

Thematic analysis on access to justice for social rights: An Explainer

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Access to Justice For Social Rights
Addressing The Accountability Gap

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Introduction to the case studies

This briefing has been prepared for the Nuffield Foundation project on 'Access to Justice For Social Rights: Addressing The Accountability Gap', led by Dr. Katie Boyle. The briefing explains our approach to the thematic analysis of empirical research and what we learned from the data across four case studies. Each case study explored a specific social rights legal case from each of the four UK jurisdictions, apart from Wales for which we adopted a more general approach to understanding access to justice for social rights issues. Case studies were used to help focus this research and help our team identify potential similarities and differences across the UK nations.

The Scottish case study focused on the cases surrounding government contractor, Serco, changing the locks on the homes of asylum seekers.¹ Social security was the focus of the English case study where the Pantellerisco case concerned benefits being capped based on when the claimant is paid.² In Northern Ireland, both social security and housing were discussed. We focussed on the Cox case³ concerning access to Personal Independence Payment (PIP) for people with terminal illnesses being the focus of the social security discussion. The Welsh case study took a much more general approach addressing a range of social rights issues but primarily access to food.

There were 26 interviews conducted across the 4 case studies. The interviews were with

practitioners who worked closely to the cases or surrounding the social rights issues we wished to discuss. Informal conversations before the interviews helped our team identify who to talk with and potential areas to focus on.

Part 1: The thematic analysis

The early analysis of the interviews was conducted using a thematic approach. Using the qualitative analysis software NVivo themes were identified within and across each of the four case studies. There were two levels to this analysis.

The first level was theory-driven, built around the access to justice journey. Each interview was analysed individually, and key points were grouped under the following ten codes:

1. **Access:** How is accessibility imagined & implemented regarding housing, social security and food/fuel poverty and what does access to justice or access to a remedy mean when there are problems with the provision of these services?
2. **Participation:** Can everyone participate in decisions that impact them when seeking to access justice? What enables participation? What are the barriers to participation? Are those most impacted by issues and/or marginalised across lines of oppression able to participate?

1 *Ali (Iraq) v Serco Ltd* [2019] CSIH 54

2 *R (Pantellerisco and others) v SSWP* [2020] EWHC 1944 (Admin); *R (Pantellerisco and others) v SSWP* [2021] EWCA Civ 1454

3 *Cox, Re Application for Judicial Review* [2020] NIQB 53 (22 October 2020); *Department for Communities and Department for Work and Pensions v. Lorraine Cox* [2021] NICA 46

3. **Deliberation:** Are there clear dialogues occurring within multi-intuitional frameworks across legislative, executive, judicial branches? Is there accessible information about these dialogues? Are they inclusive and do they lead to outcomes that meet people's social rights?
4. **Compliance:** How can the issues people face be challenged? Are there set mechanisms for doing this? Are these mechanisms satisfactory?
5. **Enforcement:** What do review and enforcement mean in practice, in each of the four UK jurisdictions?
6. **Fairness:** Are there suitable means to challenge unfairness in the system?
7. **Counter-majoritarian:** Can the solutions to these issues, legal and otherwise be utilised for everyone or only a select few? How can systems prevent elite-driven litigation?
8. **Accountability:** How are institutions held to account? Are there adequate mechanisms for this?
9. **Effective Remedies:** Are remedies implemented? Are these remedies effective? By whose standard are they effective?
10. **COVID-19:** What impact has the COVID-19 pandemic had on the case studies?

At the second level of analysis key themes were identified within each of these 10 codes across all four case studies. This is how similarities and differences between social rights issues and access to justice between the UK nations were identified.

Part 2: Thematic analysis findings summary

The four case studies show that barriers to accessing justice occur across the UK concerning various types of social rights. There was several key themes identified which broadly followed the access to justice principles and adjudication journey.

Awareness and resources were presented as crucial to accessing justice for social rights issues. Awareness of what social rights are and who to

go to when your rights have not been met were prerequisites for starting the journey towards justice. However, awareness alone is not enough if there are not enough resources to engage with routes to justice. There were various types of resources discussed in the case studies but regarding individual rights holders, the two crucial ones were legal aid and legal representation. Without legal aid, many rights holders cannot afford to pursue legal avenues for justice and without legal representation, they would likely be unsuccessful even if they did.

A broader issue the case studies highlighted was the separation between effective remedies for individuals and public interest remedies. There are two key ways this manifest. First, if a legal judgment is in favour of the rights holder and identifies that an issue has occurred and rectifies that and/or provides compensation to the rights holder that may be an effective remedy for that individual. However, if feedback is not then provided to the body who created the issue, then this problem may continue to occur for other rights holders. The second way this manifest is in settlements being offered to individuals that may rectify the issue they have faced but does not challenge the wider legal issue. This is aggravated by a lack of access to legal aid and the general taxing nature of legal routes to justice. The practitioners identified that in many cases it would be unreasonable to expect rights holders to pursue legal challenges for the common good that would be unlikely to benefit them as an individual. Given these barriers to a collective remedy, insufficient advancement of effective remedies for systemic social rights violations will continue to occur. The data also suggested that rather than serving as an additional safety net, legal avenues to justice become the mechanisms through which social rights are met (i.e. where people access a service or provision of a right via the justice system rather than the initial decision making process), meaning there are significant underlying issues with decision-making processes.

Across the case studies there are numerous examples of social rights not being met and narratives justifying these failings by classifying some groups as undeserving or in not enough need. This was particularly prevalent in the Scottish case study concerning the classification of "failed asylum seekers" being seen as people undeserving of basic social rights and dignity despite that being contradictory to universal understandings

of rights. The notion of being worthy of basic rights came up concerning social security where claimants felt stigmatised to the extent where they would single themselves out as different from other claimants to try and show their worth. This also contributed to a general culture of disbelief of people seeking financial support due to disability, which is formalised via expensive and flawed privatised assessments. The case studies highlighted ways that narratives of rights being conditional led to unfit, dehumanising and often impractical remedies being provided to meet people's social rights. It was for this reason one of our key recommendations is to reclaim narratives, challenging attempts to undermine entitlements to basic social rights such as food, fuel and housing.

When reading the findings identified by this research it is important to consider that what is being discussed is access to justice relating to social rights, not luxuries. If the social rights discussed are not met people can be/are put into destitution.

The thematic analysis above was then further developed as we theorised our findings using critical discourse analysis. The critical discourse analysis helped us to identify specific areas of tension surrounding access to justice for social rights. This analysis was then used to define and develop the key findings and recommendations of this project each of which are discussed in our final report.

The Access to Justice for Social Rights: Addressing the Accountability Gap project explores the barriers faced by rights holders in accessing justice for violations of social rights across the UK. The project seeks to better understand the existing gaps between social rights in international human rights law, and the practice, policy and legal frameworks across the UK at the domestic level. It aims to propose substantive legal solutions – embedding good practice early on in decision making as well as proposing new legal structures and developing our understanding of effective remedies (proposing substantive change to the conception of 'justice' as well as the means of accessing it).

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Documents in this series:

1. The Practitioner Perspective on Access to Justice for Social Rights: Addressing the Accountability Gap
2. Briefing - ESC Rights Part One : International Legal Obligations - An Explainer
3. Briefing - ESC Rights Part Two: The Right to Social Security in the UK - An Explainer
4. Briefing - ESC Rights Part Three: The Right to Adequate Housing in the UK - An Explainer
5. Briefing - ESC Rights Part Four: The Right to Food Adequate Housing in the UK - An Explainer
6. Briefing: Thematic Analysis on Access to Justice for Social Rights: An Explainer
7. Briefing: A Comparative Study of Legal Aid and the Social Rights Gap
8. Briefing: Effective Remedies & Structural Orders for Social Rights Violations
9. Briefing: Legal and Discursive Interdisciplinary Approach to Social Rights in the UK
10. Briefing: The Access to Justice Journey