

# **Benefit Sanctions in the North East of England**

**Parallel Report to the Committee on Economic, Social and Cultural Rights  
for the examination of the United Kingdom's 6<sup>th</sup> periodic report (April 2016)**

## **Executive Summary**

A 'Benefit Sanction' is a cessation of an employment related social security payment when a claimant fails to meet certain conditions placed upon them. Conditions placed on claimants, who are often vulnerable and in challenging situations, have become progressively more stringent.

As a result, the sanctions system is currently in violation of a number of ICESCR obligations. In particular, the core, non-retrogression and obligation to fulfil aspects of the right to social security (article 9); the general obligation of non-discrimination (article 2(2)); and aspects of the right to work (article 6(2)), are being infringed.

## **Authorship and Acknowledgements**

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## 1. Introduction

### 1.1. **Overview of unemployment benefits and benefit sanctions**

Since their introduction in 1911, unemployment benefits in the UK have been conditional to varying extents. In the last four decades, together with more stringent conditions, a system of benefit sanctions – the cessation of benefit payments for a period if claimants fail to meet certain conditions – has developed, and progressively hardened, most recently in the Welfare Reform Act 2012.<sup>1</sup>

Two major forms of unemployment benefits in the current system are the Jobseeker's Allowance and the Employment and Support Allowance. These are outlined briefly below.

### 1.2. **Jobseeker's Allowance<sup>2</sup>**

Jobseeker's Allowance (JSA) applicants must agree to a 'Claimant Commitment'.<sup>3</sup> This is an agreement regarding the steps the claimant will take to look for a job. The nature of the conditions will depend on factors such as the claimant's health and the amount of help the claimant needs to re-enter the workforce. Where a claimant is deemed not to have met the conditions of the agreement, they are 'sanctioned' by having their Jobseeker's social security payments are suspended.

There are three levels of JSA sanctions: lower, intermediate, and higher. The sanctions range from a 4-week suspension to a suspension of 156 weeks (3 years). The level and length of the sanction depend on the claimant's reason for claiming JSA, what the claimant has done to breach their Claimant Commitment, and whether the claimant has received a sanction within the previous 12 months.

Examples of when claimants may face sanctions include:

- Lower level sanctions (between 4 and 13 weeks) – if claimants do not attend meetings on time; do not take part in interviews or do not take actions they are required to; or if claimants are removed from an employment scheme due to misconduct or a give up such a scheme voluntarily.
- Intermediate level sanctions (between 4 and 13 weeks, and outstanding claims may be ended) – if claimants are not available for and actively seeking work.
- Higher level sanctions (between 13 and 156 weeks) – if claimants are dismissed from their last job for misconduct; leave a job without good reason; if claimants do not apply for suitable jobs that their work coach or employment scheme adviser informed them of; or if a claimant is offered a job but does not accept it.

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<sup>1</sup> House of Commons Work and Pensions Committee, 'Benefit Sanctions Policy Beyond the Oakley Review, Fifth Report of Session 2014-15' (March 2015) <<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmworpen/814/814.pdf>> 7.

<sup>2</sup> Government Webpages, 'Jobseeker's Allowance (JSA)' <<https://www.gov.uk/jobseekers-allowance/overview>> accessed 13 April 2016.

<sup>3</sup> *ibid.*

### **1.3. Employment and Support Allowance<sup>4</sup>**

Employment and Support Allowance (ESA) was introduced in 2008 for unemployed claimants with long-term health conditions and disabilities. Following a Work Capability Assessment, ESA claimants will be placed in one of two groups – the work-related activity group or the support group. Claimants in the work-related activity group are required to attend regular adviser interviews, while claimants in the support group are not.

Following the Welfare Reform Act 2012, the monetary value of financial sanctions applicable has increased significantly. Claimants' ESA can be reduced if they do not go to interviews or do work-related activity. This reduction can continue for up to 4 weeks after they restart the interviews or activity. As with the new JSA regime, ESA sanctions are escalated for repeat failures. The sanction is one week for a first failure, two weeks for a second failure, and four weeks for each subsequent failure that occurs within a 52-week period.

### **1.4. Stockton-on-Tees and Thrive Teesside**

The research in this report was assisted by Thrive Teesside, a charity based in Stockton-on-Tees that was set up as a project of Church Action on Poverty in January 2007. It is now independent working in partnership with Church Action on Poverty, and is a non-political and non-religious based organisation. Thrive aims to 'close the gap between the rich and the poor' by supporting financially and socially excluded communities to improve their livelihoods and gain the power they need to enact change.

Thrive's ongoing projects include an intensive, tailored one-to-one community based mentoring support service, mentor support sessions, and a networking, support and action group. These aim to identify the issues that keep households trapped in poverty.

Thrive also works in partnership with others, particularly the Stockton Welfare Advice Network, a lottery-funded partnership of nine local organisations led by Stockton and District Advice and Information Service, and Durham University. Such partnerships aim to facilitate detailed research and local action. Thrive therefore seeks to tackle the root of the problem, by working to change the structures of local policies and developing processes for transformative change.

Thrive's projects are focused across areas of the North East of England which rank amongst the top ten per cent most deprived nationally.

## **2. Violation of Article 9 (Right to Social Security)**

It is argued that there is a potential violation of article 9 of the Covenant. The State party has failed to progressively realise the right, and has imposed retrogressive measures. Further, there has been a breach of the obligation to fulfil.

Article 9 has special importance given that access to adequate social security underlies the realisation of many Covenant rights.<sup>5</sup> Moreover, the recognition of the right carries

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<sup>4</sup> Government Webpages, 'Employment and Support Allowance (ESA)' <<https://www.gov.uk/employment-support-allowance/overview>> accessed 13 April 2016.

<sup>5</sup> CESCR, *General Comment 19: The Right to Social Security (art. 9)* (UN Doc E/C12/GC/19, 2007) para 8.

fundamental importance for human dignity and therefore should be given appropriate priority in law and policy of states.<sup>6</sup>

### 2.1. Retrogression

General Comment 19, at paragraph 42, outlines the following on retrogressive measures under article 9:

- There is a strong presumption that retrogressive measures under article 9 are prohibited.
- It is the burden of the state party to show they are duly justified, after the most careful consideration, in assessing the totality of the rights provided for in the Covenant and the full use of maximum available resources.
- Under paragraph 64, it is also explicitly recognised that violations include the adoption of deliberately retrogressive measures that are incompatible with the core obligations.<sup>7</sup>

In analysing if the retrogressive measure is prohibited, the factors taken into consideration under General Comment 19 at paragraph 42 include:

- Whether a reasonable justification exists for the action;
- Whether alternative measures were examined;
- If affected groups were able to genuinely participate in the proposed measures and alternatives;
- If the measures were directly or indirectly discriminatory;
- If the measures have a sustained impact on the right, an unreasonable impact on acquired social rights or whether there is deprivation of access to the minimum essential level; and
- Finally whether there was an independent review of the measures at the national level.<sup>8</sup>

It is submitted that UK has enacted *prima facie* retrogressive measures relating to article 9. This is evidenced by an increase in the proportion of claimants who are sanctioned. The proportion of those with a mental health condition who were subject to a sanction rose from 35% in 2009 to 58% in 2013.<sup>9</sup> The 668% increase in the sanctioning of people with mental health issues on ESA over the last four years is of particular concern.<sup>10</sup> These statistical trends were also reflected in our interview with the Director of Thrive. At the same time, the ability of individuals to seek redress has been affected as legal aid has been drastically cut. On the ground this felt like there are 'no rights for legal support anymore'. Pressures on the number of appointments available for claimants to discuss their concerns are also having an impact.

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<sup>6</sup> *ibid* para 41.

<sup>7</sup> *ibid* para 42.

<sup>8</sup> *ibid*.

<sup>9</sup> Government Webpages, 'Jobseeker's Allowance (JSA)' <<https://www.gov.uk/jobseekers-allowance/further-information>> accessed 16 February 2016.

<sup>10</sup> According to government figures obtained under the freedom of information act; Jon Stone, '600% Increase in Benefit Sanctions against People with Mental Health Problems' (*The Independent*, 12 November 2015) <<http://www.independent.co.uk/news/uk/politics/benefit-sanctions-against-people-with-mental-health-problems-up-by-600-per-cent-a6731971.html>> accessed 13 April 2016.

It is further argued that this *prima facie* retrogression has no adequate justification, making it impermissible retrogression and a violation of the Covenant. The Committee's letter to States of the 16<sup>th</sup> May 2012 required that retrogression be temporary, necessary and proportionate and that the rights of disadvantaged or marginalised groups are not disproportionately affected. The UK's retrogression on article 9 standards does not meet any of these conditions.

## **2.2. Obligation to Fulfil**

Additionally, it can be argued that the State party is failing under its duty to 'fulfil' under article 9. As the Committee will be aware, the obligation to fulfil is subdivided into obligations to facilitate, promote and provide.<sup>11</sup> In the UK, the obligations to facilitate and promote rights under article 9 are not being met.

Under article 9, the obligation to facilitate requires that States 'ensur[e] that the social security system will be adequate, accessible for everyone and will cover social risks and contingencies'.<sup>12</sup>

The obligation to facilitate enjoyment of article 9 rights has not been met by the UK. In particular, the State has failed to facilitate the *accessibility* of the right. The most vulnerable claimants are unable to access much of the support that is available. The geography of the North East of England (and other areas with a hybrid urban-rural landscape) means that many people are required to travel at short notice up to 90 minutes by an unreliable bus service in order to be eligible for social security payments. This requirement is particularly problematic as many local transport services are being cut.<sup>13</sup> Claimants are required to visit a Job Centre and 'sign on' in locations that are practically difficult to access. It was the view of our interviewee that the system does not consider 'the structural things which make it difficult' to get to appointments and this frequently causes claimants to miss appointments. Missed appointments result in sanctions and hardship.

In addition, the Director of Thrive observed that the imposition of too many contractual obligations under the claimant agreement were detrimental to individuals seeking employment. It was stated that these obligations placed upon people 'are not conducive to support people to fully carry out their claimant commitment' and can therefore lead to sanctioning.

Paragraph 49 of the CESCR's General Comment 19 notes that the 'obligation to promote obliges the state party to take steps to ensure that there is appropriate education and public awareness concerning access to social security schemes, particularly in rural and deprived urban areas, or amongst linguistic and other minorities'.

The UK has failed to realise this obligation as many vulnerable claimants struggle to get relevant information. For example, most of the relevant information is accessible on the Internet and claims must also be completed through an online form. As our interviewee

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<sup>11</sup> CESCR (n 5) para 47.

<sup>12</sup> *ibid* para 48.

<sup>13</sup> Mary O'Hara, 'You'll Notice Bus Cuts When Your Neighbours Lose Their Independence' (17 February 2015) <<http://www.theguardian.com/public-leaders-network/2016/feb/17/lose-independence-bus-cuts-council-funding>>.

noted, this causes difficulties for claimants who struggle with literacy or do not have access to the Internet. The outcome of the inaccessibility of some of this information is a lack of awareness of appeal procedures and of hardship funds. Sanctioned claimants are often unaware of their right to appeal: 'in an ideal world I'd like to know that everybody who is sanctioned knew they could appeal'.<sup>14</sup> Even when individuals do appeal, they may often have to go without payment in the interim.<sup>15</sup>

### **2.3. Failure to provide the minimum essential level of social security**

A potential violation of Article 9 is also alleged on the basis that the State has failed in its core obligation to provide a minimum essential level of social security.<sup>16</sup> The obligation requires the state 'to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire essential housing, healthcare and foodstuffs'.<sup>17</sup> However, after an individual has been subjected to benefit sanctions, no such minimum enjoyment exists. The state is therefore failing in its obligation under Article 9 to provide the minimum essential level of social security after an individual has been subject to benefit sanctions.

It has been noted that sanctions reduce claimants' 'ability to pay priority bills and buy food', and may impact claimants' housing benefits.<sup>18</sup> As a result, claimants' living standards are reduced, causing them to feel more isolated, anxious, depressed, and unable to move forward: '9 times out of 10, you won't be told that if you're sanctioned it'll impact on any other benefits you get, for example housing benefits, council tax rebate'.<sup>19</sup> The lack of a minimum essential level is further demonstrated through examples of claimants resorting to crime: 'a young man stole some food [and] went to court and [was] given community service order [and] asked to go to prison instead as he wanted a roof over his head and food in his stomach. Crime we say is more associated with just surviving...'.<sup>20</sup>

Access to adequate social security underlies the realisation of many Covenant rights and carries fundamental importance for human dignity.<sup>21</sup> Therefore, it should be given appropriate priority in law and in States' policies.<sup>22</sup> Statistically about 40% of benefit sanctions decisions last year were overturned, suggesting that sanctions were often unjustly applied and that the State is giving insufficient priority to its obligation to provide the minimum essential level of social security.<sup>23</sup>

It is clear that the UK is not complying with the full range of its obligations under article 9, especially the obligations of non-retrogression, the obligation to fulfil and to ensure the minimum essential level of the right.

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<sup>14</sup> Interview with Thrive (Tracey Herrington) (n 16).

<sup>15</sup> 'JSA Sanctions' (*Benefits and Work*) <<http://www.benefitsandwork.co.uk/other-benefits/jobseeker-s-allowance/jsa-sanctions>> accessed 16 February 2016.

<sup>16</sup> CESCR (n 5) para 59.

<sup>17</sup> *ibid* para 59(a).

<sup>18</sup> Interview with Thrive (Tracey Herrington) (3 November 2015).

<sup>19</sup> *ibid*

<sup>20</sup> *ibid*.

<sup>21</sup> CESCR (n 5) para 8.

<sup>22</sup> *ibid* para 41.

<sup>23</sup> Interview with Thrive (Tracey Herrington) (n 16).

### **3. Violation of Article 2(2) (Non-Discrimination)**

Article 2 imposes a duty on the State to take steps to ensure that rights are realized without discrimination. This is partly defined in General Comment 18 as ‘any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights’.<sup>24</sup> The WHO defines mental health as ‘a state of well-being in which every individual realizes his or her own potential, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to her or his community’.<sup>25</sup> According to Thrive’s estimation, around 80% of those who seek help from their organisation would be classed as a vulnerable person, due to mental health difficulties or a disability.<sup>26</sup>

Worrying statistics show that 58% of sanctioned ESA claimants are vulnerable people with a mental health condition or learning difficulty. This proportion has rocketed from 35% of sanctioned claimants in 2009 to 58% in 2013.<sup>27</sup> There has also been a 668% increase in benefit sanctions against people with mental health problems on ESA over the last four years.<sup>28</sup> The statistics demonstrate that sanctions are now overwhelmingly imposed on some of the most vulnerable individuals, affecting their access to social security in an indirectly discriminatory way.

The infringement of article 2(2) taken with article 9, can be seen to be the result of a lack of flexibility in the system, and a lack of support for the vulnerable.

#### **3.1. Lack of flexibility in the system**

A lack of flexibility in the system means that the differing needs of vulnerable people are not being recognised. In discussing their Claimant Commitment (the infringement of which can lead to a sanction), vulnerable individuals are not given proper support to communicate their requirements. This was the experience of our interviewee, who said that ‘people with a mental health issue or just low self-esteem or things like that, won’t articulate their concerns and certainly won’t ask what their rights are’.<sup>29</sup> As a result, individuals are unable to negotiate a fair Claimant Commitment and their targets are frequently unattainable.

The charity Mencap reported the example of a young person with a learning disability who was given 30 job-searching actions every week.<sup>30</sup> These actions included accessing the ‘universal job match’ system every week. However, he did not have the IT skills necessary to

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<sup>24</sup> CESCR, *General Comment 18: The Right to Work (Article 6 of the International Covenant on Economic, Social and Cultural Rights)* (UN Doc E/C12/GC/18, 2005) para28.

<sup>25</sup> World Health Organization, ‘Mental Health: A State of Well-Being’ (August 2014) <[http://www.who.int/features/factfiles/mental\\_health/en/](http://www.who.int/features/factfiles/mental_health/en/)> accessed 18 February 2016.

<sup>26</sup> Interview with Thrive (Tracey Herrington) (n 16).

<sup>27</sup> Department for Work and Pensions, ‘Freedom of Information Request 2014-79’ (18 March 2014) <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/295384/foi-79-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/295384/foi-79-2014.pdf)>.

<sup>28</sup> ‘600% Increase in Benefit Sanctions against People with Mental Health Problems’ (*The Independent*, 12 November 2015) <<http://www.independent.co.uk/news/uk/politics/benefit-sanctions-against-people-with-mental-health-problems-up-by-600-per-cent-a6731971.html>> accessed 16 February 2016.

<sup>29</sup> Interview with Thrive (Tracey Herrington) (n 16).

<sup>30</sup> Patrick Butler, ‘Benefit Sanctions: The 10 Trivial Breaches and Administrative Errors’ (*Guardian*, March 2015) <<http://www.theguardian.com/society/2015/mar/24/benefit-sanctions-trivial-breaches-and-administrative-errors>> accessed 18 February 2016.

do this and was not given support by Jobcentre Plus either. He was proactive and instead applied for jobs with handwritten notes, but was still sanctioned. Examples like this show that vulnerable people are more prone to sanctioning and their right to access social security is disproportionately affected.

### **3.2. Lack of Support**

The lack of flexibility in the system is compounded by a lack of support for vulnerable people. This often means that such individuals are unable to receive the most appropriate advice. Within the system, Disability Employment Advisors are there to help with ‘work preparation, recruitment, interview coaching and confidence building’.<sup>31</sup> However, ‘in practice that doesn’t work,’ as ‘it’s down to [claimants] to tell their work coach about their disability or mental health issue’.<sup>32</sup> The ‘onus is on you as an individual and you have to take responsibility to ask about the process and the next steps and if you don’t ask, you won’t be told’.<sup>33</sup>

This passive approach to vulnerabilities is a key flaw in the operation of the welfare system. It leaves claimants unaware of what supports or adjustments could potentially be available to them. As a result, claimants are frequently not referred to, or are unaware of, Disability Employment Advisors. Moreover, ‘a lot of people who are quite vulnerable do not have a very good relationship with the job centre at all, so they’ll do anything to get out of there as quick as possible’.<sup>34</sup> This atmosphere means that individuals will not discuss their concerns or receive the required support. This dynamic may provide an explanation for the high sanctioning rates amongst vulnerable people.

For many vulnerable individuals this lack support leads to a damaging cycle. The loss of income that comes as a result of sanctioning can often mean a reduction in food intake, or an inability to enjoy other basic minima such as warm housing. For those with a particular illness or disability the loss of these basic standards of living can ‘impact [badly] on physical health as well as mental and emotional wellbeing’.<sup>35</sup>

## **4. Violation of Article 6(2) (Right to Work)**

Article 6 of the Covenant conveys a right to work, which includes an obligation upon the State to realise the rights through ‘technical and vocational guidance and training programmes’.<sup>36</sup> In addition, the Covenant requires that States work progressively towards;

“achiev[ing] steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual”.<sup>37</sup>

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<sup>31</sup> Job Centre Guide, ‘Disability Employment Advisors’ (*Guardian*) <<http://www.jobcentreguide.co.uk/jobcentre-plus-guide/34/disability-employment-advisors>> accessed 18 February 2016.

<sup>32</sup> Interview with Thrive (Tracey Herrington) (n 16).

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*

<sup>35</sup> *ibid.*

<sup>36</sup> *International Covenant on Economic, Social and Cultural Rights* (n 21) article 6(2).

#### **4.1. Lack of training, and technical and vocational education**

It is argued that the UK has violated its obligations under this article in a number of respects. First, through a lack of technical and vocational education the State has failed to facilitate access to employment for lower skilled individuals.<sup>38</sup> When combined with the sanctions scheme, this results in individuals being pushed towards the labour market, but without first having the necessarily skills and capabilities.

It was stated in relation to the North East of England, that;

*“There may be some opportunities, what scares me is that this apprentice scheme which is a quid [£1 or approximately 1.40 euro] an hour and sometimes it may not be used as wisely as it could be”*

*“We’ve got a lot of people and they’re just too far removed from the labour market at this moment, whether it be literacy, whether it be confidence”<sup>39</sup>*

In addition, a Work Programme was introduced in 2011, which intends to offer a personalised package of support to disabled people who are out of work. There has been concern, however, that by continuing to use models similar to previous employment initiatives, the Work Programme will have similarly low success rates.<sup>40</sup>

Similarly, the ‘Work Choice’ scheme is tailored to suit the needs of each individual disabled person and provides specialised support to find employment and to keep employment once a job has been found and started.<sup>41</sup> However, underfunding of this specialist support means that in reality very few disabled people will be able to get a place on the scheme, with only 13,000 places for Work Choice available each year.<sup>42</sup> The result of this further lack of support to get into the workplace is that the claimants will continue to be reliant on the JSA system and are more likely to face sanctions.

#### **4.2. Discrimination and unequal treatment**

An immediate obligation upon states (taking article (2) with article 6) is the prohibition on discrimination and unequal treatment in relation to the right to work. The CESCR has emphasized the core nature of this obligation in its General Comment.<sup>43</sup> The State might argue that its role in this area is limited as there is no evidence of directly discriminatory policies. However, it should be noted that this obligation could be violated through both acts of omission and acts of commission.<sup>44</sup>

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<sup>37</sup> *ibid.*

<sup>38</sup> As required by CESCR (n 31) para 27.

<sup>39</sup> Interview with Thrive (Tracey Herrington) (n 7).

<sup>40</sup> Elizabeth Becker, Oliver Hayllar and Martin Wood, ‘Pathways to Work: Programme Engagement and Work Patterns’ (Department for Work and Pensions 2010) <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/214423/rrep653.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214423/rrep653.pdf)>.

<sup>41</sup> Disability Rights Watch UK, ‘Submission to the UN Universal Periodic Review UK’s Examination’ (2012) para 38.

<sup>42</sup> *ibid.*

<sup>43</sup> CESCR (n 31) para 31.

<sup>44</sup> *ibid.* 32.

The operation of the sanctions scheme, relying on time pressured interviews and having a 'one-size-fits-all' tendency, works against some vulnerable groups whose difficulties may not be properly understood in this forum. Our interviewee put it in these terms;

*"If you can't articulate yourself, you'll be given a low-skilled, casual, zero-hour type contract ... [unless] you can stand up for yourself and say 'actually, these are my interests, these are my skills and this is the type of work I want to go into'".<sup>45</sup>*

Therefore, it is arguable that the UK is failing to meet its obligations under article 6(2) in a number of respects. Namely, in its obligation to facilitate individuals' right to 'full and productive employment', and to ensure that the right is enjoyed in a non-discriminatory way.

## **5. Conclusions**

The UK as a State party to the ICESCR has not designed this aspect of social security policy in a human rights compliant manner. The benefit sanctions scheme is causing real hardship for vulnerable individuals in the area of the North East of England that we examined. In particular, we found;

- The State has enacted deliberately retrogressive measures in relation to article 9
- The State is not meeting its obligation to fulfil under article 9
- The State is failing to provide the minimum essential level of the right to social security
- The right to non-discrimination in the right to social security is not being met
- Aspects of the right to work are not being complied with.

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<sup>45</sup> Interview with Thrive (Tracey Herrington) (n 16).