‘What about the poor people’s rights?’ The deconstruction of social citizenship through access to justice and welfare reform policy

*Recent, extensive reforms to the welfare system and concurrent reduction in the provision of free legal advice have had a major impact on the meaning of social citizenship. This article examines this changed meaning, drawing mainly on the findings of an [removed for peer review] study of the impact of the Legal Aid, Sentencing and Punishment of Offenders Act (2012).*

*The study provides evidence of the strong interrelationship between civil and social rights, and of how the changes to legal advice provision have profoundly affected the ability of citizens to establish or enforce welfare rights. The effect is a perception that the state is failing to uphold its end of a reciprocal bargain with its citizens. We argue that limited reciprocity and inclusion, along with distrust in the system, have profound implications for social and civil rights, undermine the state’s political legitimacy, and have caused the deconstruction of social citizenship.*

INTRODUCTION

After the 2008 financial crisis, the UK entered a new period of austerity politics that reinvigorated neoliberal policies[[1]](#footnote-1) and emboldened claims for the residualisation of civil and social rights.[[2]](#footnote-2) The Coalition Government’s access to justice policy, particularly the cuts to legal aid and other sources of free legal advice, and extensive welfare reforms were an integral part of this agenda.[[3]](#footnote-3) The profound, negative impact of these policies on civil and social rights, and on the nature of citizenship is analysed in this article. These policies have generated distrust in the welfare system and a perception of unfairness, which undermine the state’s political legitimacy.[[4]](#footnote-4) They represent a fundamental break from social citizenship, which Marshall defined as the 20th century addition of social rights, such as welfare benefits, to the pre-existing political and civil rights. Social citizenship ensures at least ‘a modicum of economic welfare and security’, and can extend to enabling full participation in society.[[5]](#footnote-5) The access to justice and welfare benefits policy decisions reflect a governmental vision that no longer guarantees social citizenship for many citizens.

Against the seismic shifts in access to justice and welfare policy, we undertook a large-scale qualitative study in 2018 on behalf of the [Anonymous - removed for peer review].[[6]](#footnote-6) The study assessed the impact of cuts to civil legal aid in employment, family and welfare rights law that followed the controversial Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), on routes to justice,[[7]](#footnote-7) and on individuals’ lives in England and Wales.[[8]](#footnote-8) The study findings give a stark picture of the multi-layered impact of the almost complete removal of legal aid from these three areas of law, at a time of extensive welfare reform and limited availability of alternative sources of free legal advice.

This article uses the study findings related to welfare rights law to explore the continuing decline of social citizenship. Taking cuts to free legal advice as our starting point we examine the combined impact, at the intersection of civil and social rights, of reduced access to legal advice and of welfare reforms.[[9]](#footnote-9) In welfare rights law, citizens now have a severely restricted ability to understand, action and enforce their rights in a complex,[[10]](#footnote-10) increasingly punitive,[[11]](#footnote-11) and poorly administered welfare benefits system. The reduction in access to free legal advice and problems with the welfare rights system have had interrelated impacts on people, as manifest in the financial, physical and mental health, emotional, and social impacts of participants in the study.

The analysis of civil rights in the context of social citizenship is an underexplored area of study: ‘Within normative theory there seems to be a consensus that the duty of a democratic political system is to ensure all three forms of citizenship to its population. As civil rights now are mostly taken for granted, the normative discussion focuses almost exclusively on political and social rights.’[[12]](#footnote-12) Our evidence shows that we should not take the civil right of access to justice for granted and that its extreme residualisation has a highly detrimental effect on social rights,[[13]](#footnote-13) and therefore social citizenship. The ‘web of interdependence’[[14]](#footnote-14) between the elements of citizenship establishes their ‘mutual or interactive fragility’.[[15]](#footnote-15) The interconnectedness between civil and social rights mean this is currently a negatively reinforcing relationship, and difficulties in enjoying the rights in one aspect of citizenship reinforce problems with the other. This goes to the heart of the relationship between the citizen and the state, raising fundamental questions about the value of social citizenship and political legitimacy today. Can citizens trust the social contract that is in place and still enjoy social rights[[16]](#footnote-16) without the support of free legal advice to understand their rights or to challenge state decisions?[[17]](#footnote-17) The evidence is that for many citizens the answer is no, and that the impact on their lives is dramatic.

We place the findings from the study in a theoretical frame drawn from Taylor-Gooby that uses three key values of social citizenship: reciprocity, inclusion and trust.[[18]](#footnote-18) We argue, first, that the limited availability of legal advice reduces the extent to which reciprocity and inclusion are an expected or intended outcome of access to justice and welfare policy. In turn, this undermines trust in the welfare system, on which social citizenship and political legitimacy rely. As a result, the cuts to funding for free legal advice appear to be a deliberate, ideological reinforcement of the negative impacts of welfare reform and poor administration of welfare benefits. Access to justice and welfare rights policies have undermined all three values of social citizenship to such an extent that rather than *reframing* social citizenship as described by Taylor-Gooby, we are witnessing a *deconstruction* of social citizenship, at least as it relates to the welfare rights at its core.

The article proceeds as follows: first, we introduce the empirical study, followed by the theoretical and historical background of social citizenship. We then use the study findings to analyse reciprocity and inclusion, and the breakdown in trust, highlighting the limited degree to which recent policy reflects these values. The concluding comments focus on policy decisions at the intersection between access to justice and welfare rights.

STUDY BACKGROUND AND METHODOLOGY

We were commissioned by the [removed for peer review] to study the impact of legal aid cuts on routes to justice and on individuals’ lives in England and Wales in the areas of family, employment and welfare rights law.[[19]](#footnote-19) LASPO made sweeping changes to the legal aid regime: to costs and fees, eligibility and legal scope.[[20]](#footnote-20) Whole areas of civil law were taken ‘out of scope’, including most welfare rights law. Our study considered ‘bottom-up citizenship’,[[21]](#footnote-21) the lived realities of citizens themselves,[[22]](#footnote-22) and the personal impact of cuts to legal aid, as they tried to resolve legal issues.

From January – March 2018, a research team from the [removed for peer review] conducted 115 semi-structured, face-to-face interviews. We recruited participants that had had family, employment or welfare rights legal issues, no longer in scope of legal aid, in the previous two years. We also interviewed 16 solicitors or caseworkers working in these areas of law. Participant recruitment took place in civil society organisations (CSOs), such as Citizens Advice offices, law centres and foodbanks, as well as law firms with relevant legal aid contracts. These locations were chosen as likely places for people with family, employment or welfare rights legal issues to seek advice.[[23]](#footnote-23) This recruitment strategy may have reduced the likelihood of identifying people who had not taken action to solve their problem, a particularly difficult population to reach. As interviews covered legal problems experienced in the preceding two years, we still were able to identify some participants who had not taken action on a legal problem within the scope of the study.

Even before LASPO, legal aid was restricted via a means test, so we pre-screened for participants who would have met this eligibility requirement. Participants were asked to complete an information sheet about their protected characteristics,[[24]](#footnote-24) such as whether or not they were disabled or had a long-term health condition,[[25]](#footnote-25) sex, race, etc., after their interview. The attribution of these protected characteristics is thus based upon participant self-identification. Participants were not required to complete the information sheet, and some participants chose not to do so. Interviewers asked participants what they had done to try to resolve eligible issues,[[26]](#footnote-26) the degree of success and satisfaction with the outcome, the impact on their lives, and what would have helped to resolve the issue. Interview data was analysed collaboratively using a thematic analysis to develop common themes.[[27]](#footnote-27) Further analysis using a reflexive thematic approach has constructed and refined themes for this article.[[28]](#footnote-28)

This article uses evidence from interviews with the 94 participants who had welfare rights legal problems. Although the boundary between issues was sometimes unclear, these participants reported having 206 different welfare rights problems in the past two years, with 80% (75/94) participants having more than one. Of the participants with welfare rights legal problems, 52 (55%) identified as disabled.[[29]](#footnote-29) Some participants were not themselves disabled but were seeking advice as carers for disabled people, on their behalf. We have included evidence from interviews with both disabled and not disabled participants in this analysis, apart from where specified. We have also included data from the nine welfare rights caseworkers or legal professionals who participated in the study.

Participants’ welfare rights issues often related to Personal Independence Payment (PIP) and Employment and Support Allowance (ESA), as well as housing benefit, discretionary welfare payments and Job Seeker’s Allowance (JSA). Our analysis focussed on justiciable problems and access to advice in specific areas of law, but, as was the case for Fitzpatrick, et al., it was difficult to disentangle the impact of removing legal advice in particular areas of law; rather people presented a bundle of interconnected unresolved issues.[[30]](#footnote-30) Although the LASPO cuts to legal aid were the starting point for the study, evidence from participant interviews has enabled analysis of the wider context of free legal advice today, beyond legal aid, and of the impact of welfare reforms.

CIVIL RIGHTS AND SOCIAL CITIZENSHIP

In Marshall’s classic conception, citizenship includes civil, political and social rights.[[31]](#footnote-31) The accuracy of Marshall’s ideal-type characterisation of citizenship has been doubted,[[32]](#footnote-32) but it is an important launching point for discussions of social citizenship. Empirical criticisms of Marshall’s characterisation can miss the normative elements of his argument in support of an inclusive view of citizenship.[[33]](#footnote-33) In this section, we outline the theoretical and historical background of civil and social rights. The subsequent sections then use our evidence to examine social citizenship through the lens of the values of reciprocity, inclusion and trust.

*1 Access to justice*

The civil right of access to justice aims to provide all citizens with equal means to enjoy the rights to which the law entitles them, sometimes through holding state decision-making to account.[[34]](#footnote-34) Marshall stated that access to justice ‘is of a different order from the other [civil rights] because it is the right to defend and assert all one’s rights in terms of equality with others and by due process of law.’[[35]](#footnote-35) This striving for equal access to rights, which is the normative core of access to justice, has developed alongside social citizenship and many have closely aligned it with social rights.[[36]](#footnote-36) The analysis in this article highlights the close relationship between social rights and access to justice in relation to welfare rights. Justice, as this article approaches it, though, is about fair enjoyment of citizenship rights rather than effective equality before the law, which is an ideal that neither legal aid nor any other policy has achieved fully.[[37]](#footnote-37) Access to legal advice is central to this fair enjoyment of rights and access to justice.

In the post-war period, a particular set of institutional circumstances evolved that were characterised both by expanded social rights via the institutions of the welfare state and expanded civil rights. The expansion of legal aid as a mechanism to provide free legal advice ‘underwrites the social contract in liberal democracies and helps sustain order’,[[38]](#footnote-38) by enabling a route to justice for those that otherwise could not afford legal advice. Legal aid was thus ‘fundamental to the development of an inclusionary form of citizenship … and social democracy.’[[39]](#footnote-39) However, as the scope and availability of legal aid has been restricted in recent years, especially post-LASPO, other sources of free legal advice, such as law centres, Citizens Advice and other not-for-profit advice agencies, have increased in relative importance for access to justice, and as a means to sustain the social contract.[[40]](#footnote-40) The remaining access to free legal advice in civil law, particularly for welfare rights law, is now likely to be through CSOs, rather than private law firms, and to be unsupported by legal aid. This is in fact closer to Marshall’s original conception of free legal advice delivered through salaried professionals or volunteers in advice centres, rather than through the private law market.[[41]](#footnote-41)

*2 Social Rights*

Marshall did not take a prescriptive view as to what should constitute social rights, describing, ‘…the whole range from the right to a modicum of economic welfare and security, to the right to share to the full in the social heritage and to live the civilized life according to the standards prevailing in society.’[[42]](#footnote-42) Marshall viewed the rights-based framing for social assistance as a key advance over earlier charitable provision.[[43]](#footnote-43) It is clear why Marshall viewed the transition to rights over charity as crucial, though criticisms of rights discourse point toward its individualising effect.[[44]](#footnote-44) The logic of legal aid, the principal mechanism by which the state has traditionally enabled claimants to pursue their own rights claims, also has an individualising effect. Legal aid therefore has been both a product of the post-war institutional structure and productive of it.

The post-war period was characterised by increased civil and social rights, and an expanded form of social citizenship developed, although it is arguable to what extent Marshall’s vision was realised. This development of social citizenship was then increasingly criticised from the 1970s onwards.[[45]](#footnote-45) In recent decades, the conception of a community-focussed, inclusive form of social citizenship has shifted towards a more individualised and privatised form of citizenship based on neo-liberal thinking, more akin to earlier Anglo-American liberal conceptions of citizenship.[[46]](#footnote-46) This has led to a focus on the active citizen and work, and the framing of welfare rights and support for access to justice in terms of those that are deserving of these social and civil rights.

The welfare institutions are now an integral part of modern society and social citizenship, but, as Habermas stated, ‘the institutions of constitutional freedom are only worth as much as a population makes of them.’[[47]](#footnote-47) Inclusive administrative institutions that operate effectively are important to ensure the operability of citizens’ rights. Welfare rights function in part as a safety net for citizens’ membership of the community. Access to justice is intimately intertwined with social rights, and unequal access to legal services results in unequal enjoyment of citizenship rights between and within groups of citizens.

*3 Welfare reform and free legal advice post 2008*

Successive governments have carried out an extensive and controversial reform of the welfare benefits system. They have, for example, reset disability benefits, introduced Universal Credit, set a benefit cap, increased the severity of the sanctions regime, and much more. The Work and Pensions Secretary at the time, Iain Duncan Smith, said that the Welfare Reform Act 2012 alone ‘reforms virtually every part of our welfare system.’[[48]](#footnote-48) Political attitudes during this reform have increasingly emphasised the need for individual justification of welfare spending – a politics of welfare conditionality rather than universality.[[49]](#footnote-49) As a result, welfare rights policy continues to emphasise constraining cost,[[50]](#footnote-50) and deservingness.[[51]](#footnote-51) These welfare reforms, coupled with poor administration by the Department of Work and Pensions (DWP), have caused high levels of demand for welfare rights advice.

During this same period, there have been fundamental changes to access to legal advice, most notably, but not only, sweeping changes introduced by LASPO.[[52]](#footnote-52) Questions of cost and deservingness of recipients have also dominated the discursive framing[[53]](#footnote-53) for these changes. LASPO promised, for example, that legal aid would be ‘targeted at those that need it most’ to avoid ‘unnecessary litigation’.[[54]](#footnote-54) Wider political discourse has focussed on the ‘fat cat’ lawyers exploiting legal aid,[[55]](#footnote-55) and a negative narrative focused on desert has highlighted instances where individuals received legal aid for unpopular causes.[[56]](#footnote-56)

The cuts to legal aid, particularly its almost complete withdrawal for welfare rights, have hit CSOs hard.[[57]](#footnote-57) At the time of LASPO, they delivered a significant proportion of welfare rights legal aid contracts. The removal of legal aid funding severely reduced the availability of specialist caseworkers,[[58]](#footnote-58) and, at the same time, reductions in central and local authority level funding since 2008 have led to further significant cuts to CSOs’ core funding. This removed the expertise and the funding needed to support the increasingly volunteer-led delivery of welfare rights advice post-LASPO.[[59]](#footnote-59) Furthermore, these cuts to local government budgets are concentrated in areas of greater deprivation,[[60]](#footnote-60) which has compounded the impact of these national policies, unevenly across the country in areas of greatest need of free legal advice and welfare benefits.[[61]](#footnote-61) This means that today there is little or no free welfare rights advice.[[62]](#footnote-62)

The article next analyses what these policies mean for key social citizenship values and on people’s lives. The first section is focused on the values of reciprocity and inclusion, the second on trust.

RECIPROCITY, INCLUSION AND TRUST

Taylor-Gooby identifies three key values in the reframing of social citizenship: reciprocity, inclusion and trust.[[63]](#footnote-63) ‘Reciprocity binds together the major elements in society, redistributing between the more comfortable and needier periods of a typical life cycle.’[[64]](#footnote-64) Inclusion relates to the redistribution between demographic groups, between disadvantaged minorities. The third value, trust,[[65]](#footnote-65) is of a different character to reciprocity and inclusion as it is vital to the legitimacy of the system as a whole, rather than specifically related to redistributive outcomes.

We use the findings from the study that relate to welfare rights law to support analysis of these three values. We discuss the welfare system to highlight the complexity of welfare benefits, poor administrative decision-making, and its increasingly punitive nature. These issues make legal advice essential for citizens to understand and enforce their social rights. Without it, there are unjust denials of this critical support, leading to exclusion from society and severe hardship. This calls into question the extent to which reciprocity and inclusion can be goals of government policy in these areas, undermines trust in the citizen-state relationship, and delegitimises social citizenship.

*1 Reciprocity or Inclusion, or neither?*

Reciprocity and inclusion ask whether social citizenship still promises redistribution between different phases of people’s life cycle, and between more and less marginalised groups, to facilitate the operability of social insurance and the provision of social rights.[[66]](#footnote-66) Patrick describes social citizenship as ‘fundamentally about inclusion and exclusion, about who is and who is not included in the citizenry and on what basis.’[[67]](#footnote-67) The current targeting of limited legal advice and welfare policy mean the exclusion of specific groups of people from the citizenry as undeserving, and limit the extent to which reciprocity and inclusion are reflected as values in citizenship today. The evidence in the following sections shows that even when ‘good’ citizens demonstrate their desert by participating appropriately, they often do not enjoy the minimum level of social rights set by Government. Welfare reforms have reduced the economic value of welfare benefits so that even when benefit issues are resolved and redistribution occurs to the extent promised, socio-economic hardship persists.[[68]](#footnote-68) We recognise the importance of increasing the level of welfare benefits to address poverty and destitution. However, our focus here is instead on the legal advice that is critical to supporting people to receive their appropriate award of welfare benefits at all. Without concomitant changes to the administration of the system, this legal advice is needed to ensure that rights are fairly enjoyed, even if the economic value of welfare benefits were improved. The cuts to free legal advice have weakened the administrative justice system,[[69]](#footnote-69) and limited the ability of people to overcome the barriers to entry and poor administration of the system, or to challenge incorrect decisions. This means that the promise of redistribution, already limited by cuts to welfare benefits, is even less likely to be fulfilled, and the risk and impact of exclusion greater.

1. Benefit applications

Demand for legal advice is increased by the considerable complexity in the application process for welfare benefits and the continual reform of the system.[[70]](#footnote-70) For example, making all recipients of Disability Living Allowance apply for its successor, PIP, rather than being automatically migrated, resulted in huge demand for welfare rights advice. Viewed in isolation, the PIP application form (PIP2) may not seem particularly difficult. Applicants are asked to describe their experience with twelve everyday activities or ‘descriptors’. However, it is an important example of how benefits complexity drives demand for legal advice and undermines reciprocity and inclusion. Participants in our study often spoke about how the application processes can act as a barrier to accessing welfare benefits:

*I got [the PIP application] through the post and I looked at it … and there was just no way. The only thing I could probably fill in was my name and address. (Interview 95)*

One driver of legal advice demand is the perception that there is, in effect, some form of ‘magic words’ that needs to be included to succeed with a benefits application. This participant spoke about this sense of needing the ‘right’ words:

*When you get the forms, you try and put your name and you think 'ahhhh, I don't know what to do, I don't know how to go about it, I don't know what to put down'. Coz like I said, if you put the wrong word down, or you misunderstand the question, what they're asking you and you write the wrong thing, you're snookered. (Interview 49)*

Participants’ concern is justified. The DWP decision maker looks for information about the daily activities that the form does not request directly. For example, to answer the tick-box question ‘How far can you walk taking into account any aids you use?’,[[71]](#footnote-71) applicants must know that legally this means ‘How far can you walk, taking into account any aids you use, safely, to an acceptable standard, as repeatedly as is reasonably required and within a reasonable time period.’[[72]](#footnote-72) What is more, applicants would need to be aware of decisions interpreting these reliability criteria, for example those relating to the effects of pain and breathlessness,[[73]](#footnote-73) or how likely the risk of harm needs to be.[[74]](#footnote-74) This juridification[[75]](#footnote-75) of the benefits system drives demand for advice and undermines what confidence people might have had in undertaking the application themselves. Without legal advice, people then make delayed or ineffective benefit applications and fail to enjoy the welfare rights to which they are entitled.

1. *Medical assessments*

The next hurdle in the PIP and ESA application process is the medical assessment. As medical assessments are only required for disability benefits, the evidence of the impact is drawn from disabled participants in this sub-section. The EHRC warned in 2015 that the withdrawal of legal aid from most welfare benefits cases would disproportionately affect disabled people or those in poor health. Disabled people account for almost 60% of people who qualified for legal aid in welfare benefits cases before LASPO,[[76]](#footnote-76) and a majority of UK working age benefit claimants.[[77]](#footnote-77) Furthermore, there is a heightened importance of ensuring that benefit decisions for disabled people are correct. On average, disabled people tend to be out of work for longer, and to have higher levels of financial insecurity.[[78]](#footnote-78) Financial support from welfare benefits plays a crucial role for disabled people who are unemployed or on low incomes,[[79]](#footnote-79) and reports have indicated the extensive impact of welfare reforms.[[80]](#footnote-80) This highlights the importance of an effective redistributive welfare system for disabled people. The Government acknowledged this disproportionate impact on disabled people, but maintained that this could be overcome by the accessibility of the tribunal. [[81]](#footnote-81)

The problems with medical assessments for benefits for disabled people are perhaps the most egregious examples participants raised of administrative failings that act as a barrier to inclusion through the welfare system. Magnussen and Nilssen identified the need for effective administrative institutions whose decision-making does not reflect excessively wide discretion, particularly given the degree of juridification of welfare systems.[[82]](#footnote-82) As Meers notes, where there is a high level of discretion social rights become uncertain and weaker.[[83]](#footnote-83) Participants reported inappropriate levels of discretion with medical assessments. They commonly perceived the denial of benefits as arbitrary and medical assessments as incorrect. Reports from the medical assessment bore little relationship to their lived reality:

*It’s as if she’s written about somebody else almost because she’s said things in the report that just simply aren’t true. (Interview 36)*

Participants reported that the medical professionals conducting the examinations asked questions not relevant to their claim, for example spending most of an appointment on questions related to mental health for a claim over a physical disability. Participants expressed frustration and a sense of unfairness or injustice, perceiving that the medical assessment ignored medical reports or other evidence:

*But when you read the report it’s all based on their opinions – that’s all it is, it’s just their opinion. It’s got nothing to do with my medical records, nothing to do with the specialists I’ve seen, nothing at all. (Interview 102)*

The evidence from our participants and elsewhere in relation to medical assessments indicates a stressful administrative process that is inaccurately assessing the validity of a claim, and where decision makers are in a ‘search for reasons to reject [a claim], and if none can be found, they make them up’.[[84]](#footnote-84) This increases the demand for free legal advice and compounds the disproportionate, negative effect of wider welfare reform on the inclusion of disabled people. Applicants that fail to establish the validity of their claim then have to navigate the complex administrative review or appeal process.

1. Benefit Appeals and Tribunal

Complexity and change in the appeals process has contributed to reduced numbers of claimants taking their cases to the tribunal appeal stage, especially the introduction of the administrative review step of mandatory reconsideration (MR) in 2013. A claimant whose initial benefit application is unsuccessful must submit a request to revise that first decision. Participants also reported problems with the MR process:

*‘Cos I have psychosis and that’s a fluctuating condition they say that most of the time I’m well enough to work. […] now I’ve done a Mandatory Reconsideration and they’ve again said that, despite getting extra evidence from my doctor, they said the evidence my doctor provided does not qualify me to be under Employment Support Allowance. (Interview 103)*

Until the decision maker has refused a revision there is no right to appeal. Thomas and Tomlinson call this a ‘form of capture’ of the justice system by the government: ‘Overall, the expansion of administrative review underlines the huge amount of power inherent in the positions occupied by government as designer, operator, participant, and controller of administrative justice processes.’[[85]](#footnote-85) MR has functioned as an impediment to benefit appeals. Between 2013 when MR was introduced and 2017, only 17% of ESA and PIP MR requests succeeded, but the rate of successful appeals increased from 40% pre-MR to 65% after MR.[[86]](#footnote-86) Two factors suggested as contributing to the higher success rates on appeal compared with MR are access to advice and the possibility of providing additional evidence and information to the Tribunal.[[87]](#footnote-87)

The 2011 LASPO equality impact assessment asserted that the impact of LASPO would be manageable because the tribunal was ‘relatively accessible and user-friendly’ and that resources such as the Job Centre would be available, even if CSOs were unable to meet the demand for advice services without legal aid.[[88]](#footnote-88) Participants, however, overwhelmingly had negative experiences with the Job Centre and the Council One Stop Shop, and government has done little else to mitigate the impact on people claiming welfare benefits. Furthermore, the first tier tribunal may be relatively accessible and user-friendly compared to a court,but participants reported that it is still a complex and intimidating prospect, particularly when unwell.Without specialist advice, for example, people find that securing appropriate medical evidence to support an appeal, especially where this must be paid for, and dealing with the Tribunal’s evidential requirements, can be ‘extremely stressful and time consuming, and can mean that people require additional support – or even time off work to collate this’.[[89]](#footnote-89)

It is difficult to challenge official decisions, especially as administrative review puts a potential appellant in a position of already having had their claim rejected twice.[[90]](#footnote-90)A small number of participants did refer to a successful outcome at tribunal when they represented themselves, but even then, some felt that it was a slow, stressful process to navigate:

*We got everything back [via the tribunal but] we wasted 18 months and we got the money back dated ... But I went to him I could never go through this again. Oh, the stress. (Interview 101 101A)*

The study highlighted the shortcomings of a narrow policy focus on litigation, which ignores the fact that almost all welfare rights related legal advice has always happened before tribunal. Even before LASPO grants for civil representation, which can support preparation of an appeal to the second tier tribunal, were uncommon. Only 16 were granted in 2012-13.[[91]](#footnote-91)The vast majority of legal aid matter starts for welfare benefits before LASPO were for legal help, which is the lower tier of civil legal aid: 88,362 legal help matter starts for 2012-13 and 110,723 for 2011-12, falling to 137 in 2013-14.[[92]](#footnote-92) Although legal aid never funded first tier tribunal representation, legal aid contracts underwrote support for tribunal preparation provided by caseworkers on an unfunded basis. Since LASPO, the number of appeals brought in the First Tier Tribunal for Social Security and Child Support has reduced dramatically from 507,131 pre-LASPO, in 2012/13 to 160,423 in 2019/20.[[93]](#footnote-93) Given the reduction in support through free legal advice, this large reduction in cases reaching tribunal is likely to indicate large numbers of claimants giving up attempts to resolve welfare rights issues.[[94]](#footnote-94)

1. *The Impact of No Legal Advice*

Participants were seeking legal advice about their entitlement to welfare benefits and specialist casework support for appeals, both of which were highly valued and scarce,[[95]](#footnote-95) to redress the systemic problems discussed above. They reported facing overcrowded advice agencies, long waiting times and excessive travel requirements, with limited financial resources making even a bus fare a barring expense. As a result, to help them advance their case, participants reported serial engagement with one-off welfare rights advice, paired with ‘DIY’ efforts. This frequently resulted in delays and/or a lack of success at resolving their problems, worsening the already severe impact of the welfare rights problem on participants’ lives, and even leading people to surrender their social rights.

Despite being interviewed at a point where they were seeking advice, participants in our study still discussed how they, or people that they knew, had given up during the welfare benefits process and accepted decisions they believed to be incorrect:

*We just give up [on accessing ESA] because me mum was like I am not putting you through that stress again … because it’s making me have more seizures.* (Interview 85)

This fits with other evidence of people giving up on enforcing rights because of barriers in the welfare benefits application process or appeals.[[96]](#footnote-96) In a series of focus groups carried out as part of a review of the PIP assessment process, for example, some people stated that they could not face the stress of going through an appeal and decided against disputing the decision on their claim.[[97]](#footnote-97)

Participants described severely eroded social rights linked to failures in the welfare benefits system, with even basic needs going unmet.[[98]](#footnote-98) Many participants were spiralling into debt because of unresolved welfare benefit problems, or delayed resolution, and forced to prioritise between essential items, such as clothing, utilities and the number of meals consumed in a day. Poor design and a lack of advice often mean that redistribution is not happening through the benefit system. This participant for example was struggling to afford formula for a 10 month old. She had lost her ‘zero hours’ job, and then received poor advice about her eligibility to apply for benefits from the Job Centre. This, coupled with the delay built into the design of Universal Credit, led to eight weeks without income. She consequently fell in to debt:

*P1: It shouldn’t be the baby not getting vitamins just because I had to go on benefits because if I had worked I would have bought the milk. …*

*And I have lost my job which weren’t my fault. Do you know what I mean? So I could understand if I had just never worked or… It’s hard to think that you’ve worked and then you get…*

*P2: Treated like that. It’s bad.*

*P1: so that’s where I’ve struggled, so hopefully these [CAB] can help me today and if I didn’t have this service to come to I don’t know what I would do. Because I would probably end up in a more vicious circle. (Interview 4)*

The initial welfare benefits issue now appeared to be resolved with the participant in receipt of Universal Credit. However, she was now seeking legal advice about the debts incurred during the delay to receipt of benefits, to explain her new ‘bedroom tax’ related benefit deductions, which she could perhaps have challenged, and regarding a housing disrepair issue. Many participants needed advice for other civil legal problems such as debt, family or employment, prior or subsequent to, and often caused by, welfare benefits problems. This underlines the importance of free legal advice to address clustered problems, and to break the negative cycle of interlinked legal problems devolving into a more serious situation.[[99]](#footnote-99)

Participants also experienced a wide range of negative financial, health, emotional and social impacts, often severe,[[100]](#footnote-100) subsequent to the initial problem. Again and again, they described limited participation in society. Participants relayed the limited social choices they had due to a lack of funds and the stress and anxiety linked to their unresolved welfare benefits situations:

*I mean there are a lot of people who are lonely out there, who don't go out and I’m one of them. Because I haven't got that extra money to do anything with, just that little bit - I'm not asking for millions, just all you want is that little bit of money so you can say 'right, today I'll go the beach' or 'today I'll just go for a nice walk somewhere'. All I do is walk around the block because I got no money. (Interview 49)*

It is difficult to disaggregate and isolate the numerous and connected potential causes of these impacts – job loss, mental or physical health event, the residual level of welfare benefits etc. Participants, though, repeatedly reported a lack of, or bad, legal advice as an important determinant in the failure of welfare redistribution and subsequent impacts.

If ‘the extent and quality of one’s citizenship is a function of one’s participation in the community’, as Habermas asserted,[[101]](#footnote-101) then our study participants are mired in a state of semi-citizenship and limited social inclusion. They clearly paint a picture of a system where people struggle to understand and enforce their rights. Those that the Government deems to be ‘deserving’ of the support offered by the welfare system should expect to see the values of reciprocity and inclusion strongly upheld in the welfare rights system. Instead, we see a complex and poorly administrated system, unsupported by a civil right of access to justice, which undermines the already weakened redistributive values of reciprocity and inclusion the welfare system purports to uphold. This happens to such an extent that serious knock-on financial, health and emotional effects occur, and citizens fall below an acceptable level of economic security. It is hard to view social citizenship based on reciprocity and inclusion as a meaningful concept for these citizens.

*2 Trust*

The third and final value of social citizenship that this article examines is trust.[[102]](#footnote-102) The first two values of reciprocity and inclusion, as discussed above, focus attention on what the welfare system is trying to achieve. Trust, on the other hand, is about the legitimacy of the system itself, about citizens’ perception and acceptance of the system. It is clear that the three elements of a trust relationship identified by Vitale ̶ control, discretion/uncertainty and vulnerability ̶ are present in the citizen-state relationship with regard to welfare benefits (albeit one where there is often a lack of trust). However, as our study illustrated, the state is not meeting the expectations this generates of fairness, pursuit of citizen interests and competence.[[103]](#footnote-103) This is often because of a lack of legal advice. Trust exists in a range of interconnected relationships between citizen and state institutions. As Vitale argues, ‘the citizen–government relationship exists in a network of relationships (the ‘social rights network’), and that trust in that relationship (and, for that matter, any trust relationship in the social rights network) ultimately depends on the other relationships constituting the network.’[[104]](#footnote-104) This article stresses the importance of free legal advice for a legitimate and effective welfare rights system, and argues that the breakdown of trust in civil rights networks will negatively impact social rights networks, and vice versa. In other words, the loss of trust in either access to justice or the welfare system will mean a loss of trust in other social and civil rights citizenship promises.

Trust is particularly important for social rights as citizens needing the support of social rights are in a position of vulnerability and often at crisis point. ‘[T]rust plays a strong role in welfare transactions, where individuals are typically weak and lack the authority to enforce outcomes or the expertise to define what is needed but have pressing needs for services’.[[105]](#footnote-105) Whatever the level of social rights promised, citizens need confidence that they will be able to enjoy these rights. As Taylor-Gooby states: ‘In relation to social citizenship, it is institutional trust writ large, trust not only that the legal and regulatory framework will work but also that the behaviour of those involved will be such that the institutions of welfare will deliver the goods to the trusting citizen, that is central. Trust is bound up with reciprocity and with political sustainability’.[[106]](#footnote-106) Participants overwhelmingly perceived the benefits system to be unfair and that Government had treated them wrongly. There was uncertainty about what they could expect from the system, what its values were and to whom social rights were relevant. This uncertainty is reflected, for example, in comments about the ‘others’ that receive welfare benefits and comments about deservingness. This indicates limited expectation that citizens can rely on the welfare system, let alone that it is a universal one based on the values of reciprocity and inclusion. Where the ‘goods’ or social rights are not delivered, and there is a lack of legal advice to clarify their rights or challenge state decisions, citizens are likely to lose trust in the system and either not enjoy the social rights promised or not want to contribute to the system that makes social citizenship effective.[[107]](#footnote-107)

Participants described inadequate access to legal advice and an inability to enforce these social rights. As discussed above, they reported the need for advice at all stages of the benefits application and appeal process. Without this help, they were left to navigate a complex system themselves, and perceived that government policy was at odds with the rights they expected to be fulfilled:

*But somewhere along the line, I think the poor people should have more help. I really do. I really think the poor people are struggling and it's so wrong. So wrong. All you get out of them is 'it’s government policy'. Well, the government have got their policy, where’s our rights? Where’s the poor peoples' rights? (Interview 45)*

Because participants perceived the system for claiming welfare benefits as profoundly unfair, this illegitimated the process for them. They sometimes described medical assessors and benefits administrators as colluding in a process designed to deny their rightful benefits. This sense of an unfair process, and being ‘wronged’ (Interview 74) made participants feel powerless, unable to hold state decision-making to account:

*Yeah I mean how are you supposed to go through the government? (Interview 112)*

*Only them government people know don’t they. Them little monsters, don’t give a crap about us. (Interview 14)*

Many participants had absorbed the discursive frame around desert (or lack thereof) for welfare benefits. They themselves drew a connection between the social and civil rights and citizenship. They often expressed the idea that they had been a ‘good citizen’ (Interview 26) or had ‘paid into the system’ (Interview 8) for a large number of years and were now being denied help when they needed it. They perceived that they had complied with their obligations in their reciprocal relationship of trust, but that the state had not:

*I started working in 1970 when I was 16 … I pay tax, the insurance. And the way I view it, I’m not asking them for anything. All I’m asking is a little bit back of what I paid and once again there must be millions of people in this country in this predicament and they all paid in. So I just can’t see any justice in it (Interview 17).*

Participants sometimes contrasted their perceived deservingness as citizens with that of others, who were either undeserving or less deserving because they were not citizens, or who were citizens but insufficiently deserving. This ‘othering’ gave the participants license to negatively contrast the deservingness of the target with themselves:

*I mean you see some of them there and they're on sticks and you can see they're pretending but I'm not. (Interview 42)*

A few participants had their opinions of desert changed by their change in status from workers to benefits claimants:

*It’s not easy, really it’s not easy. When you see these programmes on the telly about people living on benefits I mean it’s just not true at all and when I used to watch I used to think oh yeah you only get the money to smoke all weekend but it’s not like that. Now that I’m in that position where I have to claim benefits it’s not. It’s just a horrible, horrible feeling. (Interview 6)*

These quotes also indicate a lack of perceived legitimacy for the welfare benefits system amongst citizens that are not currently receiving them. This lack of trust in the welfare system, this de-legitimisation, reduces the support from citizens contributing to the system and increases the ease with which the Government can make cuts. This in turn increases the residualisation of the welfare system, and reduces the value of and ability to enjoy social rights.

*a. Trust, conditionality and legal advice*

Despite the ineffectiveness of sanctions at achieving their stated goal of getting people back to work,[[108]](#footnote-108) the Welfare Reform Act 2012 significantly strengthened the benefits sanction regime,[[109]](#footnote-109) with full removal of benefits for up to three years becoming possible. Sanctions have continued to be largely ineffective.[[110]](#footnote-110) A Work and Pensions Committee report said that sanctions were too high, ‘nothing other than arbitrarily punitive’, and noted a disproportionate impact on single parents, care leavers and disabled people.[[111]](#footnote-111) The Department for Work and Pensions, though, insisted that the regime was ‘reasonable’ and ‘only used in a minority of cases.’[[112]](#footnote-112) Our participants highlighted the ineffectiveness and negative impact of conditionality. For example:

*I’m going to a counsellor for depression. I have suffered from depression for a number of years now but it’s like [now] you’re frightened and [if] you don’t go here and you don’t go there you’ll get sanctioned; it’s all pressure. (Interview 105)*

Finally, in May 2019, then-Secretary of State for Work and Pensions Amber Rudd partially accepted the counterproductive nature of sanctions by reducing the maximum length of sanctions from 3 years to six months.

This is a striking example of government policy shaping a more exclusionary, individualised and conditional form of citizenship.[[113]](#footnote-113) Even this reduced approach to citizenship must be built on trust, and basic governance expectations must be met, for example that the state follows fair procedures competently and in good faith.[[114]](#footnote-114) The increasingly punitive, conditional approach to welfare benefits, and the slow resolution of individual and systemic problems with benefits administration, however, disappoint these expectations and result in an increased need for prompt legal advice. Instead, though, dramatic cuts to legal advice have compounded distrust in the welfare system.

Much of the discourse that accompanied the changes to the benefit system in recent decades centred around activation policies and the advantages of work as a route to citizenship. Participants did demonstrate some of what Dwyer and Ellison termed ‘conditioning’, self-governing in an attempt to meet the expectations of a ‘good citizen’.[[115]](#footnote-115) However, some participants found that work had not presented itself as an alternative route sufficient for full social participation, and the need for legal advice remained. Many participants reported that they were very anxious to get a job, as is commonly found in other research,[[116]](#footnote-116) and that they had expended considerable effort only to meet barriers:

*Yeah, I’ve been in an interview and then I‘ve explained to them what my epilepsy is like and then they’re like, then they mention the health and safety thing and I was like, ‘yeah but it’s the Disability Act 2010’,[[117]](#footnote-117) and then I explain that to them and then they’re like ‘yeah but you have had your interview now’,[[118]](#footnote-118) and like, they were going to offer me the job until I mentioned my epilepsy (Interview 85).*

The Government’s discursive frame emphasises work as a route to citizenship, and as a responsibility associated with citizenship.[[119]](#footnote-119) Benefits are framed as a ‘dependency’ that deny citizens the chance to participate in full citizenship, rather than a support to facilitate full citizenship. Dependency is one of the justifications for reducing the level and access to welfare benefits, and for the increasingly conditional system participants were trying to navigate. Participants’ situations, however, frequently meant that work was not a meaningful alternative for them, and welfare benefits were not a dependency but a necessity. Furthermore, there are characteristics that indirectly condition a person’s ability to understand and enforce citizenship rights, such as caring obligations, ability to cope with stress and anxiety, degree of physical or mental health issues, or availability of effective informal advice networks. These characteristics, the complexity and poor administration of the system, and inability to resolve legal issues combine to increase the unequal impact of conditionality on citizens.

There was little trust in the welfare system either to deliver to those that ‘deserved’ to receive support, or to avoid supporting those that were ‘undeserving’. Participants expressed that they had upheld their end of the bargain with the state, to the extent that they were able to, and the state was now failing to uphold its end, and at the same time paying out to others that had not met their responsibilities. This reflects a welfare benefits system that lacks legitimacy for citizens as either contributors to or recipients of the system. There was little perception of a fair, redistributive welfare system based on reciprocity and inclusion. Instead, participants’ negative perception and lack of trust in the welfare system highlight the extent to which social citizenship has been undermined, and also the unfairness in the ideas of deservingness and conditionality that underpin current Government policy relating to welfare and access to justice.

Citizens need to trust that the welfare institutions will award rights fairly and have sufficient value to justify the effort needed to understand or enforce them. If not, then it is a natural consequence to delay or desist from enforcing their rights.[[120]](#footnote-120) Welfare and access to justice policies have greatly reduced the likelihood of a successful application, while increasing the efforts needed and personal costs of accessing social rights. These are key determining factors in citizens delaying or desisting in applying for welfare benefits. This breakdown in trust is as problematic for the strongly conditional, individualised form of citizenship that government policy has developed as it would be for social citizenship. Without trust that acting as a ‘good’ citizen will be rewarded, the conditions imposed become simply punitive rather than incentivising, and can, as the UN rapporteur Philip Alston reported, ‘lead to fear and loathing of the system’.[[121]](#footnote-121) The very nature of conditionality undermines trust in the system through the othering of citizens and the separation between deserving and undeserving citizens. This leads inevitably to the unequal participation of citizens in society, unequal enjoyment of citizenship rights, and weakened political legitimacy.

THE DECONSTRUCTION OF SOCIAL CITIZENSHIP

In this final section, we comment on the policy decisions at the intersection between access to justice and welfare rights and their mutually reinforcing negative relationship.

First, the most direct impact on social rights is from welfare reforms that have reduced the level of economic support for claimants, changed eligibility requirements, forced people to reapply, and heightened conditionality. These reforms clearly reject social citizenship, the essence of which is to ensure that all citizens enjoy a modicum of economic security and participate in society. Instead, they strengthen an alternative, conditional form of citizenship focussed on deservingness and work, without access for many citizens to the legal advice needed to ensure its operability. Our study confirms findings from elsewhere that this has led to uncertainty, inequality and poverty for many of the most vulnerable in society when they do not receive the welfare benefits they are entitled to, and that these problems can persist even when they do receive them.[[122]](#footnote-122) In turn, this leads to a breakdown in trust in the welfare rights system, and the exclusion of citizens from society.

Secondly, the dramatic cuts to legal aid and other forms of free legal advice have led almost to the ‘effective extinction of poor people’s access to civil justice’.[[123]](#footnote-123) This has compounded the complexity and administrative failings in the changed welfare environment, and left people struggling to understand and enforce their welfare rights. Free legal advice should be available to support the enjoyment of social rights, particularly welfare benefits, so that citizens can ‘function as free, equal and autonomous members of society within political, economic and social structures.’[[124]](#footnote-124) However, as the juridification and complexity of welfare benefits has increased, equality in accessing justice has declined. LASPO, for example, specifically indicated that legal aid was no longer based on a thick principle of access to justice furthering equality, but a thinner approach to access to justice that aims to only target legal aid ‘at those that need it most’.[[125]](#footnote-125) Implicit is that legal aid will not be available to all those that need it. Moreover, there is limited justification offered to explain which citizens need better access to legal assistance than others, to facilitate enjoyment of their social rights,[[126]](#footnote-126) or to explain why groups that it would seem reasonable to expect to be positively targeted, such as disabled people, have instead borne the brunt of cuts to welfare rights advice. Where the government offered some justification, it showed a surprising detachment from the reality of people’s lives: ‘Legal aid is not justified in [welfare rights] cases because the issues are not generally of sufficiently high importance to warrant funding. (…) In addition, [appellants] may also have access to help and advice from other sources in order to help them resolve their issues without recourse to publicly funded legal assistance’.[[127]](#footnote-127) To the contrary, the evidence from our study, and numerous others, clearly illustrates the high importance of welfare rights to people’s lives, and the limited availability of sources of free advice. Inevitably, those seeking support through societal redistribution will struggle to find the financial resources to pay for legal advice, and are unlikely to have access to effective informal advice networks.

Thirdly, the expectation that the state will act on evidence and resolve issues is key to the existence of trust.[[128]](#footnote-128) Successive governments, though, have been slow and unwilling to respond to evidence of the negative and unfair impacts of their administrative policies in numerous areas: medical assessments, mandatory reconsideration, sanctions and the high percentage of decisions overturned at appeal, Universal Credit, underpayment of disability benefits, Exceptional Case Funding, and so on. The extent of these administrative problems, the missed opportunities on the part of the state to improve processes, the often extreme impacts of these issues on citizens’ mental and physical health and finances, and, importantly, the lack of access to legal advice to resolve the issues created are central to the breakdown in trust between the citizen and the state. The direct link between the state and social rights, and the vulnerability of most citizens when compared to the might of the state, make this lack of trust particularly significant for welfare benefits. It means people delay or desist trying, or are unable, to resolve legal issues that are having negative impacts on their lives, despite their best efforts and even when in desperate situations. On top of the egregious nature of the welfare system’s administrative problems and the delay or refusal to address well-evidenced failings, the lack of access to free legal advice appears to be a deliberate, ideological decision to exacerbate the negative impact of welfare reforms.

Fourthly, there is the negative reinforcement between the cuts to legal advice and welfare reform. The reduced availability of free legal advice puts pressure on welfare benefits, and difficulties accessing welfare benefits put pressure on accessing free legal advice, and on other areas of people’s lives. This leads to a downward spiral that devalues both civil and social rights. When people fall below an acceptable level of economic security because of an inability to navigate the complex welfare system, or to correct bad administrative decisions without legal advice, this increases the difficulty of resolving these issues, and other financial, health or legal issues. Study participants presented with interconnected, multiple civil issues[[129]](#footnote-129) – threatened homelessness, job loss, etc. Often these issues are put on hold and reach crisis point while people try to resolve their most immediate problem. With the expected safety net of welfare benefits difficult to access, refused, or insufficient, and often causing an increased need for legal advice, this negative spiral of legal, financial, health, social and emotional impacts is difficult to arrest. This spiral leads towards less and less participation in society and ultimately, for some, toward the most serious consequences such as homelessness and even suicide.[[130]](#footnote-130) One participant caseworker described two cases of clients committing suicide in the preceding 12 months where he thought ongoing attempts to resolve benefit issues were a strong contributing factor. Prompt, free legal advice and effective state administration of the welfare system are needed to avoid this downward spiral and to give meaning to social citizenship for all citizens.

CONCLUSION

Social citizenship is under attack from welfare and access to justice policy. In both these areas, the current emphasis is on the deservingness of the individual to receive support rather than on values of reciprocity, inclusion and trust, which underpin social citizenship. Trust, and the fulfilment of its constituent expectations, fairness, pursuit of citizen interests and competence,[[131]](#footnote-131) are essential to political legitimacy and citizenship in any form, social or otherwise, but are in short supply. Citizens must be able to rely on the rights promised when needed: ‘Citizenship is membership of a political community. It involves rights and obligations, typically framed in law and enforceable through a system of justice.’[[132]](#footnote-132) Access to free legal advice is an essential part of access to justice, and building that trust, but is unavailable to many citizens. These policies are not just destructive, but productive of a changed citizen-state relationship,[[133]](#footnote-133) with the deconstruction of social citizenship occurring alongside the production of an individualised and exclusionary form of citizenship.[[134]](#footnote-134)

’The ability of individuals to resolve their legal problems is vital to a just society … Early intervention is key’.[[135]](#footnote-135) So starts the Government’s ‘Legal Support Action Plan’ that accompanied the long-delayed Post Implementation Review of LASPO.[[136]](#footnote-136) However, as with the LASPO objective to target those that need it most, the actions fall far short of the rhetoric. There is just one funding promise and a single action proposal of an early legal advice pilot, which is yet to materialise, and whose purpose is unclear, especially given the decades of pre-tribunal welfare rights advice from which the Government could already learn. The MOJ is yet to address the very limited access to free legal advice.

The Covid-19 crisis has thrown the role of the welfare system, the need for legal advice and the meaning of social citizenship into sharp relief. It is possible that the huge uptake in welfare benefits claims[[137]](#footnote-137) and other state intervention will remind people of the value of a system that enforces meaningful social rights. However, evidence from past economic crises in the UK, not least the most recent one in 2008 that ushered in austerity politics, does not suggest that the strengthening of social citizenship is likely following the Covid-19 crisis.[[138]](#footnote-138) For the foreseeable future, large numbers of citizens will remain unable to resolve civil law issues often at a time of urgent personal need and having fulfilled their part of the social contract, so as to ‘deserve’ support. This leaves many citizens with a lesser form of semi-citizenship, with limited social rights and participation in society. In other words, the increased commodification[[139]](#footnote-139) of people has emphasised a form of citizenship where financial resources and ‘desert’ determine the degree to which citizens enjoy even basic civil and social rights, rather than a social form of citizenship based on reciprocity, inclusion and trust.

1. C. Crouch, *The Strange Non-death of Neoliberalism* (2011); D. Edmiston, *Welfare, Inequality and Social Citizenship* (2020); H. Sommerlad, ‘Access to Justice in Hard Times and the Deconstruction of Democratic Citizenship’, *Delivering Family Justice in the 21st Century*, ed. M. Maclean, J. Eekelaar and B. Bastard (2015). [↑](#footnote-ref-1)
2. K. Farnsworth, and Z.M. Irving, ‘Austerity: Neoliberal dreams come true?’ (2018) *Critical Social Policy* 461. [↑](#footnote-ref-2)
3. The Ministry of Justice suffered a 25% budget cut and the Legal Aid Agency a 37% cut between 2010-11 and 2018-19: <https://commonslibrary.parliament.uk/research-briefings/cdp-2019-0217/>. Welfare reforms cut £5 billion from Personal Independence Payment and Employment and Support Allowance alone: <https://www.disabilityrightsuk.org/news/2018/september/disability-benefit-spending-reduced-%C2%A35-billion-over-last-decade>. [↑](#footnote-ref-3)
4. D. Beetham, ‘The legitimation of Power’(1991); D. Beetham and C. Lord, ‘Legitimacy and the EU’(1998) provide a well-recognised definition of political legitimacy. [↑](#footnote-ref-4)
5. T.H. Marshall, ‘Citizenship and Social Class’ in *Citizenship and Social Class*, eds. T.H, Marshall and T. Bottomore (1992); C. Fitzpatrick, G. McKeever and M. Simpson, ‘Conditionality, discretion and TH Marshall’s ‘right to welfare’, *Journal of Social Welfare and Family Law* (2019). Social citizenship is defined in detail on pages 6-9 below. [↑](#footnote-ref-5)
6. Anonymous. (2018). Removed for peer review. [↑](#footnote-ref-6)
7. In her seminal work, Hazel Genn referred to people’s approaches to solving legal problems as ‘paths’ to justice. H. Genn, *Paths to Justice: What People Do and Think about Going to Law* (1999). The [removed for peer review] chose to term these ‘routes’ to justice, which we have followed here. [↑](#footnote-ref-7)
8. Conclusions in this article may be relevant to the UK. However, as legal aid is the starting point for the empirical evidence, we only draw conclusions for England and Wales. [↑](#footnote-ref-8)
9. There is extensive research of welfare reforms alone: C. Fitzpatrick, et. al., op. cit. n. 5; R. Patrick, ‘Wither Social Citizenship? Lived Experiences of Citizenship In/Exclusion for Recipients of Out-of-Work Benefits’ (2016) *Social Policy and Society* 2(16) 292; The special edition D. Edmiston, ‘Welfare, Austerity and Social Citizenship in the UK’ (2016) *Social Policy and Society (*2016)2(16); Edmiston, op. cit., n.1; P. Larkin, ‘Universal Credit, ‘positive citizenship’, and the working poor: squaring the eternal circle’ (2018) *Modern Law Review* 81(1); Patrick, Ruth, *For Whose Benefit? The Everyday Realities of Welfare Reforms* (2017). [↑](#footnote-ref-9)
10. N. Harris, *Law in a Complex State: Complexity in the Law and Structure of Welfare* (2013) Hart Publishing. [↑](#footnote-ref-10)
11. M. Adler, *Inhuman or Degrading Treatment? Benefit Sanctions in the UK*. (2018); S. Wright, D. R. Fletcher, A. Stewart, ‘Punitive benefit sanctions, welfare conditionality, and the social abuse of unemployed people in Britain: Transforming claimants into offenders?’ (2020) *Social Policy and Administration.* [↑](#footnote-ref-11)
12. M. Hooghe and J. Oser, ‘Social and Political Citizenship in European Public Opinion: An Empirical Analysis of T.H. Marshall’s Concept of Social Rights’ (2018) *Government and Opposition* 53(4), 600. Hillary Sommerlad’s work is a notable exception. [↑](#footnote-ref-12)
13. G. McKeever, M. Simpson, and C. Fitzpatrick, *Destitution and Paths to Justice* (Legal Education Foundation and Joseph Rowntree Foundation 2018). [↑](#footnote-ref-13)
14. M. Lister, '“Marshall-ing”' Social and Political Citizenship: Towards a Unified Conception of Citizenship’ (2005) *Government and Opposition,* 40(4), 471, 473. [↑](#footnote-ref-14)
15. A. Halsey, ‘T. H. MARSHALL: PAST AND PRESENT 1893 - 1981: President of the British Sociological Association 1964-1969’ (1984) *Sociology*, 18(1), 1, 13. [↑](#footnote-ref-15)
16. Hooghe and Oser, op. cit., n.12. [↑](#footnote-ref-16)
17. A-M Magnussen and E. Nilssen, ‘Juridification and the Construction of Social Citizenship’ (2013) *Law and Society* 40(2) 228, 231. [↑](#footnote-ref-17)
18. P. Taylor-Gooby, *Reframing Social Citizenship* (2008). [↑](#footnote-ref-18)
19. Anonymous, op. cit., n. 6 [↑](#footnote-ref-19)
20. Legal Aid, Sentencing and Punishment of Offenders Act 2012 available at <<https://www.legislation.gov.uk/ukpga/2012/10/contents>>. Law Society summary of LASPO changes available at <<https://www.lawsociety.org.uk/support-services/advice/articles/legal-aid-changes-key-information-and-advice/>> [↑](#footnote-ref-20)
21. R. Lister, *Citizenship: feminist perspectives (*2003, 2nd edn.). [↑](#footnote-ref-21)
22. Other examples include H. Dean and M. Melrose *Perceptions of poverty, wealth and citizenship* (1998); P. Dwyer, *Welfare Rights and responsibilities: Contesting Social Citizenship* (2000). [↑](#footnote-ref-22)
23. Potential participants were asked if they had legal problems in these three areas in the previous two years. Only those who did were screened further to see if they were eligible for the study. Therefore, we make no claims as to the prevalence of these legal problems in relation to other potential legal problems that might be experienced by this population. [↑](#footnote-ref-23)
24. The Equality Act 2010 ‘protected characteristics’ are: age; sex; race; disability; sexual orientation; religion or belief; gender reassignment; marriage and civil partnership. [↑](#footnote-ref-24)
25. We will refer to these participants as ‘disabled’ from hereon. [↑](#footnote-ref-25)
26. The four options explored were formal advice, informal advice, no advice/pursued on own, or did nothing. [↑](#footnote-ref-26)
27. V. Braun and V. Clarke, ‘Using thematic analysis in psychology’ (2006) *Qualitative Research in Psychology* 3(2) 77. [↑](#footnote-ref-27)
28. V. Braun, V. Clarke, G. Terry, and N. Hayfield, ‘Thematic Analysis’, *Handbook of Research Methods in Health and Social Sciences*, Ed. P. Liamputtong (2018). [↑](#footnote-ref-28)
29. The prevalence of disabled people in the UK population in 2018/19 is estimated at 21 per cent. Department for Work and Pensions, *Family Resources Survey 2018/19* (2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/874507/family-resources-survey-2018-19.pdf> [↑](#footnote-ref-29)
30. Fitzpatrick et al., op. cit. n.5. This phenomenon has been repeatedly observed in surveys of civil and social justice, e.g. Genn, op. cit. n.7, P. Pleasance, N. Balmer, A. Buck, A. O’Grady, and H. Genn, ‘Multiple Justiciable Problems: Common Clusters and their Social and Demographic Indicators’ (2004) *Journal of Empirical Legal Studies* 1(2) 301; A Currie, ‘The Legal Problems of Everyday Life’, in R Sandefur (ed.) *Access to Justice*, (Emerald 2008) p.35: Justiciable problems ‘appear to be integral aspects of patterns of disadvantage, alternatively described as social exclusion’ [↑](#footnote-ref-30)
31. Marshall, op. cit., n.5. [↑](#footnote-ref-31)
32. See Lister, op. cit., n. 21; A. Giddens, *Profiles and Critiques in Social* Theory (MacMillan 1982); A.M. Rees, ‘T. H. Marshall and the Progress of Citizenship,’ in *Citizenship Today: The Contemporary Relevance of T. H. Marshall,* eds.M. Bulmer and A.M. Rees (1996), pp. 1–23; B. Revi, ‘T. H. Marshall and His Critics: Reappraising ‘Social Citizenship’ in the Twenty-First Century,’ (2014) *Citizenship Studies* 18/3–4, p. 452. [↑](#footnote-ref-32)
33. Lister, op. cit., n.14; D. King and J. Waldron, 'Citizenship, Social Citizenship and the Defence of Welfare Provision' (1988) *British Journal of Political Science*, 18(4). [↑](#footnote-ref-33)
34. On the normative and descriptive meanings of access to justice: T. Cornford, ‘The meaning of access to justice’, in *Access to Justice: Beyond the Policies and Politics of Austerity* eds. E. Palmer, T. Cornford, A. Guinchard, and Y. Marique (2016). [↑](#footnote-ref-34)
35. Marshall, op cit., n.5, p. 30. [↑](#footnote-ref-35)
36. M. Cappelletti and B. Garth, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) *Buff L Rev* 28 (181). Cornford, op. cit. n.34. [↑](#footnote-ref-36)
37. H. Sommerlad, ‘Some Reflections on the Relationship between Citizenship, Access to Justice, and the Reform of Legal Aid’ (2004) *Journal of Law and Society* 31(3). [↑](#footnote-ref-37)
38. S. Moore and A. Newbury, *Legal aid in Crisis: Assessing the Impact of Reform* (2017), p.3. [↑](#footnote-ref-38)
39. Sommerlad, op. cit. n.37, p. 348. [↑](#footnote-ref-39)
40. H. Sommerlad and P. Sanderson, (2013) Social justice on the margins: the future of the not for profit sector as providers of legal advice in England and Wales. Journal of Social Welfare & Family Law, 2013 Vol. 35, No. 3, 305–327. [↑](#footnote-ref-40)
41. Id., p. 308. [↑](#footnote-ref-41)
42. Marshall, op. cit., n.5, p. 8. [↑](#footnote-ref-42)
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