

Testing the fairness of workfare

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A legal challenge to 'workfare' schemes could be trumped by the state's right to provide training

The requirement on certain recipients of Jobseeker's Allowance (JSA) to work for businesses on unpaid work experience schemes or risk losing their JSA payments, while there is no obligation on the business for which they work to pay a wage, is alleged to amount to exploitation of the unemployed in favour of - business, or even forced labour.

There is a number of schemes operating under the umbrella of what is known as 'workfare'. The two that have attracted particular controversy are, first, 'Mandatory Work Activity', which is aimed at jobseekers deemed to have little or no understanding of what is required to obtain and keep employment (failure to participate can lead to loss of JSA); and second, the 'Work Programme', whereby jobseekers are required to undertake work placements to continue receiving JSA. Under neither scheme are participants paid wages for their work.

The idea of workfare is that getting jobseekers working, even if not in return for a wage and with the alternative being the likely loss of JSA, equips them with the skills necessary to successfully apply for jobs while providing a sense of purpose and motivation.

Mandatory Work Activity and Work Programme are targeted at the two groups that most concern the Government - the long-term unemployed and the young unemployed.

Those who believe that these schemes amount to forced labour may look first to Article 4 of the European Convention on Human Rights (ECHR), which states that nobody shall be required to perform forced or compulsory labour and which was incorporated into domestic law by the Human Rights Act 1998.

Jurisprudence of the European Court of Human Rights provides that it is lawful to require a person to obtain employment or lose welfare benefits, and it would not be a huge extension of this principle to find lawful a requirement that someone takes part in a work placement scheme that provides them with skills or lose their welfare benefits.

Further, such a scheme could fall within the exception to the prohibition on Article 4 of the ECHR where a person is complying with their normal civic obligation.

The issue is really whether there is a right to remuneration. Those looking for such a right will find it in Article 4 of the European Social Charter (ESC), which has been signed up to by the UK but never ratified.

Although not directly enforceable in the domestic courts, the ESC provides guidance on how a court might approach a challenge to workfare on human rights grounds. Article 10(4) of the ESC contains the right to vocational training in that states should undertake to provide or promote, as necessary, special measures for the retraining and reintegration of the unemployed.

It is likely that the workfare initiative being pursued by the Government is just such a measure, based on the objective of getting jobseekers working, and that any - interference with their human rights would be proportionate on the basis that they receive JSA while having the opportunity to improve their skills, which is deemed to deliver a net benefit to the labour market.

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