasury. This is an aspect of the UC scheme that needs to be restructured, with a view to ensuring that there can be opportunities in the future for workers on low hours to be in the contributory system and gain a stake in its entitlements. The point was made by Kate Bell and Declan Gaffney when they argued that the system should be modified to enable 'crediting in' on a partial basis of those earning below the LEL. This would extend coverage at the same time as off-setting current incentives for employers to offer low hours, low paid work that takes workers out of support from contributory benefits. Interestingly, the introduction of partial contributions in respect of mini jobs, but at lower rates than for other jobs, was adopted in Germany when the Harz IV reforms were developed (Bell and Gaffney, 2012: 6, 34, 35).

Apart from the unwelcome baggage that reliance on wage subsidisation through means-tested schemes like UC and HB involves – as well as increased conditionality, sanctioning and the other negative aspects associated with means-testing - uncertainty about the rising fiscal costs of UC is a major concern as the scheme is rolled out (OBR, 2018b). In the bigger picture this raises broader questions about how the Welfare State, and particularly expensive aspects like in-work support, is going to be paid for in the future. According to a Resolution Foundation study *To Maintain Our Welfare State We Need to Rethink How We Pay for It*, OBR projections that maintain State provision at current levels will require spending as a share of GDP increasing by 7 per cent by 2066 need a response, and soon. Without action to address this, debt could rise by as much as 230 per cent of GDP - the equivalent of raising total tax revenues by £160bn a year. This is achievable, but if accomplished through rises in higher income and consumption taxes on the working age population, it would have clear impacts on living standards. An alternative scenario – no doubt favoured by the Right - would be to implement major cuts to the Welfare State.

A further approach would be to start identifying sources that are currently outside the tax net, or under-taxed. The biggest candidate for this would be 'wealth' in corporate and other forms. Concerted action against tax avoidance and evasion is also long over-due. Wealth taxes per se, though, are unlikely to be easy, as the Foundation suggests. Yet, given that the only other two realistic alternatives are 'stripping back our Welfare State or very large tax rises on working people' (Bell, 2018), there may be little choice but to go down this route if current levels of welfare support are to be sustained, and improved upon.

There are precedents for this. In 1997, taxing the excess profits of the utilities privatised by the previous Conservative governments with a one-off Windfall Tax was not only seen as necessary in

order to help fund welfare-to-work and tax credit schemes - it was recognised as an entirely legitimate means of pump-priming this major extension to the welfare system.

END NOTES

Chapter 1 – Introduction & Overview

1. The term ‘Welfare State’ has never been comprehensively explained, let alone formally defined, but the description ‘A collection of services ... whose boundaries expand and contract over time’ (Timmins, 2001: 7) seems particularly apt at a time when the coverage provided by welfare schemes and services ebbs and flows in the face of financial, political, and other pressures. Austerity measures and cuts have ensured that it in recent years it has been mostly ‘ebb’. The International Labour Organisation has laid down what the minimum standards for an effective Social Security programme should be in terms of benefits, allowances, etc for dealing with particularly contingencies, namely the ILO (1952) Social Security (Minimum Standards) Convention 1952, International Labour Organisation No. 102. Since then the ILO has produced a more comprehensive, up-to-date blueprint for national ‘social protection floors’ (Bachelet Report, 2011).
2. The social wage describes that part of the support they receive, whether in the form of income, services, or other assistance that derives from the State and its agencies, or wider community. The concept is used more formally in other countries, even to the point of social rights embedded in the constitution. In South Africa, the ‘social wage packet’ is at the heart of the Social Security Agency’s legal remit to provide ‘comprehensive social security services’.
3. Lord Woolf, a former Law Lord and head of the Court of Appeal, described Community Care as the ‘residual social security benefit’ which had ‘completed the Social Security system established following the Beveridge Report’ (*R v Westminster City Council, ex parte M, P, A, X* (1998) HLR 10 at 16). Entitlements are important for workers in a variety of other contexts, for example after a care assessment under the Care Act 2014. Schemes like Access to Work are invaluable in helping people with a disability take up work opportunities, or help them remain in work, although issues of inadequate funding have been blighting the scheme, as in other areas of the system. The scheme has also extended to assisting workers who become disabled while in a job. Disability Rights UK, Fact Sheet F27 provides very useful information: <https://www.disabilityrightsuk.org/access-work> Employed recipients of Employment and Support Allowance are eligible for support from Access to Work if they are undertaking ‘Permitted Work’; <https://www.gov.uk/access-to-work/eligibility>: both sites accessed 21 January 2019.
4. A ‘core’ definition of low pay is based on gross hourly earnings (excluding overtime) below two-thirds of median pay. This puts the ‘low paid’ at 20 per cent of the workforce (approximately 5 million people). A ‘needs-based living wage’ definition suggests a figure that is closer to 25 per cent - approximately 6.2 million people, up from 6 million in 2016; Resolution Foundation, 2017: 5. A growing number of ‘self-employed’ must be added to that figure, and this informs a total that is nearer 30 per cent of labour market participants.
5. The Foundation has called for changes to UC that will allow families with children to keep more of what they earn. Increasing the UC work allowances to their original level for working

families would, they say, boost the budgets of 9.6 million parents and children, half of whom are in working poverty (4.9 million). The view is that as a redistributive mechanism the UC work allowance is 'over five times more effective' than increasing personal tax allowances.

6. The Social Mobility Commission has found in a report on training that cuts in government funding have made free-to-access courses hard to come by. As a result, employers are now the main providers of training opportunities to improve their skills and ability to progress to better work on higher earnings. However, most training is more likely to be offered to those in higher-paid or senior roles. Low-skilled, male, manual workers are the least likely to access training, the report found. According to the Chair of the Commission, Dame Martina Milburn, 'The result is a system with vast numbers of low-skilled workers with little opportunity to build skills and escape low pay' (Social Mobility Commission, 2019).

Chapter 2 – The 'Welfare' in Welfare State

1. As a result of the Poor Law Amendment Act 1834 (and in Scotland by the Poor Law Amendment (Scotland) Act of 1845).
2. *Bateman v Asda Stores PLC* [2010] IRLR 370. In order for Asda to move all staff into a uniform pay structure the courts allowed it to do this by imposing the change on all staff, including those who objected to the changes. For a compelling and wide-ranging critique of the judgment and its implications, see F. Reynold QC and J. Hendy QC, 'Reserving the Right to Change Terms and Conditions: How Far can the Employer Go?' (2012) 41 ILJ 79–92.
3. As in *Ali v Christian Salvesen Food Services Ltd* [1997] ICR 25, CA. Annualised hours agreements which pay a standard wage for basic weekly hours, but which make provision for a minimum threshold of further hours to be worked before a worker could qualify for additional payments, could not be construed as giving a worker a right to pro rata payments if he leaves the job before the threshold has been reached. Implied terms can be introduced when this can be justified, particularly if this is needed to give effect to the parties' intentions – but in the *Ali* case this was refused on the basis that the absence of any agreed provision to cater for this eventuality may have been intended when the agreement was negotiated.
4. After a successful campaign by Unison, the Supreme Court struck down the previous system; *R (Unison) v Lord Chancellor* [2017] UKSC 51. Evidence from a project led by Prof. Nicole Busby, Dr Emily Rose of Strathclyde University, and Prof. Morag McDermont of Bristol University, clearly showed how fees inhibited claimants pursuing claims (Busby, Rose, and McDermont 2018). ET Claims can relate to a wide range of issues which impact on the welfare of workers and families including non-payment of wages and benefits like SSP, as well as unfair dismissal and equalities issues.
5. The leading case is *Barry v Gloucestershire County Council* [1997] 2 WLR 459, House of Lords, approved in *R (McDonald) v Royal Borough of Kensington and Chelsea* [2011] UKSC 33, Supreme Court. The Supreme Court declined to reconsider the Barry decision in *R (KM) v Cambridgeshire County Council* [2012] UKSC 23 – so the position remains unaltered for the time being, pending any later fuller review of the courts.

6. The commentary quotes a director of a leading private provider, MetLife, pointing out what a valuable area this represents for the 'Group Risk industry', especially given the current lack of coverage and the importance of employee benefits as a means of attracting and retaining employees.
7. A detailed consideration of the system and particular benefits is outside the scope of this paper. Reference may be made to specialist works like the CPAG *Benefits and Tax Credits Handbook 2018-19*; and the *Disability Rights Handbook 2018-19* (Edition 43) (Disability Rights, 2018). Citizens Advice also provide a valuable on-line service 'Benefit Calculators: What Benefits Can You Get': www.citizensadvice.org.uk/benefits/ last accessed 3rd February 2019.
8. The benefit cap outside Greater London in 2018/19 is £384.62 a week (£20,000 a year) for a couple; £384.62 1 week (£20,000 a year) for a single parent and children living with the claimant in the household; and £257.69 a week (£13,400 a year) for a single adult. Inside Great London the cap rises: £442.31 a week (£23,000 a year) for a couple; £442.31 a week (£23,000 a year) for a single parent with children living with her/him; and £296.35 a week (£15,410 a year) for a single adult. For those increasing their hours and transferring to WTC there is no cap, even if the WTC award is £0. Otherwise, exemptions are limited, eg for claimants who are carers, or on DLA/PIP, Attendance Allowance, or in-work UC with net monthly earnings above £542.
9. *R (DA and Others) v Secretary of State for Work and Pensions* (UKSC/0061) on appeal from the Court of Appeal [2017] HLR 35; [2018] EWCA Civ 504. The appellants are single parents with children under the age of two. As they are not in employment they are subject to a benefits cap unless and until they take up employment at the prescribed level of working hours (usually 16). They argued that imposing a cap on single parents with at least two children under the age of two was unlawful as they were in a very different position from others affected by the cap: this was as a result of the difficulties and barriers they have faced because of their childcare responsibilities. The claim succeeded in the High Court, but the decision was then overturned by a majority in the Court of Appeal. In legal terms the issue is whether the cap, imposed in 2016 by the Welfare Reform and Work Act 2016, s.8, unlawfully discriminates against parents or their children contrary to the European Convention of Human Rights art. 14, when read with article 8 or Article 2 of the First Protocol, and in breach of the UK's obligations under article 3 of the UN Convention on the Rights of the Child. A further argument was that the government's actions were simply 'irrational'. The case is being heard alongside another case *R (DS and Others) v Secretary of State for Work and Pensions* (UKSC/0074). In that case the focus was on the legality of the cap which, from 11th January 2017, was lowered from £500 to £384.62 a week. One parent in the case lost £80 a week and the other £110. Both women had been unable to obtain employment 'despite their best efforts'. The Supreme Court will be deciding the legality of the government's actions in extending the reduced cap to such parents.
10. State Retirement Pension is a benefit that is still largely dependent on NI Contributions. Those with gaps in their contributions record receive a correspondingly low State Pension. In the absence of any kind of private pension, Pension Credit, as paid under the State Pension Credit Act 2002, is the system's cure-all. Essentially, if the claimant has no income a full 'guarantee credit' is payable.

Otherwise, if she or he has any weekly income or other income (notional or real) an award of PC is based on the difference between the guarantee amount and that income (s.2(2)(a), (b)). The award is helpful in passporting claimants to other benefits, including help with housing costs.

Chapter 3 - From Collective Insurance to Means-Testing & Wage Subsidisation

1. Under the scheme in Part 2, the worker paid 2 1/2 pence, which was matched by the same amount from the employer. The taxpayer's contribution was 3 pence.
2. Public Assistance Committees carried out checks of claimants' and recipients' means before the full amount of the 'dole' was paid. Opposition to the post-1931 measures followed, with contemporary accounts highlighting the resistance from the labour movement and unions; *The Means Test 1931-32*: https://www.youtube.com/watch?v=rN6_CSS4UI : last accessed 3rd February 2019. However, there was little easing of what had become a predominantly means-tested system, with means-testing procedures at its core.
3. Jobseeker's Act 1995 ss.6, 6A-6K, and JSA Regulations 2013, SI 2013/378 regs 17-30.
4. Interestingly, the War Cabinet summary of the report observed that the Social Security scheme Beveridge proposed was 'pre-eminently not a plan for giving to everybody something for nothing and without trouble'. Instead, it was a plan to secure to each citizen an income adequate to satisfy a natural 'minimum standard' on 'condition of service and contribution...' It was added that 'benefits in return for contributions rather than free allowances from the State is what the people of Britain desire'. (para D21). It went on: 'whatever money is required for provision of insurance benefits should come from a Fund to which the recipients have contributed' (p.3); War Cabinet Summary of Report Social Insurances and Allied Services by Sir William Beveridge: Confidential WP (42) 547, 25th November 1942 (National Archives, accessed 12th November 2017). National Assistance as a fall-back source of support remained outside the scheme (p.9)
5. The best example was the State Earnings-Related Pension (SERPS), but this approach also extended to a range of other contributory benefits.
6. Beveridge had also put forward a proposal for a benefit for 'unmarried wives' and separated wives, which was rejected.
7. Among other things, the Finer Report recommended the introduction of a new non-contributory benefit, the Guaranteed Maintenance Allowance as an alternative to SB: a recommendation that the government rejected. Beveridge had also put forward a proposal for a benefit for 'unmarried wives' and separated wives, which was also rejected.
8. For example, the National Federation of Claimants Unions Claimant Handbook 1976 (London: NFCU, 1976). Although this was to change when it became New Labour policy to promote lone parents' routes into employment, assisted by programmes linked to the New Deal for Lone Parents, and the inclusion of childcare elements in tax credits, the system until then was not remotely geared up to promoting employment among this group. Furthermore, as late as

2000 there was every disincentive to work given the way take-up of employment opportunities was, in effect, penalised by keeping lone parent earnings 'disregards' low in the calculation of means-tested benefits like Income Support.

9. Now in ss.6D, 6E of the 1995 Act as 'work search' and 'work availability' requirements, embodied in a wider range of work-related requirements in ss.6-6L and in the JSA Regulations 1996, SI 1996/207 regs.5-22.
10. One significant feature of New Labour's system, by the time Working Tax Credit was introduced by the Tax Credit Act 2002, was that it was extended to couples and single workers without children: at that point it ceased to be simply *family* support, as earlier schemes like Family Income Support, Family Credit, and Earnings Top-Up were characterised. By 2002 WTC had transitioned into a full-blown general subsidy for all labour market participants including the self-employed. The intention was to create a 'single visible instrument' to make work pay, available to groups without children and 'underpinned by the National Minimum Wage' (HM Treasury, 2000: para. 1.5).
11. A JSA claimant hoping to rely on her Class 1 NICs record currently (as at 20th November 2018) needs to show that she has
 - Paid Class 1 NICs for one year (the 'base' year) of the last two complete years before the start of her 'relevant benefit year' and satisfies several additional conditions, including the key requirement that her relevant earnings for the base year on which primary Class 1 contributions have been paid (or treated as paid) are not less than the base year's Lower Earnings Limit multiplied by 26
 - In respect of those last two complete years either paid Class 1 NICs or been credited with earnings (but also satisfies an additional earnings factor condition now required for contribution-based claims)
 - Not exceeded a prescribed earnings limit (in effect a means-test introduced into the JSA contribution conditions); and
 - No entitlement to Income Support.

In comparison, the key 'additional condition' is simplicity itself! It is that 'the earnings factor derived from so much of the claimant's earnings as did not exceed the upper earnings limit and upon which primary Class 1 contributions have been paid or treated as paid or from so much of the claimant's earnings as did not exceed the upper earnings limit and credited is not less, in each of the two complete years, than the lower earnings limit for the year multiplied by 50'. (JS Act 1995 ss.1(2)(d) and 2).

Chapter 4 – Making Work Pay

1. Schemes of this kind include, since 2016, Ireland's Employee Tax Credit and the Earned Income Credit. Their main attraction is that they can deliver support across a range of income sources, including pension, managed from within the Irish PAYE system and earnings. A group like pensioners who are still engaged in part-time work can benefit from support directed at both main sources. For example, a PAYE Pension of €5000 a year would attract a credit at 20%

(1000) under the ETC scheme, and Case 1 earned income of €2000 would get a credit at 20% of €400 under the Earned Income Tax Credit scheme. EIC support also extends to the self-employed. Information on the schemes is accessible on the Irish Revenue site: <https://www.revenue.ie/en/personal-tax-credits-reliefs-and-exemptions/income-and-employment/earned-income-credit/index.aspx> last accessed 2nd February 2019.

2. On the USA's EITC scheme, see 'Earned Income Tax Credit', US Inland Revenue Service. The scheme is complex and has some significant shortcomings, including earned income and adjusted gross income thresholds that can operate inflexibly for claimant groups on variable hours and earnings; and documentation requirements, including the need for completed Federal tax returns and records can be onerous (Alstott, 1995). On the system's other problems and limitations, see Alstott, Essentially, the scheme must operate within a wider framework in which labour law assists low wages and harsh working conditions, and a social law safety-net which leaves gaps through which low-income workers can often fall. Reforms, she has argued, are needed to both systems.
3. Details were in *Proposals for a Tax-Credit System*, London: HMSO, Cm 5116 (January 1972). A commentary on the proposals was provided by Peter Sloman in 'The Pragmatist's Solution to Poverty' (Sloman, 2015).
4. When the 10p starting rate was introduced most people under 65 paid nothing on their first £5,225 (thereby taking the lowest paid in the bottom 20% of the earnings distribution out of tax); 10% was paid on the next £2,230; and 22% on the next £32,370. After abolition the position of those with income under £5,435 remained unchanged, but 20% was payable on income in the next £36,000. This meant that people with incomes between £5,435 and £19,355 were worse off. They lost more from the abolition of the starting rate than they got from the cut to basic rate, and according to IFS figures the loss was at its worst (£232) for anyone earning £7,755. The main gainers were those earning between £19,355 and £40,000 would gain noticeably from the reform, with the biggest gain of £337 a year at £36,140. On the face of it the government was 'robbing the poor to pay the rich(er)'. However, as the IFS analysis pointed out, other changes were made – for example by raising tax allowances for a number of groups, including the over-65s, injecting £1 billion into the tax credits system, and directing help at those on Working Tax Credit by raising the income threshold at which tax credits begins to be withdrawn (something which the current Chancellor, Philip Hammond did in Budget 2018 when he committed £1.5 billion into the UC work allowances scheme in the face of a powerful barrage of criticism of the way in-work UC is being mismanaged). The verdict of the IFS on Gordon Brown's actions in 2008? Taking the changes overall, and especially the re-working of tax credits support, 'the poorest third of the population actually emerge as the biggest winners...'
5. Working Tax Credit Act 2002. Working Tax Credit still extends to a sizeable part of the working population as a 'legacy' benefit except in those areas where Universal Credit as an in-work benefit has replaced it and will eventually replace it completely.
6. Payments used to be assessed and paid by employers through the payroll in accordance with Inland Revenue guidance, with payments being made with wages (and showing on pay slips) with the aim of making the payment look like part of the wages, and with the intention of

reinforcing the message that ‘work pays’. The intention behind this was to mirror contractual wages, and to minimise any stigma associated with in-work benefits support, and to emphasise the advantages of a wage over ‘welfare’ (Treasury, March 2000, para. 2.8). Later, payments were made by HMRC directly to recipients under the Tax Credits Act 2002. WTC and Child Tax Credit paid with it are now ‘legacy’ benefits being progressively replaced by Universal Credit (paid directly by the DWP under the Welfare Reform Act 2012, Part 1).

7. HC Deb, Vol 629, 15 October 2017, cols 860 et seq. The Trussell Trust reported a rise in take-up of food bank help by UC recipients; *Early Warnings: Universal Credit and Foodbanks*, Trussell Trust April 2017.
8. BBC Panorama 17th November 2018: <https://www.bbc.co.uk/programmes/b0bs39ky> last accessed 3rd January 2019.
9. House of Commons Select Committee on Work and Pensions Inquiry: Report of the In-Work Progression in Universal Credit Inquiry, HC 549, 11 March 2016.
10. Department of Employment Affairs and Social Protection Guidance ‘Working Family Payment (WFP) – SW22’, November 2018: <https://www.welfare.ie/en/Pages/Working-Family-Payment-SW-22.aspx> last accessed 10th December 2018.
11. A restriction made by the Welfare Reform and Work Act 2016, s.13. Given that the impact assessment said that the change will affect over half a million families, and save the Treasury a lot of money, it is more likely that the measure was really an austerity one.

Chapter 5 – Raising the Floor?

1. These include the role of work for individuals and society, the need to end women’s pervasive global inequality in the world of work, and the importance of managing inequalities in sectors like the platform economy and cushioning the impacts of life transformations (and typically as a result of family life changes, and new technology impacts).
2. Among other things, the survey concluded that some countries are reluctant to introduce minimum wage systems because they already have suitable alternative ways of regulating pay, for example collective bargaining and agreements providing adequate protection at sectoral level. They may not see the value of such wage-setting: in fact this has been a reason for some countries not ratifying Convention 131.
3. The DGB made it clear at the time, however, for example when commenting on an OECD analysis of minimum wage-setting in 2015 (‘Minimum Wages Help the Low-Paid with Little Adverse Effect on Employment Levels’) that a national minimum wage should not be regarded as a ‘panacea’ for curbing imbalances in the labour market; and it called for wider measures including tailored support for the unemployed and low-paid, the containment of temporary work and service contracts, and protective measures in collective agreements (Stefan Körzell, DGB board member, *DGB European Employment Outlook*, July 2015).

4. The Statute of Labourers 1351 followed the Ordinance, and among other things it attempted to stop wages being paid at pre-plague rates and expected everyone under the age of 60 to take up employment.
5. This was weighted in favour of the bottom of health service pay scales; see the details of the settlement in the *NHS Agenda for Change Pay Scales 2018–19*.
6. Living wage clauses and other the social objectives have featured in the public procurement legal framework but have been subject to restrictions in their scope (Koukiadaki, 2014).
7. The NMW scheme operates within the legal framework provided by the National Minimum Wage Act 1998 and National Minimum Wage Regulations 1999, SI 1999/584.
8. See the submissions to the Low Pay Commission, Annex A, HM Treasury, 2002 (Simpson, 2004: 24). The floor ensures that at least part of the burden of low pay is allocated to employers (Davies and Freedland, 2007: 189). As previously suggested, tax credits have the advantage of delivering support that is more targeted on a recipient's particular needs and family circumstances.
9. S.1(3) of the 1998 Act enables the Secretary of State to prescribe a single hourly rate. The National Minimum Wage Regulations 2015, SI 2015/621 consolidated the original 1999 regulations and set out how the NLW is to work. In particular, reg 4 prescribed the NLW single hourly rate. Reg. 4A sets lower rates for those who are 21 or over but not yet 25 (£7.38), and even lower rates for those who are younger or on the apprenticeship rate (£3.75).
10. National Minimum Wage': www.USDAW.org.uk/Campaigns/National-Minimum-Wage last accessed 3rd December 2018. Usdaw believes that the NLW should start to be paid at 18 not 25. 'We do not believe a lower rate for workers under 25 is justified, when they are doing the same job'. It also supports adoption of the Real Living Wage rather than the NLW, pointing out that the RLW is worth £10.20 an hour in London and £8.75 in the rest of the country, and is 'independently calculated, and is based on the amount needed for a decent standard of living'.
11. Care workers who are required under their contracts to sleep at or near their workplace may only be 'available for work' rather than actually working for NMW purposes as a result of the complex ways in which 'time work' and 'salaried hours work' are dealt with under the original 1999 and later 2015 regulations. Workers expected just to be 'available' do not necessarily qualify to be paid the NMW for the whole of a sleep-in shift: only for the periods they should be awake for work purposes; *Royal Mencap Society v Tomlinson-Blake* [2018] IRLR 932, Court of Appeal.
12. As in *Twenty-Four Seven Recruitment Services v Alfonso* [2018] 10 WLUK 269. In that case agency workers' terms and conditions simply said that they would be paid a rate that was 'equivalent to the NMW'. The Employment Appeal tribunal accepted that this was compliant with the Agency Workers Regulations 2010, even though it gave them little in terms of detail. However, as is common practice now, it said that simply telling the staff that they could be expected to work 'any 5 days out of 7' or 'any 5 out of 7 days/nights as required' was not

enough as it did not give them a figure for the expected hours of work during any assignment as required by reg. 10(1)(a)(iii).

13. 2018 No.433 (W.76).

14. 2018 No.65 (20th March 2018).

15. Under the Scottish order, for example, the basic minimum rate aligns with the NLW, ie £7.83 for all workers, as the base-line. However, in addition to higher rates further up the scale there is a secure minimum overtime rate which is £11.75. Criteria and information on payment requirements is in the Scottish Agricultural Wages Order Guidance:

<https://www.gov.scot/publications/scottish-agricultural-wages-order-guidance/pages/3/> last accessed 4th February 2019.

Chapter 6 – Universal Credit

1. Unite has called for the system to be stopped; ‘Stop Universal Credit’: <https://unitetheunion.org/campaigns/stop-universal-credit/> last accessed 12th December 2018. It has organised successful national days of action to build support for the campaign. Liane Groves, Unite’s Head of Community has described UC as creating a ‘hostile environment for claimants’ and as unfit for purpose’. Other unions like the NUJ have attacked the impact of UC on groups like disabled members. The Chair of the National Union of Journalists Disabled Members Council, Ann Galpin, said that it had been clear that UC’s roll-out had been ‘shambolic’: she added that ‘Combined with cuts to Access to Work, difficulties accessing Personal Independence Payments, and the reduction of severe/enhanced disability premiums, UC is making it harder than ever for disabled people to stay in work’; NUJ Statement on the National Audit Office’s Critical Report on Universal Credit (15
2. The introduction of Universal Credit is causing unacceptable hardship and difficulties for many of the claimants it was designed to help. However, while the Department is responsive to feedback on its digital systems from staff, it has persistently dismissed evidence that Universal Credit is causing hardship for claimants and additional burdens for local organisations and refuses to measure what it does not want to see. In 2013 this Committee raised concerns about the Department’s culture of reporting good news and denying problems that emerge. In further reports in 2015 and 2016 the Committee warned about the Department’s continued lack of transparency. It is hugely regrettable that the Department has not heeded these warnings. Instead of listening to organisations on the frontline supporting claimants, the Department has continued with its fortress mentality and as a result is failing claimants who struggle to adapt to the way Universal Credit works’ (Committee Summary).
3. He also made the connection between the failures in government’s welfare policies and the rise in child poverty, referring to the fact that two-thirds of children in poverty have a parent in work, but the parents were earning too little to lift them out of poverty. He added that the safety-net was no longer the Welfare State but food banks and charities.

4. Unite and other unions, with the help of the TUC, organised a highly successful day of action against UC on 24th May 2018. Liane Groves, Head of Unite Community, when calling for UC to be stopped commented that “Despite knowing that Universal Credit causes serious problems for those claiming it the government is ploughing ahead regardless while claimants are descending further into debt, relying on food banks and getting into rent arrears and in many cases are being evicted from their homes.
5. Among the findings in the Welfare Conditionality Project 2013-2018: Final Findings Report it was concluded that Welfare conditionality within the social security system is largely ineffective in facilitating people’s entry into or progression within the paid labour market over time. Benefit sanctions do little to enhance people’s motivation to prepare for, seek, or enter paid work. Within conditional welfare interventions the provision of appropriate and meaningful support, rather than sanction, is pivotal in triggering and sustaining both paid employment and positive change (WelCond Project, 2018).
6. The Trussell Trust has been tracking take-up of food bank support and reporting rises in take-up of food bank help by UC recipients.
7. ‘Para. 1 Core Objectives: (a) ‘A key aspect of the Universal Credit is that it should mimic work and receipt of a salary. In order to help households understand what money they receive and how choices over work affect it, the Universal Credit will be simpler ... Universal Credit will be paid monthly, reflecting the fact that 75% of people are paid earnings monthly in arrears’. (BACS Family Finance Survey 2011).
8. The restriction was made by the Welfare Reform and Work Act 2016 and the Loans for Mortgage Interest Regulations 2017, SI 2017/725. It affected an estimated 124,000 claimants who received Support for Mortgage Interest (SMI) 45% being of whom were of Pension Credit age. The average weekly amount of SMI for pensioners was about £20, while for those of working age it was about £40 (equating to mortgage amounts of about £40,000 for pensioners and £80,000 for those of working age) (Morgan, 2018).
9. Workers on very low earnings may get maximum Housing Benefit with benefits like income-based JSA. Otherwise, they will get HB with their WTC – or housing costs will be paid with their UC. A rise in earnings will generally mean less support for rental costs given the way ‘earnings’, including arrears of wages, are dealt with under the Housing Benefit Regulations 2006, SI 2006/213. Settlements of equal pay claims, with payments made in lump sums, are generally treated as arrears of income. This triggers a ‘recoverable overpayment’; *Minter v Kingston-upon-Hull City Council* [2012] HLR 3, CA.
10. On the amounts HB can deliver by way of eligible costs, rent, and ‘maximum rent’, see the Housing Benefit Regulations 2006, SI 2006/213, particularly Part 8 (regs. 11-18A). Besides schemes like the bedroom tax, other restrictions have been tried and failed in the past - for example when a ‘single room’ limit was imposed on the under-25s as a group.
11. *R (DA and Others) v Secretary of State for Work and Pensions* (UKSC/0061) on appeal from the Court of Appeal [2017] HLR 35; [2018] EWCA Civ 504. For a fuller summary, see chapter 2, note 9.

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