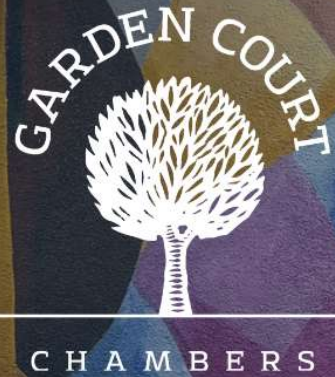
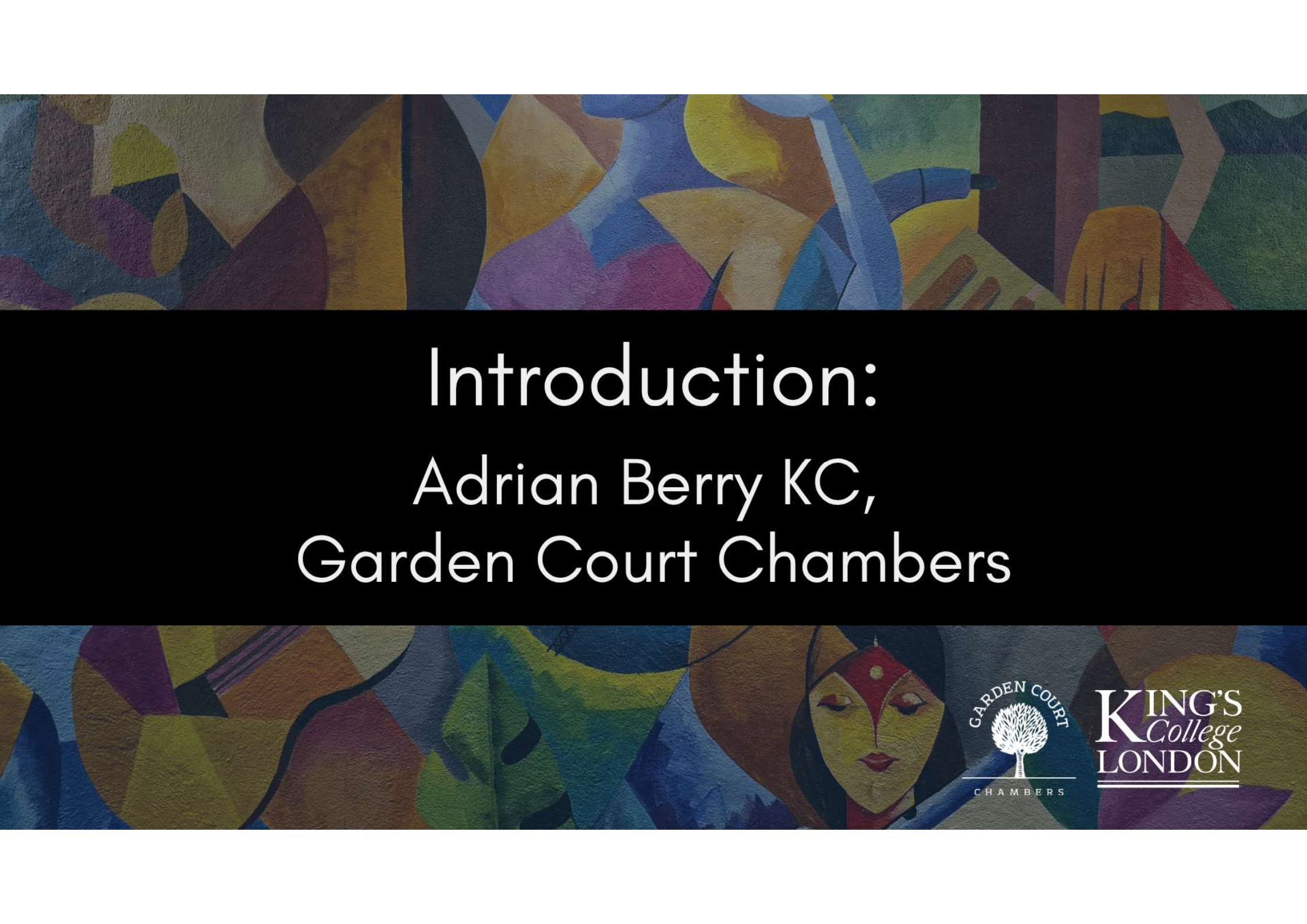




KING'S
College
LONDON

Socio-Economic Rights: The Next Chapter



Introduction:

Adrian Berry KC,
Garden Court Chambers



KING'S
College
LONDON



Keynote Speaker:

Dr Koldo Casla,
UN Special Rapporteur on Right to Adequate
Housing



KING'S
College
LONDON

How can we make the case for ESCR out of this room?

Dr Koldo Casla

Senior Lecturer, Law, University of Essex

UN Special Rapporteur on the Right to Housing

**What do the
literature and
practice of cognitive
linguistics tell us
about strategic
framing?**

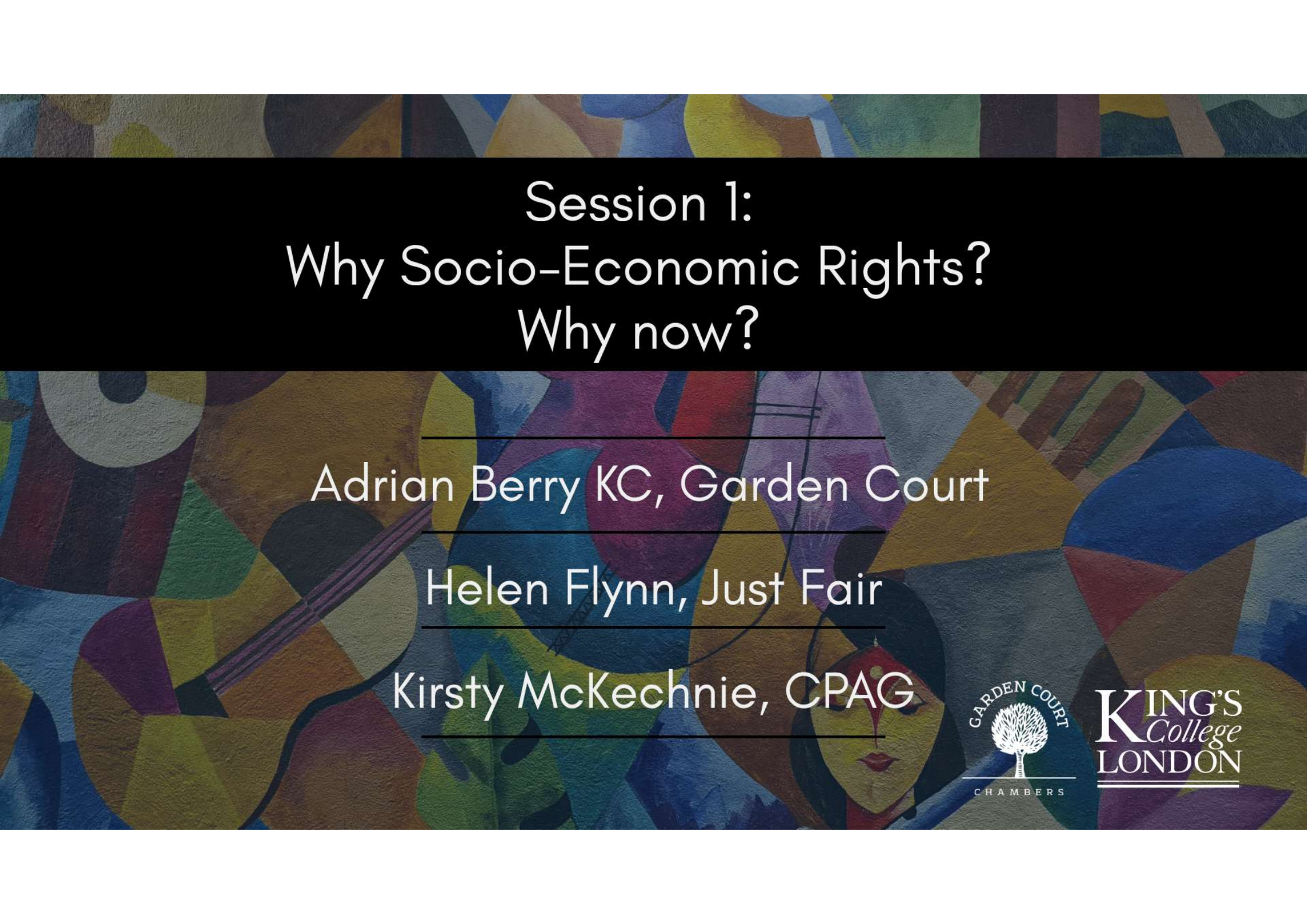


- Not only *what* people think, but also *how* they think. The rationale, the interests and the values behind the opinions.
- This is an empirical question. Test messages.
- Research, by itself, is limited.
- Telling people they are wrong, even *why* they are wrong, can be counterproductive.
- Resonance is a tool, not an end.
- We need villains and heroes.
- Repetition. Repetition. Repetition.
- What are you for? What do we share?
- Reaching the *persuadables* without provoking a backlash from opposition.
- Mind you. Your opponents are using these techniques against you!

How am I applying all of this to my UN mandate?



- You may not think of it as a right. But you surely care about housing. Let's start from there.
- What language/ideas/proposals connect with *majorities*?
- Housing & the local community. Looking for promising practices.
- Follow the money. Housing & property/capital.
- Housing & health.
- The ecosystem. Housing & the city.



Session 1: Why Socio-Economic Rights? Why now?

Adrian Berry KC, Garden Court

Helen Flynn, Just Fair

Kirsty McKechnie, CPAG



KING'S
College
LONDON



Socio-Economic Rights: The Next Chapter

September 2026

Helen Flynn: Head of Programmes and Partnerships

justfair





Just Fair

justfair

- A UK civil society organisation that works to achieve **lasting, positive change** through the promotion and protection of economic, social and cultural rights (ESCR)
ESCR are rights of everyday life, including the rights to housing, food, health and social security
- Our **vision** is for a fairer, more just society where everyone can live with dignity
- Our **mission** is to lead and inspire action so that ESCR are respected, protected, and fulfilled across the UK
- The **hub** for ESCR in the UK

Indivisibility of human rights

UDHR (1948)

Universal Declaration of Human Rights

Life, freedom from torture, freedom from slavery,
liberty and security of person, equality, asylum,
nationality, thought, work, rest and leisure...

+

ICESCR (1966)

International Covenant on Economic, Cultural and
Social Rights

Housing, health, food, social security, work, trade
unions, education...

+

ICCPR (1966)

International Covenant on Civil and Political Rights

Life, freedom from torture, freedom from slavery,
liberty and security of person, free movement, fair
trial, voting and elections, assembly and
association...

=

International Bill of Human Rights

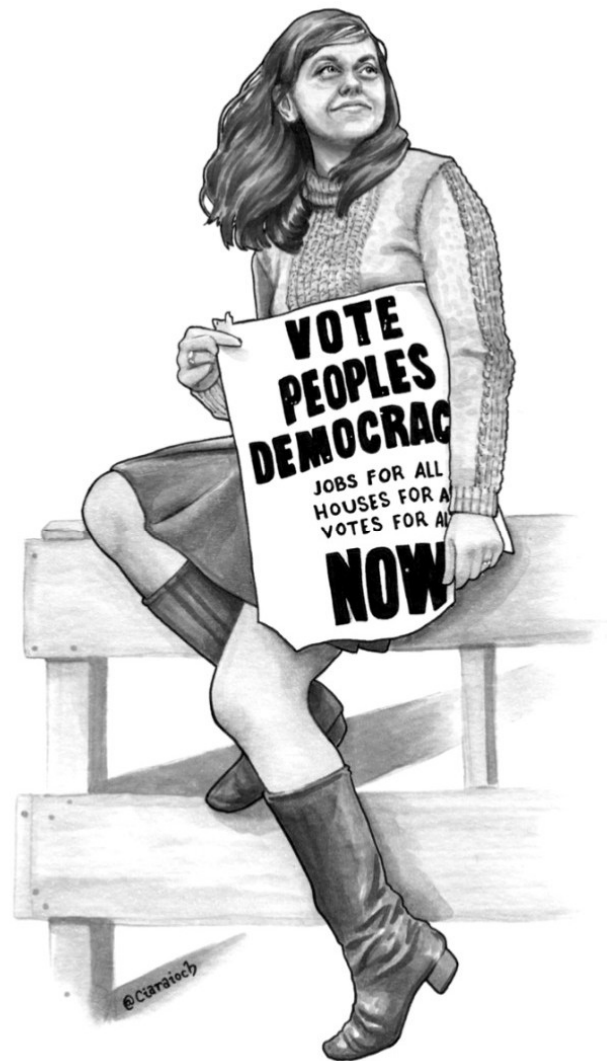


Image: Bernadette Devlin McAliskey by [Ciaraíoch Art](#)



Northern Ireland

- Bill of Rights committed to in Belfast/Good Friday Agreement.
- [Advice provided](#) by NIHRC in 2008 contained a wide range of rights; economic, social, cultural, environmental, civil and political.
- Failure of delivery by successive Westminster Governments
- [Ad Hoc Committee](#) on Bill of Rights found 80% describing NI Bill of rights important or very important.
- Check out [#MakeOurFutureFair](#).



Wales

- In 2011 [Rights of Children and Young Persons \(Wales\) Measure](#).
- Led to UNCRC (Incorporation) (Scotland) Act
- 6th Senedd under Mark Drakeford committed to the incorporation of CEDAW and UNCRPD, and the [right to adequate housing](#). Welsh Government [green paper consultation](#) into adequate housing and fair rents, 2025 white paper lacked any mention of 'right' to housing
- YouGov poll in 2020 commissioned by CIH Cymru found that over three-quarters (77%) of people in Wales supported a legal right to housing.
- Plaid Cymru 2026 election manifesto committed to legislate for right to adequate housing in Wales, and a Human Rights Act for Wales (to fully incorporate UNCRPD, CEDAW, ICESCR, CERD and UNCRC)
- The Equality, Human Rights and Social Justice Committee established June 2026
- Check out the '[Back the Bill](#)' campaign.



Scotland

- UNCRC (Incorporation) (Scotland) Act came into force on 16 July 2024. ([See some case summaries here.](#))
- The Scottish Government's (now long-awaited) Human Rights Bill (Scotland) aims to bring into Scots law (within limits of devolution) ICESCR, CERD, CEDAW and UNCRPD.
- [See briefing on Just Fair submission here](#)
- SNP 2026 manifesto committed to introduce the Human Rights Bill in the next parliament and incorporate a range of conventions into Scots Law.
- Shirley-Anne Somerville MSP remains Minister responsible for incorporation of UN human rights treaties.



Garden Court Chambers Conference

Socio-economic rights in Scotland

Kirsty McKechnie
Early Warning System Project Manager, CPAG in Scotland



CPAG in Scotland

- Child Poverty Action Group (CPAG) in Scotland works for the over one in five children in Scotland growing up in poverty.
- We collect evidence from families living in poverty and campaign for solutions to bring about a society where children have a fair chance in life free from hardship.
- We provide training, advice and information on social security to frontline workers to make sure families get the financial support they need.

Fairer Scotland Duty

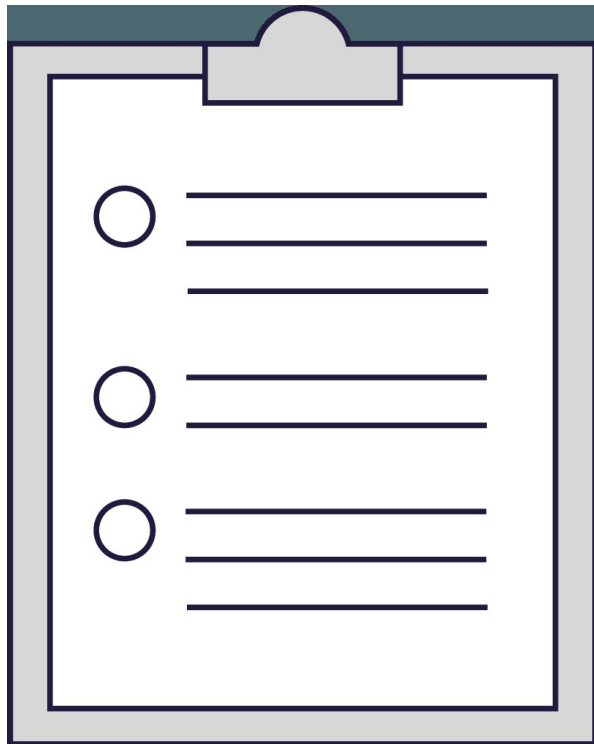
- Since 1 April 2018
- Places legal responsibility on specific public bodies to pay due regard to how they can **reduce inequalities of outcome caused by socio-economic disadvantage**, when making strategic decisions.
- Statutory guidance
- Public bodies must publish a written record of their decision-making process
- Monitored by the Equality and Human Rights Commission

Who is bound by the duty?

Public bodies including:

- The Scottish government
- Social Security Scotland
- Local authorities (eg South Ayrshire is using an [integrated impact assessment](#))
- The Scottish Courts and Tribunals Service

Impact Assessments



Fairer Scotland Duty

Equality

Island Communities

Data Protection

Business and Regulatory

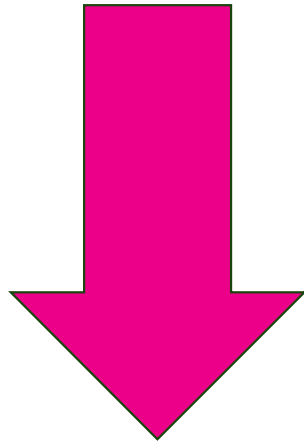
Children's Rights and Wellbeing

EHRC research

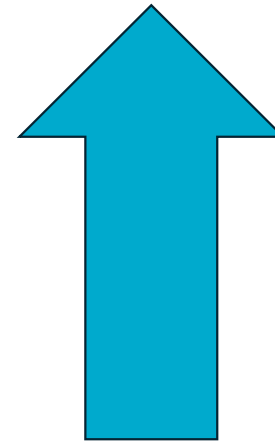
- Most organisations had a process, template or framework for implementing the Duty, often combining assessments for multiple duties.
- Most duty bearers who responded in Scotland felt their organisation engages well with individuals and groups with lived experience.
- Financial pressures, or a lack of capacity and resource, was an important issue for duty bearers when implementing the Duty.
- Some duty bearers felt the Duty provided a statutory basis for considering socio-economic disadvantage. However, others felt that **attributing success solely to the Duty was challenging and subjective**. This was particularly the case if an organisation already had a strategic focus on tackling poverty and inequality.

Does it drive change?

Child poverty



Benefit take-up



Attributable to the FSD?

Pre FSD

Child Poverty (Scotland) Act 2017

- targets, plans and reports

Social Security (Scotland) Act 2018

- Scottish social security principles
- Power to create Scottish child payment

Post FSD

Social Security (Amendment) (Scotland) Act 2025

- Power to change legislative footing of Scottish child payment
- Benefit take-up strategies

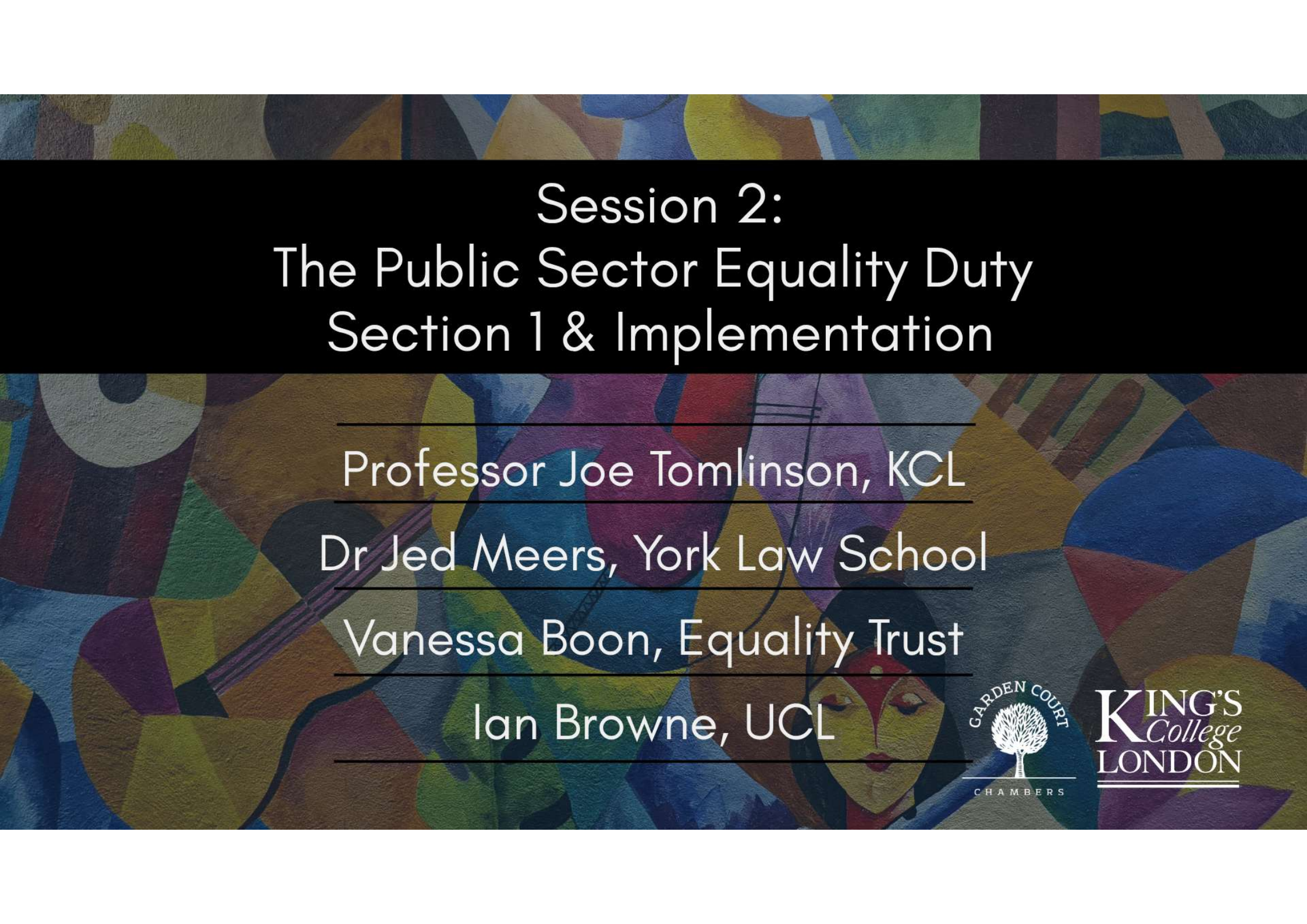
Shaping fairer decision making?

Example: Falkirk Council

- Council budget proposed 13.7% council tax increase and reduction of ELC places, school bus routes, teachers and classes.
- Equality and poverty impact assessment highlighted lack of consultation and resulting negative impact of poverty.
- Council tax increases went ahead (15.6%) but reductions were all rejected.

Fairer Scotland Duty

- No substitute for political will
- Scottish government impact assessments tend to focus towards the positives
- More helpful at local/organisation level
- Future proofing for a different political context?



Session 2: The Public Sector Equality Duty Section 1 & Implementation

Professor Joe Tomlinson, KCL

Dr Jed Meers, York Law School

Vanessa Boon, Equality Trust

Ian Browne, UCL



KING'S
College
LONDON

Snapshot of media discourse sample

Categorised, using Fairclough's critical discourse analysis, as either challenging or reproducing the status quo of unequal class and power relations

Challenge

Harman's law is Labour's biggest idea in 11 years

A public sector duty to close the gap between rich and poor will tackle the class divide like no other policy has - The Guardian

'Socialism in one clause' - The Guardian

The Tory folly of cutting back the Equality Act

By chipping away at anti-discrimination legislation, Theresa May risks alienating white working-class voters - The Guardian

Government urged to extend Equality Act to cover economic inequality
'Socio-economic duty' was included in legislation a decade ago but never activated - The Independent

Failure to enact public duty law 'has worsened England inequality in pandemic' - The Guardian

Unions call for Equality Act update to make 'socio-economic duty' to tackle austerity - Morning Star

Socio-economic rights deserve legal protection

Academics and lawyers on the new protected social rights proposed by Gordon Brown's Commission on the UK's Future - The Guardian



Equality Act 2010
Section 1

Reproduce

Labour draws up equality law revamp that 'will impose socialism on Britain'

Tories say Starmer's 'socio-economic duty' for public sector is 'war on middle class' - The Telegraph

Theresa May to axe Harman's 'ridiculous' equality law
- Daily Mail

Middle class children to be 'shut out of best schools' in Labour equality crackdown

Plans to update Equality Act could force schools to prioritise pupils from a working-class background, Tories claim - The Telegraph

Labour plan to put middle class people 'at back of queue for access to services'

Money could be diverted from affluent areas to those less well off with council tax rising to make up the difference - The Telegraph

'Monstrous' Equality Act has gone too far says Lord Sewell
Legislation has embedded 'flawed ideology' in British state, says Tory peer - The Telegraph

Britain does not need any more equality

Labour is planning to impose a Procrustean 'socio-economic duty' on all public bodies that will only make our economy more sluggish - The Telegraph

Keir Starmer plots equality law 'to penalise middle class and privately educated', Tories claim - Daily Mail

Litigating the Socio-Economic Duty in Scotland, Wales and, perhaps, England.

Ian Browne

Lecturer (Teaching), UCL Faculty of Laws

Barrister, One Pump Court Chambers

The Equality Act 2010

Section 1: Public sector duty regarding socio-economic inequalities

*(1) An authority to which this section applies must, **when making decisions of a strategic nature** about how to exercise its functions, have **due regard** to the **desirability** of exercising them in a way that is designed to **reduce the inequalities of outcome** which result from **socio-economic disadvantage**.*

Section 149: Public sector equality duty

*(1) A public authority must, in the exercise of its functions, have **due regard** to the **need** to—*

- (a) **eliminate** discrimination, harassment, victimisation and any other conduct that **is prohibited by or under this Act**;*
- (b) advance equality of opportunity between persons who share a relevant **protected characteristic** and persons who do not share it;*
- (c) foster good relations between persons who share a relevant **protected characteristic** and persons who do not share it.*

Expectations

Harriet Harman, then Minister for Women and Equality:

- *“The new duty will attack one of the most fundamental and stubborn of all the determinants of inequality and ensure public bodies take the action they can to tackle it.”*

Lord Lester, then Liberal Democrat spokesperson in the House of Lords:

- *“In its present form the so-called “duty” is gesture politics – a politically motivated statement, too vague to be likely to achieve its important aim. It is a duty “writ in water”.”*

Baroness Warsi, then Conservative Shadow Minister for Community Cohesion:

- *“There is a very serious problem of socio-economic disadvantage, and that is something which we can all agree upon. The difference here is that we believe that real action should be taken in order to address the root causes of the problem, and we believe that these clauses are an empty gesture at a very serious problem.”*

Implementing the Socio-Economic Duty

- In England:
 - Theresa May (then Minister for Women and Equality) announced that it would be scrapped in November 2010, but it was never repealed.
 - The position of successive Conservative Governments was that the SED was effectively a pointless “tick-box exercise”.
 - Labour committed to commencing the SED in their 2024 General Election Manifesto.
- In Scotland: brought into force in April 2018 (as the “Fairer Scotland Duty”).
- In Wales: brought into force in March 2021.

Approach

- An effort to gain an understanding of the SED as a tool of legal mobilisation.
- Surveying and analysing instances of litigation offers a potentially valuable method of assessing the impact of a particular legal provision through:
 - rates of cases,
 - types of cases,
 - outcomes of cases, and
 - resulting judicial reasoning.
- However:
 - not all legal action becomes public - reported litigation may just be the visible tip of the iceberg of greater use, and
 - in isolation, it is hard to determine whether a lack of litigation is caused by limited impact, widespread compliance, or lack of challenge.

Findings

- *Reid v Scottish Ministers* [2022] CSOH 56
 - A challenge to a policy requiring a 2-day-a-month commitment to sit as a Tribunal member in Scotland, which was understood to impact welfare benefits eligibility.
 - Unsuccessful.
- *Foster v The Information Commissioner* [2024] UKFTT 00294 (GRC)
 - A data rights challenge to a refusal of HMRC to release information about the taxation of cultural assets.
 - Legally mistaken.
- *R (Evans) v Aneurin Bevan University Local Health Board* [2025] EWHC 1518 (Admin)
 - A challenge to a reorganisation of emergency services in Wales.
 - Unsuccessful.

Findings – Recent cases

- *R (Girdler) v Caerphilly County Borough Council* [2026] EWHC 2213 (Admin)
 - Application for permission for judicial review of a decision to prevent library closure.
 - Brought alongside PSED, with significant overlap in arguments.
 - Permission refused.
- *R (ST by her litigation friend KY) v Carmarthenshire County Council* [2026] EWHC 2038 (Admin)
 - Application for permission for judicial review of a decision to close a school.
 - Breach of SED was argued, in particular, breach of the duty to take into account statutory guidance (per s1(2) EqA 2010).
 - [92] “It follows that, if an authority has in fact discharged the socio-economic duty in section 1(1), its failure to have adverted to guidance issued under section 1(2A) could not constitute a rational basis on which to quash the decision.”
 - Permission refused.

How predictive might these findings be?

Reasons to be cautious:

1. England is much larger than Scotland and Wales.
2. England has a much greater concentration of legal resources.
3. Knowledge and understanding of the Duty may still be limited in Scotland and Wales.
4. Commencement by the UK Government will mean not just English public authorities are subject to the Duty, but also UK-wide authorities.

Comparisons to the Public Sector Equality Duty

The SED replicates the weaknesses of the PSED while adding some limitations of its own:

1. it applies to a narrower range of public authorities;
2. it applies to a narrower range of decisions (those of a “strategic nature”);
3. it requires public bodies to consider only the “desirability” of “reducing” “inequalities of outcome”, rather than the “need” of “eliminating” discrimination;
4. it lacks equivalently stringent guidance on reporting; and
5. it is not coupled with equivalent private law rights against socio-economic discrimination.

Conclusion

- I would argue that, although these findings only provide part of the picture, they give reason to be sceptical that the full commencement of the SED will be a significant tool for those hoping to use the law as a mechanism for combating socio-economic disadvantage.
- However, that is not to say that the SED will be without benefits:
 - greater data-gathering on socio-economic issues and likely impacts of policy
 - greater transparency about how socio-economic factors are taken into account during policymaking;
 - resulting levers of political accountability.



UNIVERSITY
of York

KING'S
College
LONDON

ADMINISTRATIVE
FAIRNESS LAB

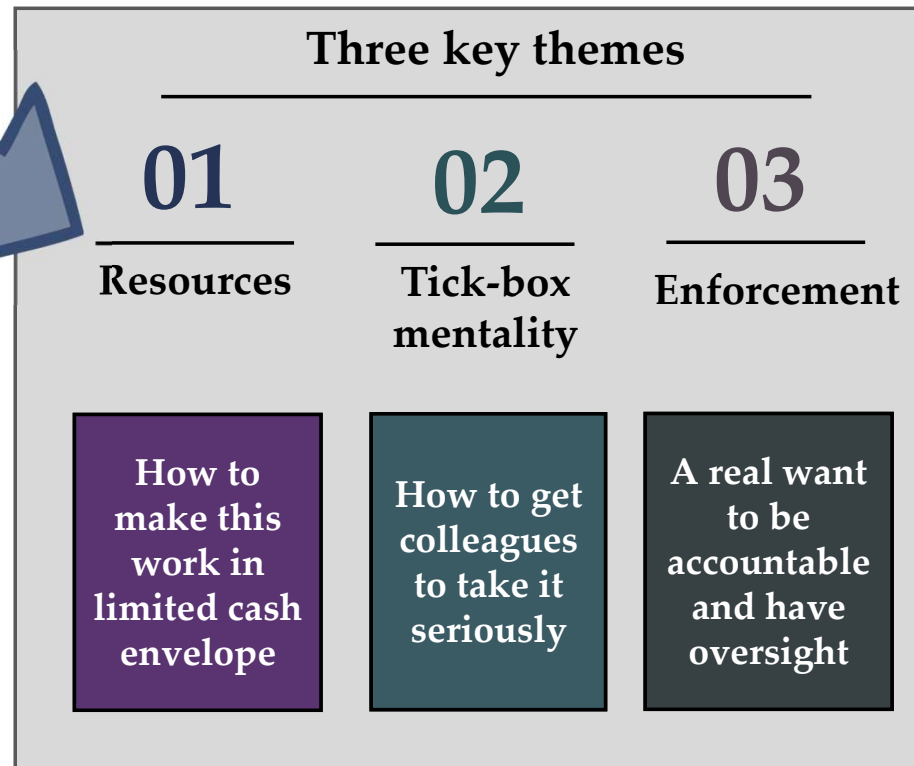
Enacting the socio-economic duty

What do the affected civil servants think?



A qualitative survey
with 267 English civil
servants

An experiment with a
further 432



A few thoughts on what
this means looking
ahead to
commencement



jed.meers@york.ac.uk

Delegating responsibility without delegating resources

*'under-resourced' - 'overworked' - 'under extra pressure' - 'extremely stretched'
– 'in the middle of a funding crisis' – 'cut to the bone' – 'flat budgets'*

“

Sorry, possibly overly pessimistic, however, given the spending controls in place currently, in order to avoid s114 [section 114 Local Government Finance Act 1988], **the idea we'll be doing more to improve equality strikes me as slightly perverse - like the way the Tories implement things - create a system in which people are forced to fail, then punish them for failing**

Problems with a 'tick box mentality'

80 references to '*tick box*', '*check box*', '*paper exercise*' and '*lip service*'

“ I've seen some good and some terrible EIA documents. I think much depends on the management structure and support offered. **An EIA can often be perceived as a box ticking exercise and delivered without any real thought - especially where teams are under resourced and where there is little support from higher levels of management....** However in an organisation in which senior leadership recognise and value EIAs - and support their delivery **it can be a powerful tool for service improvement and delivery**



UNIVERSITY
of York

KING'S
College
LONDON

ADMINISTRATIVE
FAIRNESS LAB

A call for enforcement and accountability

“ There must be clear accountability, proper funding, and real enforcement... otherwise, it risks becoming another symbolic policy with little real impact

“ I think public organisations need to be audited independently. At the moment it's all about tick boxes and being seen to do the right thing. I think equality and its impact should be advanced by senior personnel and **they need to accountable and when scrutinised should be able to demonstrate the actions and measures they have taken.** This poses the question were the measures correct and needed and what if any impact they have had.

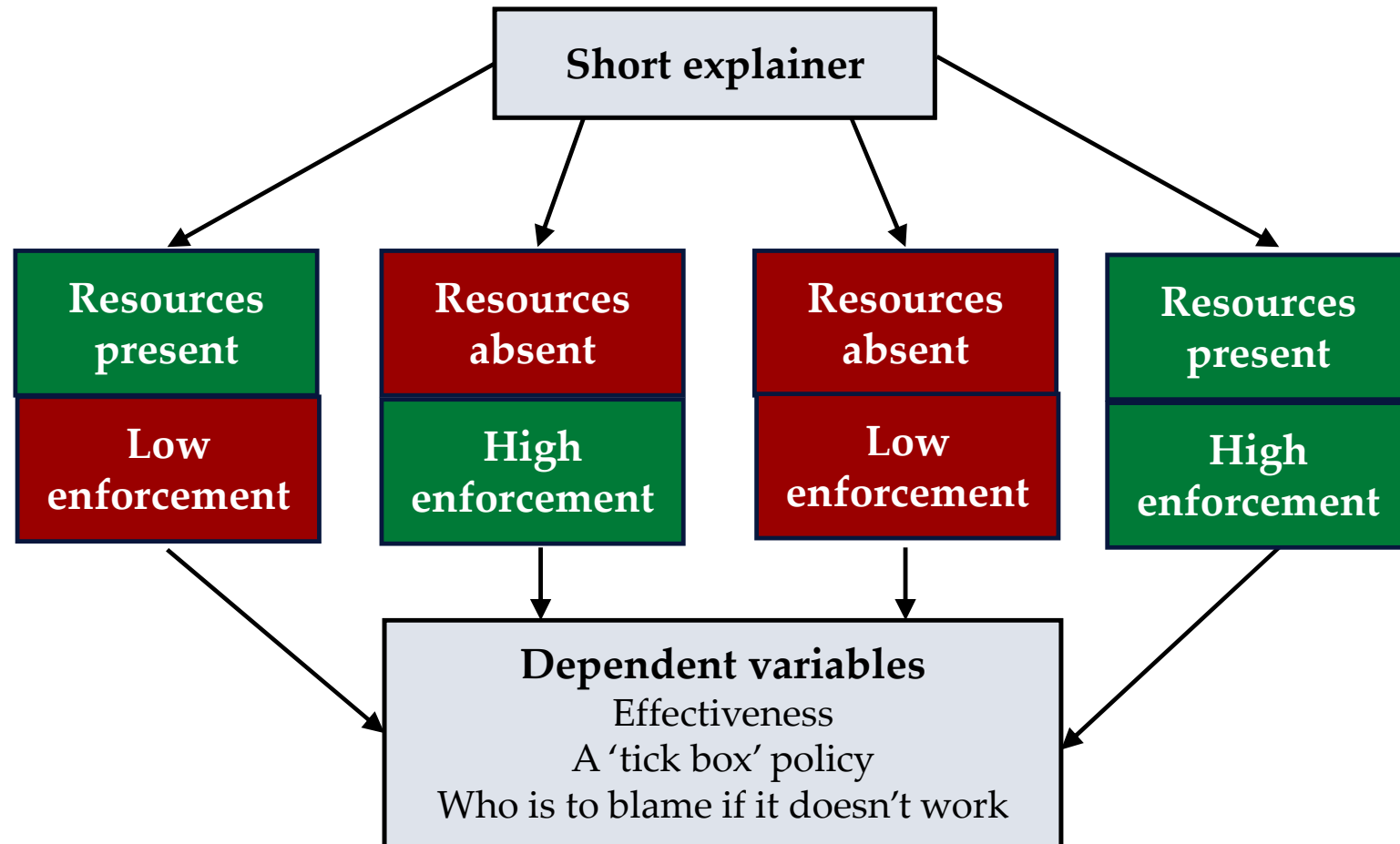


Testing this out: An experiment

Do resources + enforcement =
'tick box' perceptions?

H1. Yes – when both are absent,
scores across all dependent
variables will be worse.

H2. Resources will matter more
than enforcement.

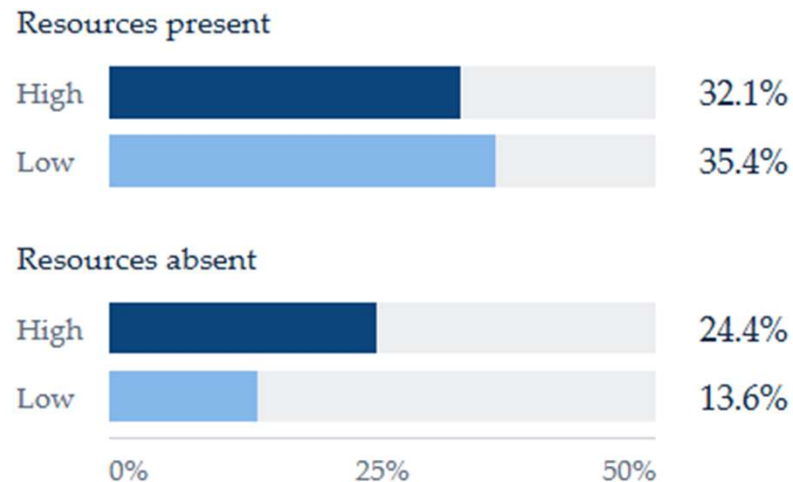


Testing this out: An experiment

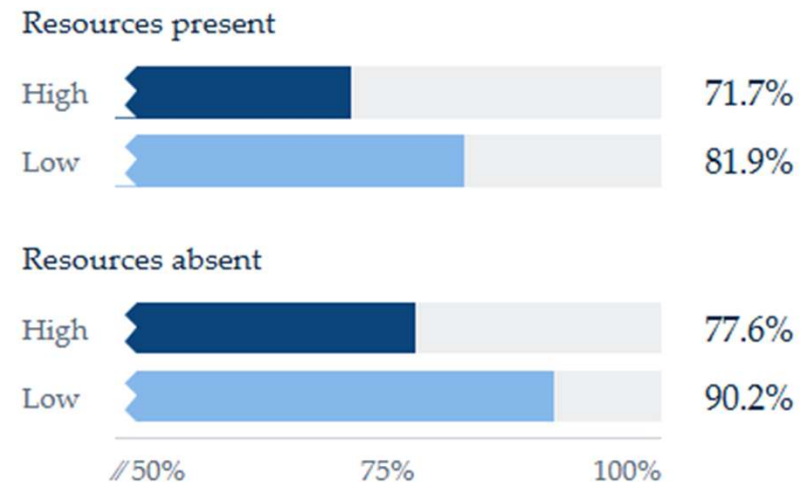
H1. Yes – when both are absent, scores across all dependent variables will be worse. ✓

H2. Resources will matter more than enforcement. ✓

Rated moderately or very effective



Somewhat or strongly agree it's a 'tick box'





UNIVERSITY
of York

KING'S
College
LONDON

ADMINISTRATIVE
FAIRNESS LAB

Enacting the socio-economic duty

What do the affected civil servants think?

Three key themes

01

Resources

How to
make this
work in
limited cash
envelope

02

**Tick-box
mentality**

How to get
colleagues
to take it
seriously

03

Enforcement

A real want
to be
accountable
and have
oversight



jed.meers@york.ac.uk

Are there prior conditions for reflexive discrimination law to be effective?

Introducing reflexive law into a struggling public sector leads to defensive protocolisation ('tick box' approaches).

Why do civil servants support greater enforcement and accountability?

Would perhaps expect civil servants to be reluctant – but that is not what emerged. Could be because it clarifies the boundaries of responsibility/helps a policy to land?

What is the promise and potential of the Socio- Economic Duty in a resource constrained environment...?



Paper plug...

Blame Games in Reflexive Discrimination Law,
Oxford Journal of Legal Studies



Session 3: BREAKOUTS

1. Education Rights (Main Theatre)
2. Accommodation Rights (Anatomy Museum)



KING'S
College
LONDON

Session 3, Breakout 1

Education Rights

Stephanie Harrison KC, Garden Court

Ollie Persey, Garden Court

Dan Rosenberg, Gold Jennings

Curtis Banks, Class Divide



KING'S
College
LONDON



Socioeconomic rights: the next chapter

[Unequal access to education]

Ollie Persey

Garden Court Chambers

10 September 2026

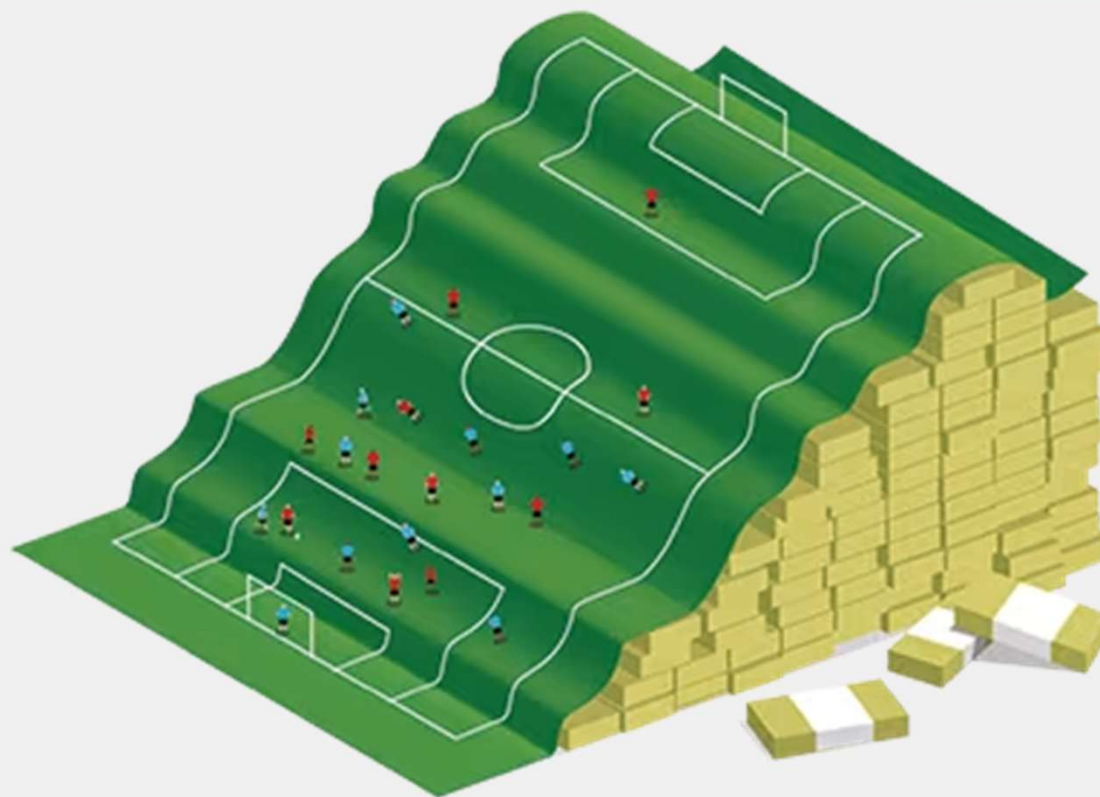


GARDEN COURT CHAMBERS



 @gardencourtlaw.bsky.social

A level playing field?



School Exclusion: Intersectional Equality Issues

Key drivers of educational exclusion are socio-economic ([Release home - Suspensions and permanent exclusions in England - Explore education statistics - GOV.UK](#)):

- The suspension rate for pupils eligible for Free School Meals ('FSM') continued to be more than four times that of pupils who were not eligible, with rates of 26.66 and 5.41, respectively. Permanent exclusion rates were more than six times higher for FSM-eligible pupils, with a rate of 0.32 compared to 0.05 for pupils who were not eligible.
- The suspension rate for pupils with an Education, health and care (EHC) plan was 26.45, which is more than three times the rate for pupils with no identified SEN at 6.78. The suspension rate for pupils with Special educational needs (SEN) support was 28.86, more than four times the rate for pupils with no identified SEN.
- Gypsy/Roma and Traveller of Irish Heritage pupils have the highest rates of suspensions and permanent exclusions consistently over time. Black Caribbean second highest rate.
- Children on free school meals are twice as likely to have SEN and Black children face a higher chance of living in poverty: Just for Kids Law, "Race, poverty and school exclusions in London"



Unequal Educational Outcomes

“... there is also a strong economic imperative to address this sharp end of the social mobility challenge. IPPR research estimates that the cost of [school] exclusion is around £370,000 per young person in lifetime education, benefits, healthcare and criminal justice costs.

This calculation reflects the costs of: education in the alternative provision sector; lost taxation from lower future earnings; associated benefits payments (excluding housing); higher likelihood of entry into the criminal justice system; higher likelihood of social security involvement; and increased average healthcare costs. Using the official figure of 6,685 children permanently excluded from school last year, this amounts to £2.1 billion for the cohort.

However, the true cost is likely to greatly exceed this figure. As explored in the Chapter 2, more than five times the number of pupils permanently excluded last year were known to be being educated full-time in schools for excluded pupils, and there is evidence that a further unknown number of pupils are functionally excluded through methods which elude government data. The true cost of exclusion is an unknown number, likely many multiples of this conservative estimate.”

2017 IPPR Report, p. 22.

<https://ippr-org.files.svdcdn.com/production/Downloads/making-the-difference-report-october-2017.pdf?dm=1778241520>.



Inequality of power and access to SEN support

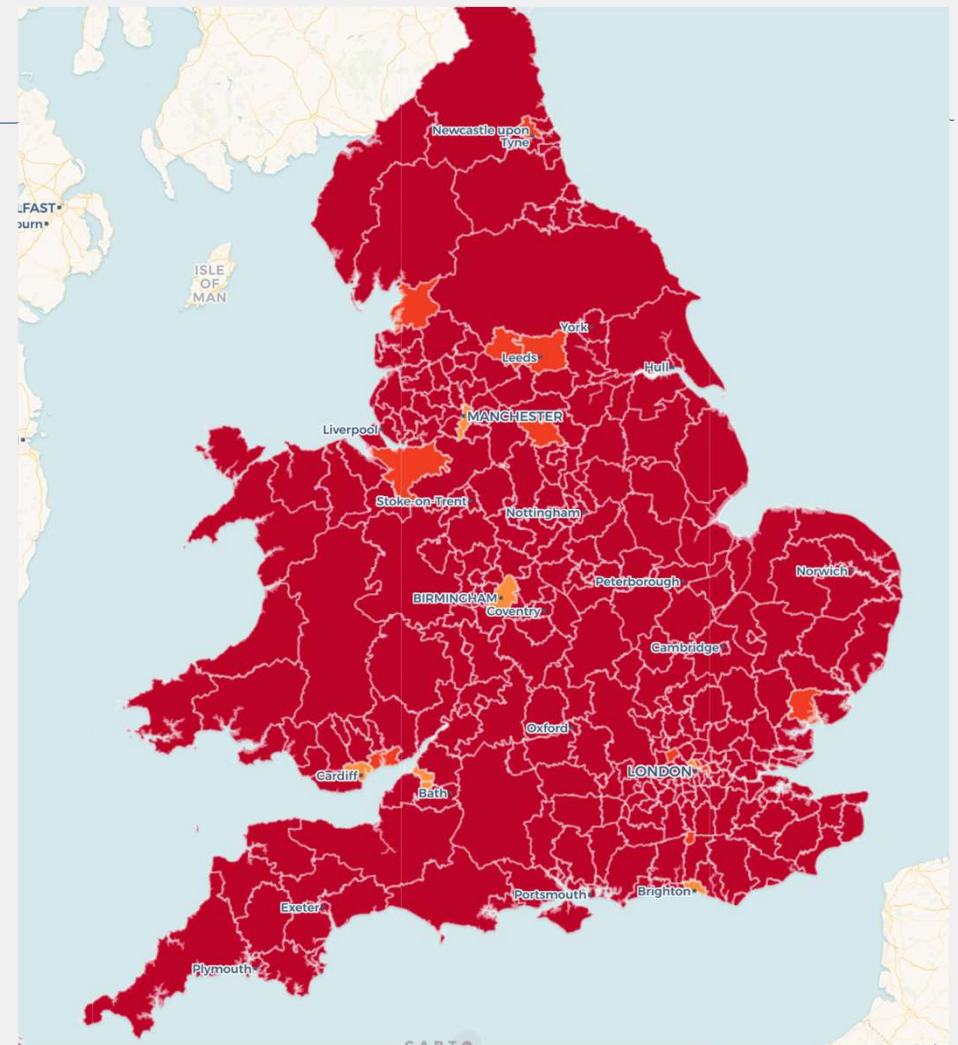
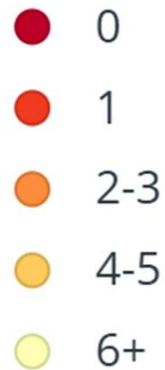
Kumar v LB Hillingdon [2020] EWHC 3362 (Admin) at [31]:

“Local authorities have huge powers over the lives of families with children who have special needs, making decisions with potentially lifelong consequences. Where parents are unhappy with those decisions, there is a fundamental and frightening inequality of power.”



Law Society Legal Aid Provider Map

Education legal aid providers



Problem: Unequal enforcement of rights

- Education legal aid market failure in relation to SEND work.
- Means test
- First-tier Tribunal in parents' name up-to-16
- Legal help only for First-tier Tribunal ('FTT'); Exceptional Case Funding ('ECF') for representation at a hearing
- Alternative Person's means assessed
- FTT largely determined by expert reports, which cost £££
- No in scope legal aid for school exclusion process; ECF available post-*R (CWJ) v Director of Legal Aid Casework & Lord Chancellor* [2025] EWHC 306 (Admin)



What can be done about it?

- Legal challenge to education legal aid market failure due to low rates.
- Means test legal challenges- incremental changes [Changes to legal aid rules in SEND Appeals following legal challenge - Public Law Project.](#)
- Scope challenges?
- Looming SEND reform making things worse?
- Do socioeconomic rights add anything to more traditional equality and human rights?





Using the Equality Act 2010 and the Human Rights Act 1998 to advance access to education

Dan Rosenberg
dan@goldjennings.co.uk



Other legislation / legal frameworks – more important than HRA/ EqA 2010?

- Ability to advance access to education through other legislation
- Particularly for individuals, and with reference to **disability** (and families with children with disabilities disproportionately disadvantaged economically...)

- *Current SEN system and EHCPs*
- *Section 19 Education Act 1996*



Other routes – Current SEN system and EHCPs

- *Legally enforceable provision in EHCPs - Section 42 CFA 2014*
- *Individualised assessment of need*
- *Procedural Rights*
 - *Request Assessment*
 - *Annual Reviews*
 - *Appeal Rights (including each year/ merits appeal in respect of school placement)*

Hard edged legal rights – able to be enforced effectively

ALL RIGHTS CURRENTLY AT RISK OF REMOVAL

Other routes

Section 19 Education Act 1996

- Backstop – tool for children of compulsory school age who are not receiving education to obtain education from LA.
 - Primarily will be children with disabilities (whether or not have EHCP).
 - Normally others making use of it from other disadvantaged groups
 - Often will lead to provision of school place if that is desired (particularly for children with EHCPs without a place).
- Will be less effective if Government's SEN Reforms go through, as currently used in conjunction with s.42 CFA 2014.
- Also in future less likely to lead to appropriate school place or education if no EHCP/ suitable schools simply don't exist.



Equality Act 2010 – children with disabilities

At present, in respect of SEN, EqA 2010 of much less use than legal framework in CFA 2014.

- Disability discrimination claims are very slow, and backwards looking.
- Achieving results through EHCP (backed up by s.42 CFA 2014 and JR threats) much more effective. JR forwards looking.
- Also – few legal disincentives for schools not to discriminate on disability discrimination grounds. No damages/ no cost risk. Often benefit to school (results/ resources used on other children) from discriminating.



Equality Act 2010 – Children with disabilities continued

If Govt SEN reforms go through, substantive rights left for children with disabilities will be in EqA 2010 – most substantive protections and procedural safeguards in education legislation will go.

To advance access to education:

- Parents will need to bring discrimination cases against schools.
- Once parents realise, expect there to be (tens of) thousands of these each year. Less effective route – which is why not used much now.

NB - Reform Party policy is to repeal EqA 2010. If they win and existing domestic legislative rights removed by current Govt, no rights at all for children with disabilities in schools...

Equality Act 2010

Other potential uses to advance access to education

- Admissions and indirect discrimination
 - Race in context of access to CofE schools– CKT in CoA next month
 - Protected characteristics as proxies for social class – Waltham Forest OSA case
 - Race (privately renting parents (in London) disproportionately not white British)
 - Age (of parents –private renter parents younger than home-owning parents in context)
 - Further issues to consider if s.1 EqA 2010 comes into force - see further next slide
- Getting schools / MATs to grapple with data
 - PSED – have due regard, and then (hopefully) take steps to improve
 - Detentions and Isolations – large numbers given out so can see trends – much more representative than exclusions/ suspensions. Less thought goes into sanctions.
 - Often possible due to way data is captured for school/ MAT to see if any particular department/ individual teacher is disproportionately sanctioning a particular group and take action. Can also see differences between schools in same Trust.
 - Opportunity for Ofsted / DfE to use sanctions data to drive improvement/ reduce discrimination (and thus advance access)
 - Data also there for non-protected characteristics too (socio-economic).



HRA 1998

- Exclusions - dealt with by Oliver Persey
- Otherwise, doesn't have huge role in advancing access, as legislative framework (particularly for children with disabilities) available instead. But...
- Article 2, Protocol 1 – denial of education. Useful tool because
 - If a child is not receiving any education, A2P1 can be used in pre-action correspondence to indicate that damages are being sought, and the level of damages will continue to increase the longer the child is not receiving education.
 - Only really relevant for complete failures to provide / completely ineffectual attempts to make provision. **Facts must be extremely stark.**

Section 1 Equality Act 2010 – Do academies need to be added?

- 2010 – 6% of secondaries academies/ 0% primaries
- 2026 - 84% of secondaries academies/ 49 % of primaries/ 53% state funded special
- Percentage of schools that are academies still increasing.
- S.1 Applies to local authorities – section 1(3) EqA 2010- not to Multi-Academy Trusts
- Section 2 EqA 2010 – Ability of minister to amend s.1 by regulations to add a new public authority. Should MATs be added?
- Decision of strategic nature for central Govt...

Admissions

Section 1 Equality Act 2010 context

Duty - need to at least think about access to better schools. Who can attend a school – obviously decision of strategic nature.

- New Schools Admission code coming soon. Central Govt can set framework, and central Govt would be subject to s.1 EqA 2010, but implementation for schools. Current guidance – not to discriminate directly or indirectly against any child from particular social group. Not even thought about by schools at present. Needs to be stronger than that. Possible areas for consideration in respect of access to schools (only relevant to oversubscribed/ popular ones)
 - 10% reservations for sport/music/languages etc – no obvious objective justification for prioritisation – suspect benefit indirectly more advantaged families/ more able children. Could obtain data to check. Removing them straightforward - can be done at central Govt level.
 - Mobility (e.g. sibling priority not applying/ sibling priority applies only if don't move further away – private renters adversely affected- again could be dealt with at Central Govt level) – likely to be popular particularly at primary school level (given obvious problems for parents if children can't travel to school by self).
 - Faith schools –oversubscribed / popular (and good) faith schools – particularly CofE ones. Very low PP/FSM numbers compared to local areas. Would require consideration.
 - Currently possible for schools to prioritise PP/ FSM. But (i) optional; and (ii) risk window dressing for popular + oversubscribed schools (effectively setting a relatively low 'quota'/ one which is likely to be met anyway). Alternative to low quotas– priority up to LA average FSM rate.
 - Geography/ house price/ lottery issues – 'losers' from any change likely to fight hard. Local context.
- But socio-economic duty will not apply to most schools...
 - Admission to **almost all** secondaries are not controlled by LA (as academies, and some of the remainder Voluntary Aided)
 - Admissions to most primaries now not controlled by LA (half primaries, plus VA schools).

SEN – Section 1 Equality Act 2010 context

- Many issues in SEN system at present.
- But – for now- LA still have majority of functions.
 - Many children not receiving education /out of school
 - Disproportionately from disadvantaged socio-economic backgrounds
 - Exercise functions in way that pro-actively seeks to ensure these children provided with education ASAP.
 - Outcome not necessarily measured in GCSE grades/ attainment – but in ability to take part in society.

SEN Reforms – if implemented – role of LA minimised.

Exclusions– s.1 EqA 2010 context

- Almost all of the functions controlled by schools.
- LAs do not control schools
- Most schools/ MATs don't appear to currently give due regard. Would be beneficial if they did. Strategic nature would relate in particular to behaviour policies/ culture and understanding who disadvantaged (not just who is advantaged).
- But at present section 1 won't bite on them.
- Role obviously for DfE in setting guidance/ monitoring, but exempting MATs/ schools who have relevant functions weakens – education landscape now different to 2010.

CLASS DIVIDE

**Education Right:
Using the EA 2010
and HRA to advance
access to education**

Curtis James

**10th September
2026**

A photograph of two men sitting at a table. The man on the left is wearing a dark green jacket over a white t-shirt with 'A' and 'V' visible, and a black baseball cap. The man on the right is wearing a blue vest over a dark shirt and glasses, looking down. A yellow box with the text 'CLASS DIVIDE' is in the top right. A black box with white text is at the bottom.

**CLASS
DIVIDE**

**WHERE I COME FROM,
WE DON'T HAVE A VOICE**



**28% of Whitehawk young people get
GCSE English & maths at grade 5+**

53% citywide

76% in Brighton's highest-performing area

(46% Nat Average) - data from 23/24

OPEN ADMISSIONS

20% of places set aside

REVISED CATCHMENT

Whitehawk gains a second school

FSM FLOOR

30% minimum by 2026

**"lawful, fair and
non-discriminatory."**

**Schools Adjudicator - Determination on Brighton & Hove
community secondary schools admission arrangements
20 October 2025**

**"Children eligible for FSM
are not a protected
characteristic in the EA 2010,
and so I have not taken that
concern any further."**

**Schools Adjudicator - Determination on Brighton & Hove
community secondary schools admission arrangements
20 October 2025 - paragraph 434**

**A duty, in practice,
to make a child's
disadvantage
a concern someone
can take further.**

www.classdivide.co.uk

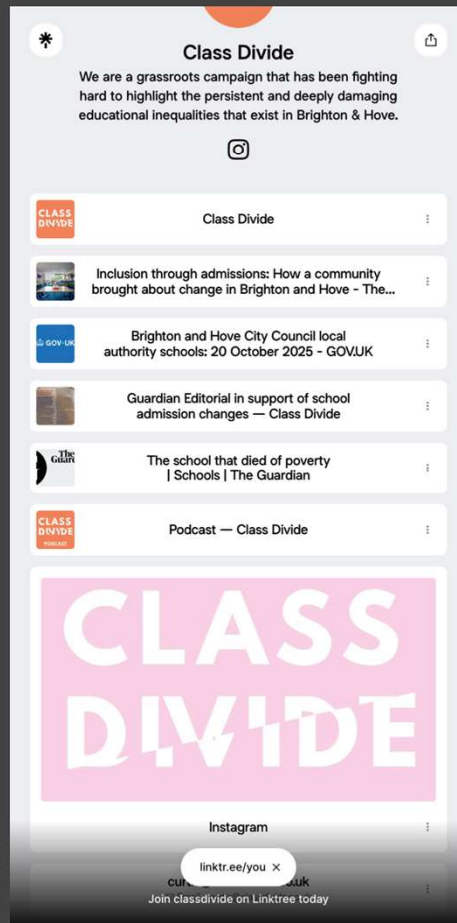
Connect with us on LinkedIn

Follow us on Instagram

@divideclass

Contact us

fightingforfairness@classdivide.co.uk



linktr.ee/classdivide

Session 3, Breakout 2

Accommodation Rights

Adrian Berry KC, Garden Court

Georgie Rea, Garden Court

Jo Underwood, KCL

Mark Rogers, ASAP



KING'S
College
LONDON



Care Act and Children Act

accommodation policies

Georgie Rea

27 August 2026



GARDEN COURT CHAMBERS



Section 1, Equality Act 2010

S1. Public sector duty regarding socio-economic inequalities

(1) An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, ***have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.***

(2) In deciding how to fulfil a duty to which it is subject under subsection (1), an authority must take into account any guidance issued in accordance with subsection (2A).

(2A) The guidance to be taken into account under subsection (2) is—

...

(b) in any other case, guidance issued by a Minister of the Crown.

...

(6) The reference to inequalities in subsection (1) does not include any inequalities experienced by a person as a result of being a person subject to immigration control within the meaning given by section 115(9) of the Immigration and Asylum Act 1999.



Section 1, Care Act 2026

S1. Promoting individual well-being

(1) The general duty of a local authority, in exercising a function under this Part in the case of an individual, is to promote that individual's well-being.

(2) “Well-being”, in relation to an individual, means that individual's well-being so far as relating to any of the following—

- (a) personal dignity (including treatment of the individual with respect);
- (b) physical and mental health and emotional well-being;
- (c) protection from abuse and neglect;
- (d) control by the individual over day-to-day life (including over care and support, or support, provided to the individual and the way in which it is provided);
- (e) participation in work, education, training or recreation;
- (f) social and economic well-being;
- (g) domestic, family and personal relationships;
- (h) suitability of living accommodation;
- (i) the individual's contribution to society.



Care Act 2014 – overview of powers/ duties

- **Section 18(1)** provides that a local authority **must meet** the adult's needs for care and support which meet the eligibility criteria **if**, among other things, they are ordinarily resident in the local authority's area or present in its area but of no settled residence.
 - **Regulation 2(2), The Care and Support (Eligibility Criteria) Regulations 2014**
 - **S. 24:** 'care and support' plan.
 - **S. 25:** the plan must set out the needs and how the LA is going to meet them.
- **Section 19** provides the local authority with a **power** to meet an adult's needs in circumstances where there is no established duty under **s. 18**.
 - **S. 19(3)** provides a power to meet needs which appear to be **urgent** (irrespective of whether the person is ordinarily resident) without the LA having conducted a needs/ financial assessment/ made a determination under s. 13(1).
- **S. 8** gives examples of what may be provided to meet needs for care and support – these include accommodation “*in a care home or in premises of some other type*” (**s. 8(1)(a)**).
- **S. 23** contains an exception for the provision of housing – an LA may not meet needs under ss. 18-20 by doing anything which it is required to do under the Housing Act 1996.
- **S. 21** provides that a LA may not meet needs for care and support of an adult to whom **s. 115 IAA 1999** (exclusion from benefits) applies and whose needs for care and support have arisen **solely** (a) because the adult is destitute, or (b) because of the physical effects, or anticipated physical effects of being destitute (this is known as the 'destitution plus test').



‘Accommodation-related’ needs for care and support

When is a local authority required to provide accommodation under s. 18 CA 2014?

- The established position is that a need for accommodation by itself does not constitute a need for care and support, but that accommodation may nevertheless need to be provided, as a vehicle to deliver care and support, where that care and support is ‘accommodation-related’ (see, e.g., *R (SG) v Haringey LBC* [2015] EWHC Civ 2579 (Admin), §66 and *R (GS) v Camden LBC* [2016] EWHC 1762 (Admin)).
- This has been defined as support of a sort which is normally provided in the home or would be ‘effectively useless’ if the person had no home.
- ‘Accommodation-related needs’ are so defined to avoid undermining the statutory framework in the CA 2014 by allowing it to become a ‘back-door’ route to claims, circumventing the Housing Act scheme (‘queue jumping’ the homelessness queue) (*R (Aburas) v Southwark LBC* [2019] EWHC 2754 (Admin), §6(iii)).



Asylum Accommodation and Care Act Accommodation

R (SB & SBO) v London Borough of Newham [2023] EWHC 2701 (Admin)

- Accommodation-related Care Act needs must be assessed independently of the Secretary of State's residual powers under s.95 IAA 1999.
- The decision to withdraw support was quashed and interim support continued under s.19 Care Act 2014.
- [52]-[55] for a summary of the accommodation-related needs authorities.

R (TMX) v London Borough of Croydon (1) SSHD (2)[2024] EWHC 129 (Admin)

- Support under s.95 IAA 1999 is residual.
- Where accommodation is required to meet care needs, the duty falls on the local authority, not the Secretary of State.
- Failure to provide suitable accommodation breached Articles 3 and 8 ECHR.



Section 18 and The Socio-Economic Duty

S.1-Compliant Housing Policy and EPIA (Equality & Poverty Impact Assessments)

1. Evidence

- Use Index of Multiple Deprivation (IMD), housing and hardship data to identify need for accessible, family-inclusive housing.
- Use s.1 to justify pre-acquisition or leasing of ordinary wheelchair-accessible family homes, reducing reliance on unsuitable temporary accommodation.

2. Participation

- Establish permanent lived-experience forums, modelled on Poverty Truth Commissions.
- Pay people with experience of poverty, disability and temporary housing to co-design placement policies and identify hidden barriers.

3. Assessment

- Build family unity and physical accessibility requirements into temporary accommodation contracts.
- Require a 12-month review of placement policies to assess secondary harms, including fuel poverty, mental health impacts and food insecurity.



Wellbeing Principle and The Socio-Economic Duty

1. Absolute Dignity Floor

- Assess whether impairments prevent basic eligible outcomes and whether living conditions meet minimum standards of dignity and physical and psychological integrity.
- Where care cannot be delivered effectively because wellbeing has fallen below this dignity floor, needs should be treated as accommodation-related, triggering the s.18 duty to provide suitable, family-inclusive housing.

2. Family Unity

- Treat family unity as integral to wellbeing and socio-economic equality.
- Prohibit split-family placements for Care Act-eligible individuals.
- EPIAs should recognise that separation from family carers causes both psychological harm and socio-economic disadvantage.

3. Joint Care-Housing Pathways

- End the gap between Housing and Social Services.
- Require automatic, fast-tracked joint assessments for potentially Care Act-eligible homeless applicants.
- Pool resources to secure immediate, dignified placements rather than relying on unsuitable temporary accommodation.



Children Act 1989 - Section 17

Statutory Nature – A Deferential "Target" Duty:

- **Section 17(1):** general "target duty" on local social services authorities to safeguard and promote the welfare of children "in need" within their area.
- While it converts to a specific duty to assess individual children who appear in need, it does not automatically create an individual duty to provide a specific service (like housing) to a particular child.

The Power to Accommodate Families:

- **S 17(6):** Contains a discretionary power to provide accommodation to a child in need together with their family if it safeguards or promotes the child's welfare.



Section 17 and NRPF

Immigration Restrictions & Article 3

- Schedule 3 NIAA 2002 restricts support for families subject to immigration control.
- s.17 support remains available for children; support extends to adult family members where required to avoid an Article 3 breach.
- Birmingham City Council v Chue [2010] EWCA Civ 460; R(GW) v Dudley Metropolitan Borough Council [2025] EWHC 2140 (Admin))

No "Wait and See"

- Local authorities must not delay s.17 support pending possible Home Office support under ss.95 or 4(2) IAA 1999: R (ES) v LB Barking and Dagenham [2013] EWHC 691 (Admin)
- s.17 duties take precedence over prospective asylum support: R (VC) v. Newcastle City Council [2011] EWHC 2673 (Admin)



Section 17 and The Socio-Economic Duty

1. Progressive s.17 Policies

- Use dignity-first assessments and flexible subsistence rates, with exceptional-needs uplifts for disability and severe hardship.

2. Absolute Child Dignity Standard

- Treat socio-economic disadvantage as deprivation of basic developmental needs, including stable shelter and adequate nutrition.
- Protect destitute migrant and NRPF children through this minimum dignity threshold.

3. Universal Municipal Safeguards

- Provide fee-free access to nurseries, playgroups and holiday food and activity programmes for s.17 and NRPF children (example of Wales)

4. Repatriation

- Do not refuse s.17 support based on possible voluntary return unless an independent assessment confirms the child's safety, welfare and developmental rights abroad.



Children Act 1989 - Section 20

The Mandatory Duty:

- **Section 20(1):** local social services authority shall provide accommodation for any child in need who requires it due to: (a) no person having parental responsibility, (b) being lost or abandoned, or (c) their carer being prevented from providing suitable care/housing.
- Unlike Section 17, Section 20(1) accommodation is not subject to the eligibility exclusions in Schedule 3 of the NIAA 2002.

The "Looked After" Gateway and Leaving Care Duties:

- Once accommodated under **s.20** for 24 hours, the child becomes "looked after" (s.22(1)).
- This triggers extensive care-leaving support and housing duties after they turn 18 (former relevant child status).
- Crucially, accommodation under **s.17** is expressly excluded from counting towards "looked after" status.

Homeless 16 and 17-Year-Olds:

- *R (G) v Southwark LBC [2008] UKHL 26*: the primary duty for accommodating homeless 16/17-year-olds lies with social services under s.20, rather than the housing authority under Part 7 of the Housing Act 1996.
- A local authority cannot sidestep s.20 obligations by steering a child toward Part 7 housing or down-grading support to a Section 17 power to avoid long-term care-leaving duties. *R (FZW) v Bristol City Council [2026] EWHC 1956 (Admin)*



Section 20 and The Socio-Economic Duty

1. Joint Strategic Pathways

- Make s.20 the default route for homeless young people through pooled Housing and Children's Services budgets.
- Use s.1 reviews/audits to identify and prevent gatekeeping, including inappropriate reliance on s.17 and avoidance of care-leaving duties.

2. Smoother Transitions

- Co-design pathway plans with care leavers and youth advocates.
- Remove barriers such as deposits, guarantor requirements and fuel poverty.
- Guarantee funded vacation accommodation and s.24B transition support to prevent educational drop-out.



Thank you

020 7993 7600 | info@gclaw.co.uk | [@gardencourtlaw](https://www.gardencourtchambers.com)



GARDEN COURT CHAMBERS

Homelessness applications: digital gatekeeping

Jo Underwood (King's Legal Clinic)



Digital exclusion and homelessness – the ‘closed door’ problem

- Through clinic housing advice networks, we discovered that many councils in London are no longer seeing homeless applicants face to face.
- Councils are instead preferring online forms or phone applications.
- Significant numbers of people are being turned away from getting help.





Accident & Emergency →

Advisers told us that homeless applicants were presenting at hospitals, usually with varying medical needs, but also so they could see the hospital homeless team and get face to face housing help.

Digital exclusion and homelessness – the ‘closed door’ problem – research questions

- How do local authorities support homeless applicants who need **face-to-face assistance to make a homeless application**?
- If people cannot access support, do they **visit A&E departments** to access support?
- What **impact** do closed door practices have:
 - on those accessing support through A&E
 - on hospitals who support homeless patients?



How we answered those questions



Freedom of Information requests and informal consultation



Semi structured interviews with hospital staff



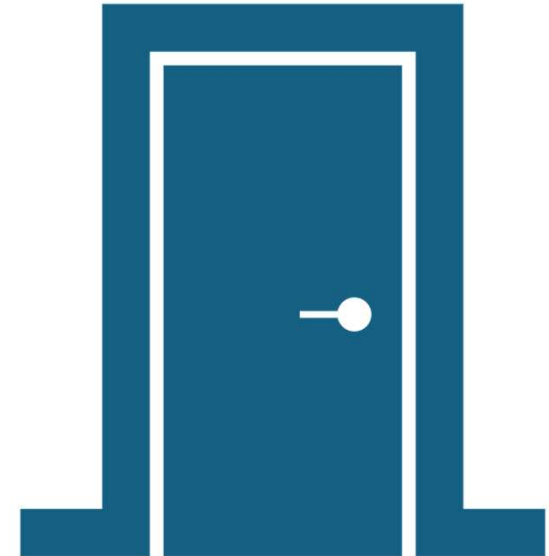
Policy roundtable

Clinic students assisted to bring this together. Attended by hospital staff, local and national policy advisers, housing advisers, national charities

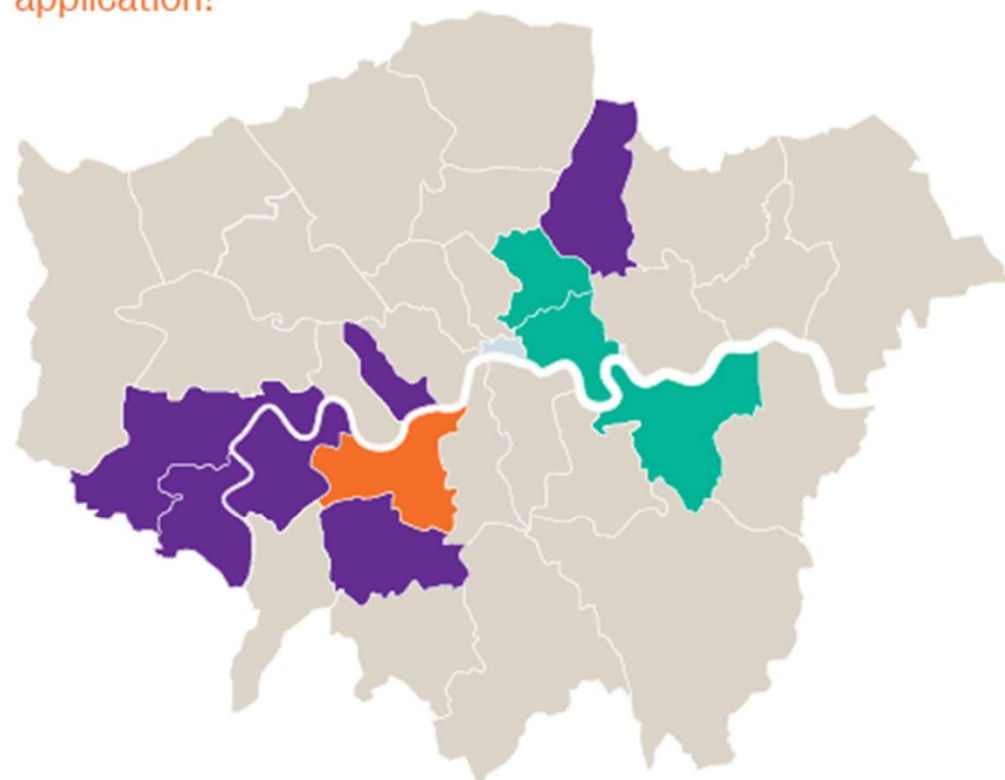
Local Authority closed-door policies

The FOI results revealed that **most people** experiencing homelessness in London **cannot visit their LA in person to make a homeless application**. Instead, most LAs ask people to first get in touch with them by phone, email, or using an online application form.

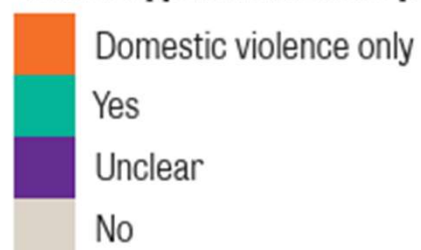
- **24** councils do **not** offer a walk in, in-person service where people can make a homeless application
- Only **3** councils said that applicants could present in person and make an application that day, without needing a prior appointment or online form
- **10** councils require applicants to complete an online form before they can receive further help
- **1** council no longer offers any face to face services
- (**27** out of 33 councils responded)



Is there somewhere I can visit to make a homeless application?



Walk-in application service provision by London Borough



The impact of closed-door policies for applicants



Practical barriers to being able to access support

- Access to working technology
- Navigating a complex application without assistance
- Language and communication barriers



Systemic barriers facing people seeking homelessness support.

- Distrust in a system that repeatedly lets people down
- Those who are especially vulnerable are more likely to be excluded
- Obstacle for those who cannot access statutory support but need advice on where to get help

The impact of closed-door policies for hospitals

- Increase in the number of people attending hospitals who need homelessness support – many of whom have been unable to access help through their LA in the past
- Difficult for hospital teams to support patients in making a homelessness application
- Knock on effects
 - bed blocking
 - unsafe discharges

“If you look at the pattern of referrals, that’s only going up, which implies that people are not able to access the support they need or redress the problems before coming into hospital. So, the inpatient and front doors of hospitals are increasingly overwhelmed by really sick people who shouldn’t have got that sick in the first place. People are seeking help because they can’t get help anywhere else. And people whose mental and physical health are deteriorating rapidly.”

Clinical Fellow, Hospital Homeless Team

ASAP

www.asaproject.org.uk

ASYLUM
SUPPORT
APPEALS
PROJECT

Some **systemic** problems:

- Poverty on support due to low subsistence rate
- Inadequate asylum accommodation
- Poor quality decision-making
- Reduced engagement with policy stakeholders

Some recent cases:

- **‘Move-on’ period post asylum decision:** AC-2025-LON-004377 & Others, 18 Feb 2026
- **Overcrowding/adequacy of hotels:** R (SH) v SSHD [2026] EWHC 279 (Admin)
- **SSHD’s failure to consult:** R (Freedom From Torture & Helen Bamber Foundation) v SSHD [2026] EWHC 1278 (Admin)

The closure of asylum hotels:

- Chaotic process – often relocations to another hotel &/or a different part of the UK at short notice
- Impacting some of the most vulnerable in the asylum system
- Permission granted on judicial review challenge

Changes on the horizon:

- Restoring Order and Control statement (November 2025)
- Reforms in the Immigration Act 2016
- AASC (accommodation) and AIRE (advice) contracts

Impact of the s.1 EA 2010 duty?

- Asylum support – a ‘last resort’ safety net (*R (BLV) v SSHD* [2025] 2516 (Admin), para 71)
- Ambit of s.1(6) EA 2010:

The reference to inequalities in subsection (1) does not include any inequalities experienced by a person as a result of being a person subject to immigration control within the meaning given by section 115(9) of the Immigration & Asylum Act 1999.



Thank You



Session 4: Using ECHR & HRA to advance & enforce socio-economic rights

Professor Joe Tomlinson, KCL

Dr Luke Graham, University of Manchester

Chloe Pugh, EHRC

Desmond Rutledge, Garden Court





Socio-Economic Rights: The Next Chapter

Barriers to advancing and enforcing socio-economic rights using the ECHR and HRA

Desmond Rutledge, Garden Court Chambers

10 September 2026



GARDEN COURT CHAMBERS



 @gardencourtlaw.bsky.social

Introduction

Prior to ***Stec v UK (Admissibility) (2005) 41 EHRR SE18***, case law on welfare benefits was confined to contributory based benefits e.g.:

- *R (Carson) v Secretary of State for Work and Pensions* [2005] UKHL 37 — Retirement pension—Annual uprating restricted to residents of UK and countries with a reciprocal agreement.
- *R (Hooper) v Secretary of State for Work and Pensions* [2005] UKHL 29 -Widow's payment and widowed mother's allowance - Whether provision for widows only discriminatory.



Welfare benefits and Article 1P

According to earlier ECtHR case law:-

- a welfare benefit only falls within the scope of Article 1 of P if contributions had been made to the fund that financed it (*Carlin v. the United Kingdom*, no. 27537/95, Commission decision of. 3 December 1997);
- on the other hand, the Court has held that a welfare benefit in a non-contributory scheme can constitute a possession for the purposes of Article 1 of P (*Koua Poirrez v. France*, no. 40892/98).



Welfare benefits and the applicability of Article 6

According to earlier case law:

- only contributory benefits were sufficiently personal and economic to constitute a dispute under Article 6(1) (*Feldbrugge* (2005) 41 EHRR 22).
- The ECtHR subsequently held that Article 6(1) applies to a non-contributory welfare benefit (*Salesi v Italy* judgment: (1998) 26 EHRR. 187).

Note: the Court emphasised that the applicant had an assertable right, of an individual and economic nature, to social security benefits, in contrast to an application for funds based on the exercise of a discretionary power (social assistance).



Application of Article 14

- The application of Article 14 – read in conjunction with a substantive provision – does not presuppose the violation of one of the substantive rights.
- It is sufficient, for the facts of the case to fall within the ambit of the Convention Article (*Belgian Linguistic Case* (1979-80) 1 EHRR 241).

Stec v UK (Admissibility) (2005)

The Court's reasoning refers to the following:

- As Article 14 does not presuppose an actual violation of a substantive right. It is sufficient, for the facts of the case to fall within the ambit of the Convention Article. This means it extends to “those additional rights for which the State has voluntarily decided to provide”
- There is conflicting case law on whether a welfare benefit falls within the scope of Article 1 of P and on the applicability of Article 6(1) based on whether the benefit is contributory or non-contributory.



Stec v UK – Continued

- The Convention must be interpreted in such a way as to promote internal consistency and harmony between its various provisions.
- The autonomous concept of “possessions” in Article 1 of P should therefore be interpreted in a way which is consistent with the concept of pecuniary rights under Article 6(1).
- Moreover, the Court's approach to Article 1 of P should reflect the reality of the way in which welfare provision is currently organised within Member States. Many are paid out of general taxation.



Stec v UK – Continued

- Moreover, many domestic legal systems provide for benefits to be paid—subject to the fulfilment of the conditions of eligibility—as of right. The Court concluded that:

“Where an individual has an assertable right under domestic law to a welfare benefit, the importance of that interest should also be reflected by holding Article 1 of Protocol No. 1 to be applicable” (at [51]).



***Stec v UK* – The Ruling**

- Article 1 of P does not create a right to welfare benefits.
- Article 1 of P places no restriction on the State's freedom to decide whether or not to have in place any form of social security scheme. Nor on its freedom to choose the type or amount of benefit it decides to provide.
- If a Contracting State does have in force legislation providing for the payment as of right of a welfare benefit—whether conditional or not on the prior payment of contributions—that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1P for persons satisfying its requirements (at [54]).

-
- Moreover, if a State does decide to create a benefits or pension scheme, it must do so in a manner which is compatible with Article 14 of the Convention.
 - Accordingly, in a complaint under Article 14 in conjunction with Article 1P, the relevant test is whether, but for the discrimination about which the person complains, they would have had a right, enforceable under domestic law, to receive the benefit (or the amount of the benefit) in question (at [55]).

Summary of the position Post-*Stec*

As a result of *Stec and Others v. UK* the protection against discrimination has been found to cover a variety of social benefits such as: -

- Unemployment benefits (*Gaygusuz v. Austria*, (1997) 23 EHRR 364;
- Disability benefits (*Popović and Others v. Serbia*, (Applications nos. 26944/13 and 3 other, 20 June 2020);
- Housing benefits (*Vrountou v. Cyprus*, (2017) 65 EHRR 31);



-
- Parental leave allowance (*Petrovic v. Austria*, 1998);
 - Child benefits (*Okpisz v. Germany* [2006] 42 EHRR 32; *X and others v. Ireland*, Applications nos. 23851/20 and 24360/20, 22 June 2023).

Cases with a successful outcome for the client

- ***Burnip v Birmingham City Council* [2012] EWCA Civ 629**: Ian Burnip and Lucy Trengove needed 24-hour care. Richard Gorry had two disabled daughters who could not share a room because of the nature of their disabilities. The Court concluded that the statutory criteria (size criteria) were discriminatory because they failed to treat differently persons whose situations were significantly different (*Thlimmenos* discrimination).

Note: see *IB v Birmingham City Council v Secretary of State for Work and Pensions v EHRC* (HB) [2011] UKUT 23 (AAC) for why Upper Tribunal rejected these arguments below.



-
- ***R (Mathieson) v Secretary of State for Work and Pensions* [2015] UKSC 47**: Stopping payment of Disability Living Allowance for disabled children after they spent 28 days in a hospital violated their human rights.
 - ***Siobhan McLaughlin* [2018] UKSC 48**: Excluding surviving unmarried partners with children from bereavement benefits was unlawful discrimination. The judgment forced a change in the law to extend entitlement to cohabiting parents.

***JD and A v. United Kingdom* (Applications nos. 32949/17 and 34614/17) 24 October 2019:** The ECtHR ruled that the UK government had not provided any weighty reasons to justify the prioritisation of the aim of the ‘bedroom tax’ over that of enabling victims of domestic violence covered by Sanctuary Schemes to remain in their own homes safely.

***R (AR & SXC) v Secretary of State for Work and Pensions* [2020] EWCA Civ 37:** The Court of Appeal ruled in favour of severely disabled claimants in receipt of legacy benefit who suffered a loss of income when they moved onto Universal Credit.





The University of Manchester

Barriers to advancing and enforcing socio-economic rights using the ECHR and HRA

Socio-Economic Rights: The Next Chapter

Garden Court Chambers Public Law Team and King's College London

Luke D. Graham

Senior Lecturer in Public Law & Human Rights

University of Manchester

luke.graham@manchester.ac.uk



lucedavidgraham

Outline

- Indirect Protection
- State Responsibility
- Maximum Deference

Indirect Protection

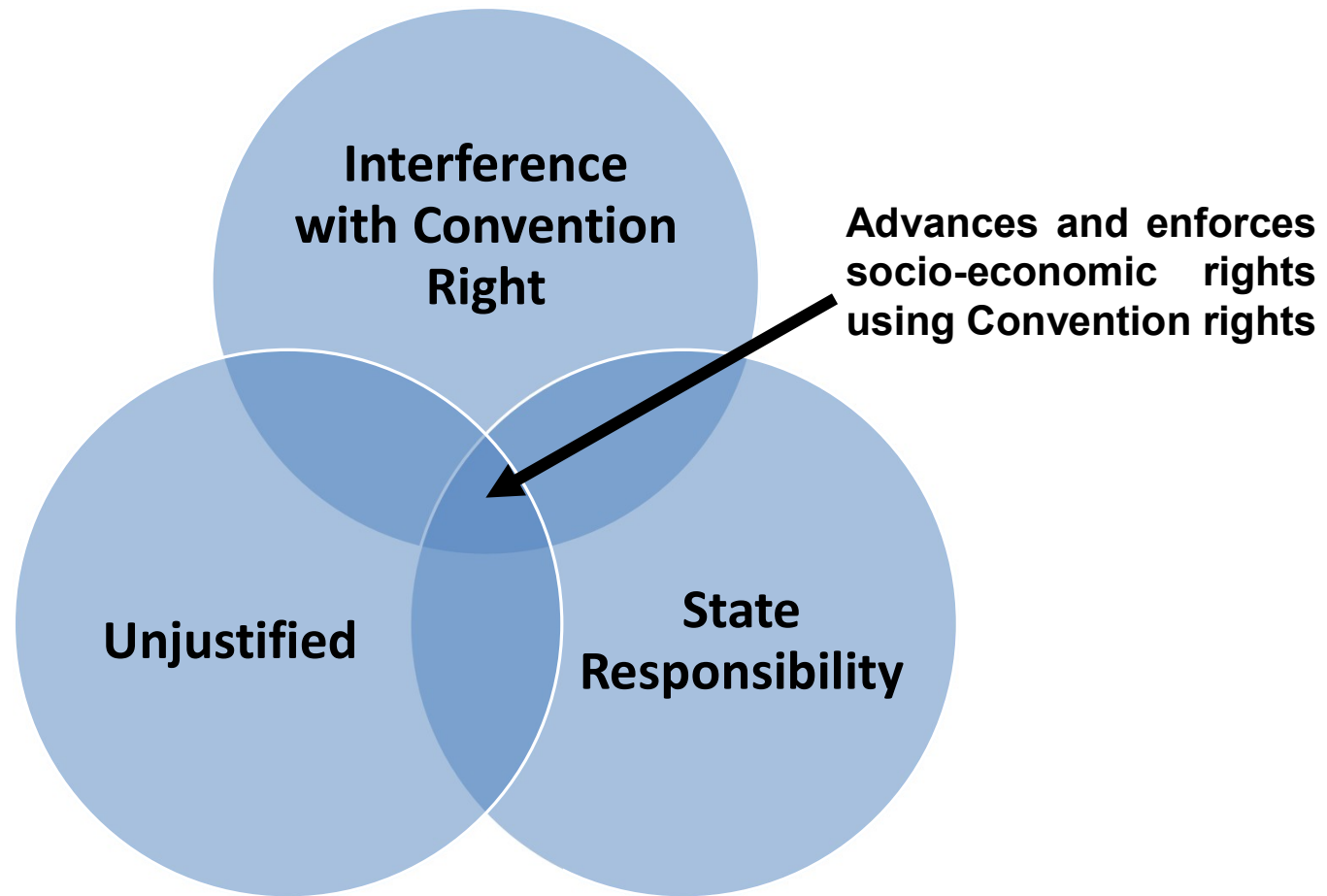
- 'no water-tight division'
- Socio-economic rights interference alone has not been found to violate the Convention
- Grounds socio-economic rights claims in Convention rights

State Responsibility

- Unwillingness to attribute state responsibility
- Individual responsibility
- Positive vs negative obligations
- Exceptional; something more needed

Maximum Deference

- Wide margin ‘when it comes to general measures of economic or social strategy’
- ‘manifestly without reasonable foundation’
- Not for absolute rights, but these have their own challenges



Luke D. Graham

luke.graham@manchester.ac.uk



lucedavidgraham

Using ECHR and HRA to advance and enforce socio-economic rights

Chloe Pugh
Principal Lawyer, EHRC
10 September 2026

Overview

Existing enforcement powers for EA 2010 and HR

Enforcement of SED under EA 2006

Limitations

Potential options

EHRC legal powers

Enforcement powers:

- Investigations (s20)
- Unlawful act notices (s21) and action plans (s22)
- Enter legally binding agreements (s23)
- PSED assessment (s31) and compliance notice (s32)

EHRC legal powers

Litigation powers:

- Give legal assistance to individuals making claims (s28)
- Bring or intervene in equality and human rights cases (s30)

Thank you



Session 5: BREAKOUTS

1. Environmental Rights (Anatomy Museum)
2. Social Care Rights (Main Theatre)



KING'S
College
LONDON

Session 5, Breakout 1

Environmental Rights

Marc Willers KC, Garden Court

Acland Bryant, Garden Court

Dr Sonam Gordhan, KCL

Lara Ibrahim, University of Oxford





**Section 1 Equality Act 2010,
a Planning and Environmental Justice Perspective**

Acland Bryant, Garden Court Chambers

aclandb@gclaw.co.uk



GARDEN COURT CHAMBERS



Planning environmental justice into

Section 1 Equality Act 2010

Environment, planning and socio-economic rights

Acland Bryant
Garden Court Chambers

15-minute session contribution



The talk in one sentence

Environmental justice is often decided long before a planning permission is granted.



The environmental inequality problem



The legal gap in existing duties



What section 1 could add



How practitioners can use it

s 1 is not a merits appeal. It is a discipline of evidence, reasoning and accountability.



THE STATUTORY HOOK

Section 1: small text, large terrain

A public authority, when making strategic decisions, must have due regard to the desirability of exercising functions in a way designed to reduce inequalities of outcome resulting from socio-economic disadvantage.

England

not commenced nationally

Scotland

Fairer Scotland Duty from 1 April 2018

Wales

socio-economic duty from 31 March 2021

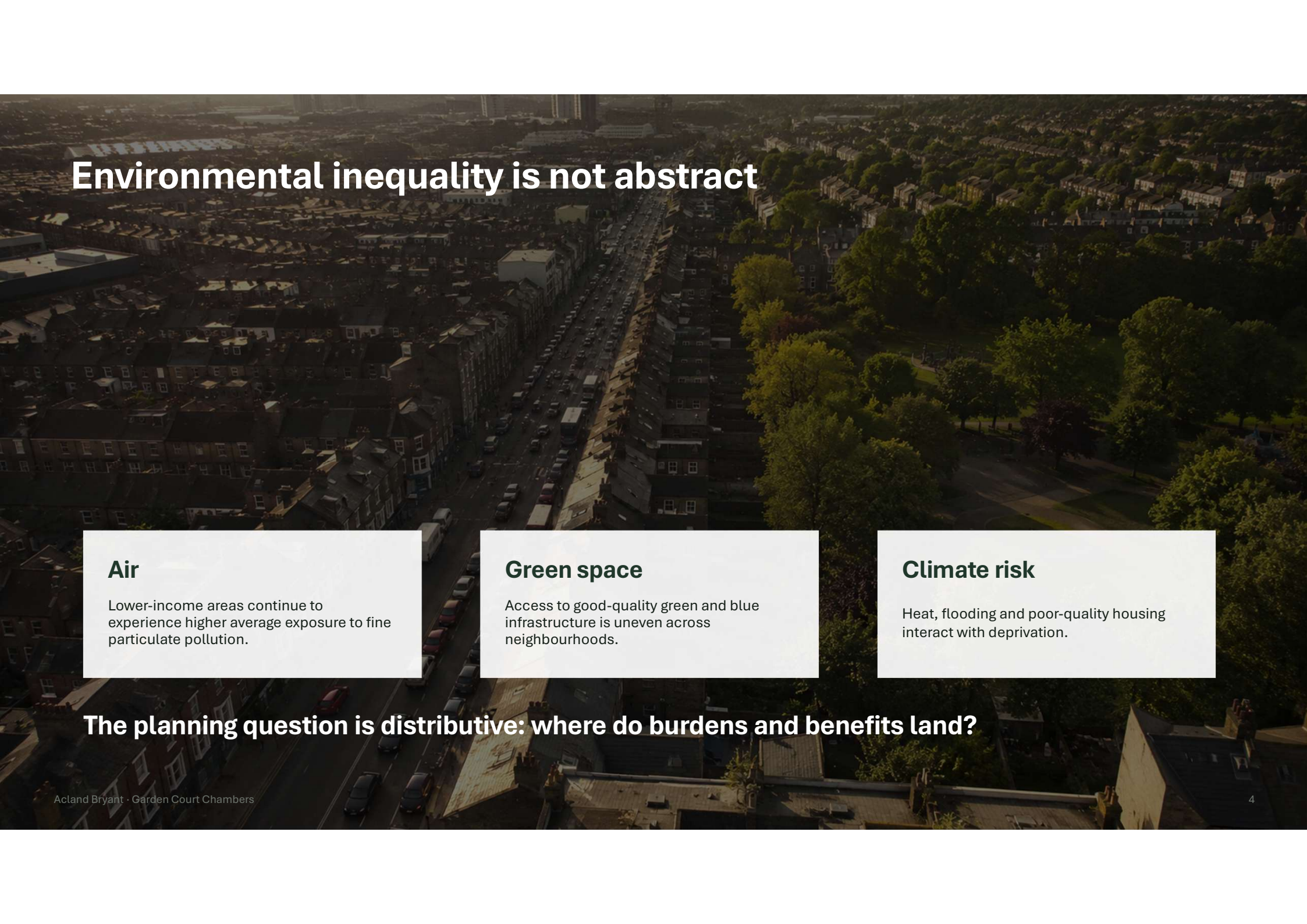
Strategic decisions

Due regard

Inequalities of outcome

Socio-economic disadvantage

Sources: Equality Act 2010, s 1; Welsh Government statutory guidance; Scottish Government Fairer Scotland Duty guidance.

An aerial photograph of a city street, likely in Glasgow, showing a long row of terraced houses on the left and a large park area with many trees on the right. The street is filled with cars and has a tram lane. The lighting suggests it's either early morning or late afternoon.

Environmental inequality is not abstract

Air

Lower-income areas continue to experience higher average exposure to fine particulate pollution.

Green space

Access to good-quality green and blue infrastructure is uneven across neighbourhoods.

Climate risk

Heat, flooding and poor-quality housing interact with deprivation.

The planning question is distributive: where do burdens and benefits land?



Law Commission

Reforming the law

Planning is where environmental rights become concrete

Local plans	Where homes, roads, schools, green space and employment land are put.
Infrastructure	Which communities host major projects and who benefits from them.
Development control	Conditions, obligations, mitigation, viability and cumulative impacts.
Budgets & delivery	Whether promised environmental benefits are funded, maintained and monitored.



Planning context: NPPF 2024; Planning and Infrastructure Act 2025; environmental assessment reforms.



Existing public law tools help, but leave a gap

PSED

Protected characteristics

Strong due regard case law, but class and poverty are not protected characteristics.

EIA / SEA

Environmental effects

Excellent for information, but not always structured around distributive inequality.

HRA / ECHR

Individual rights

Powerful in severe cases, but limited as a routine planning equality tool.

Climate duties

Carbon budgets

Increasing scrutiny, but distributional burdens can remain under-examined.

The missing question: what happens to inequalities of outcome caused by socio-economic disadvantage?



What section 1 adds to environmental decision-making

Evidence

Map who is exposed, who benefits, and what data is missing.

Alternatives

Test less unequal options, not just technically feasible ones.

Mitigation

Prioritise targeted protection, access and compensation.

Reasons

Explain how inequality was weighed and what will be monitored.

A due regard duty is only as good as the questions officers ask and members answer.

Four immediate environmental and planning use-cases

Air quality

traffic schemes, freight, road building, schools and hospitals

Green space

local plans, BNG, nature access, public realm

Climate adaptation

heat, flood risk, housing retrofit, tree canopy

Infrastructure burdens

waste, energy, logistics, cumulative impacts

The strongest claims will be evidence-rich, place-specific and tied to a strategic decision.



Law Commission

A litigation and advocacy frame

- 1 Identify the strategic decision
- 2 Define the disadvantaged groups
- 3 Show inequalities of outcome
- 4 Test alternatives and mitigation
- 5 Interrogate reasons and monitoring

Best forum

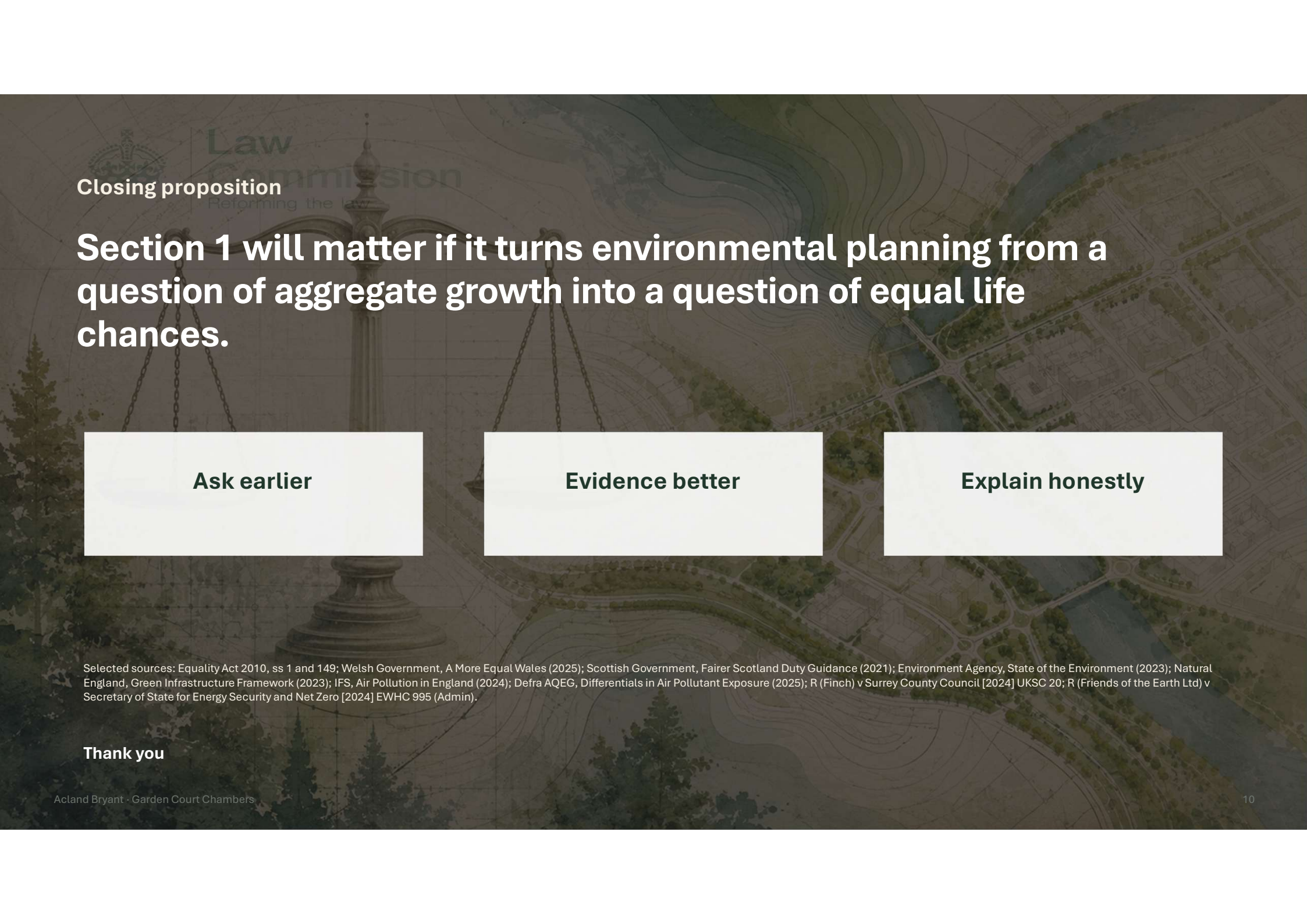
early consultation, plan examination, committee report, JR pre-action

Best evidence

place-based data, cumulative impacts, community evidence, delivery commitments

Legal realism

procedural route, not a guarantee of substantive equality



Closing proposition

Section 1 will matter if it turns environmental planning from a question of aggregate growth into a question of equal life chances.

Ask earlier

Evidence better

Explain honestly

Selected sources: Equality Act 2010, ss 1 and 149; Welsh Government, A More Equal Wales (2025); Scottish Government, Fairer Scotland Duty Guidance (2021); Environment Agency, State of the Environment (2023); Natural England, Green Infrastructure Framework (2023); IFS, Air Pollution in England (2024); Defra AQEG, Differentials in Air Pollutant Exposure (2025); R (Finch) v Surrey County Council [2024] UKSC 20; R (Friends of the Earth Ltd) v Secretary of State for Energy Security and Net Zero [2024] EWHC 995 (Admin).

Thank you

Session 5, Breakout 2

Social Care Rights

Jennifer Twite, Garden Court

Connor Johnston, Law Commission

Kari Gerstheimer, Access Social Care

Alex Temple, Garden Court





**Law
Commission**
Reforming the law

**Using social and economic rights for children,
persons with disabilities, and those in need for
community care**

How do we make those rights effective?

**Connor Johnston (Law Reform Senior Lawyer/Uwch Gyfreithiwr
Diwygio'r Gyfraith)**

@Law_Commission

www.lawcom.gov.uk



- Law Commission review of disabled children's social care law
<https://lawcom.gov.uk/project/disabled-childrens-social-care/>, 2023-25
- Law Commission review of accessibility of transport for disabled people
<https://lawcom.gov.uk/project/accessibility-of-transport-for-disabled-people/> 2026-29



How do we make social care rights effective?

Accessibility

- Those who rely on the law – children and families, disabled people, social workers etc - need to be able to both find *and* understand it.
- Finding the law can be hard: for disabled children's social care there is no single piece of guidance or legislation, which a family or local authority can go to, to find out what their rights and responsibilities are.
- Understanding the law can be harder. **Proposition:** assessment of disabled child's need for aftercare services may trigger duty to assess need for services under Children Act 1989. **Authority:** s117 Mental Health Act 1983; s47 National Health Service and Community Care Act 1990; s4 Disabled Persons (Services, Consultation and Representation) Act 1986; s2 of the Chronically Sick and Disabled Persons Act 1970; s17 Children Act 1989; *R (G) v Barnet*.
- **LC recommendations:** a single unified legal framework accompanied by comprehensive statutory guidance; a single statutory duty to assess the social care needs of disabled children.



How do we make social care rights effective?

Consistency

- A right implies a minimum standard available to all.
- A feature of the duty under s2 Chronically Sick and Disabled Persons Act 1970 is that local authorities are entitled to take into account their resources in deciding whether duty is owed.
- This means that local authorities can devise their own eligibility criteria, setting out more or less stringent conditions for what is an eligible need, depending on financial resources available.
- Results in a postcode lottery of provision, whereby a disabled child may be eligible to have their needs met in one area but not another. Inconsistent with the adult social care system.
- **LC recommendation:** There should be a single duty to meet the social care needs of disabled children, subject to national eligibility criteria.



How do we make social care rights effective?

Co-production

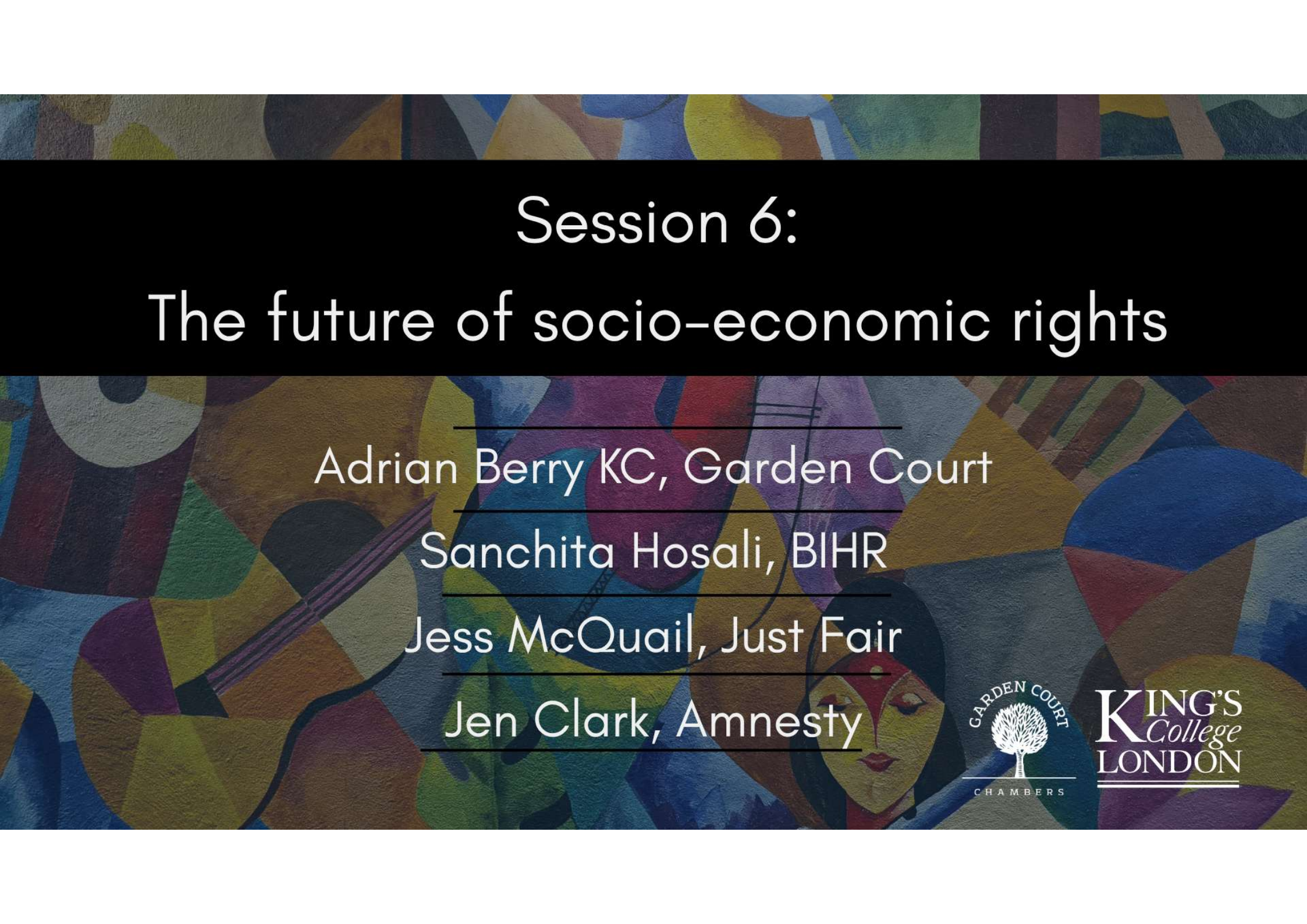
- ‘Nothing about us without us’: a guiding principle of the disability rights movement since the 1970s. Embodied by article 4(2) UNCPRD: ‘In the development and implementation of legislation and policies... and in other decision-making processes... States Parties shall closely consult with and actively involve persons with disabilities.’
- Important in its own right to recognise and promote the autonomy of disabled people. But also a means to improve the quality of law and decision making. C.f. visual information requirements on buses: reg 14 Public Service Vehicles (Accessible Information) Regulations 2023.
- **LC recommendations:** statutory guidance for disabled children’s social care law should be co-produced with disabled children, young people and families.
- For transport there may be scope/need to go further e.g. embedding co-production in legal standards. Statutory mechanisms can include consultation obligations and specialist panels (e.g. the Disabled Persons Transport Advisory Committee).



How do we make social care rights effective?

Enforceability

- A right – by definition – must be capable of enforcement.
- General dissatisfaction in disabled children's social care about the efficacy of complaints, judicial review, the SEND Tribunal and the Ombudsman.
- Similar in transport accessibility with specific concerns about availability and levels of compensation for disability discrimination and the onus on individuals to enforce. Coupled with a layer of complexity: e.g. for bus travel there are 6+ bodies involved in the investigation of complaints about one EU reg.
- **LC recommendations:** There should be a fair, accessible, independent and effective system for resolving disputes about social care for disabled children.
- For transport accessibility, options to consider might include: a single front door for complaints and proactive duties on enforcement bodies to investigate systemic issues, underpinned by reporting obligations on operators.



Session 6:

The future of socio-economic rights

Adrian Berry KC, Garden Court

Sanchita Hosali, BIHR

Jess McQuail, Just Fair

Jen Clark, Amnesty



KING'S
College
LONDON