

13 December 2017

**Social Security Advisory Committee
Minutes of the meeting held in room 5.21/5.22
Caxton House, Tothill Street, London, SW1H 9NA**

Members: Paul Gray (Chair)
Bruce Calderwood
Carl Emmerson
Colin Godbold
Chris Goulden
Jim McCormick
Dominic Morris
Seyi Obakin
Judith Paterson
Charlotte Pickles
Liz Sayce
Victoria Todd

Apologies: Rachael Badger
Gráinne McKeever

Guests and Officials: See Annex A

1. Private session

[RESERVED ITEM]

2. The Universal Credit and Miscellaneous Amendments Regulations 2018

2.1 The Chair welcomed the following officials to the meeting: Dave Higlett (G6, UC Policy), Ronnie Haynes (G6, UC Policy), Geoff Scammell (G6, Housing Policy), Aidan Armitage (SEO, UC Policy) and Fiona Kilpatrick (Head of Legislative Strategy). Dave Higlett apologised for the fact that there had been a delay in sharing the papers with the Committee.¹

2.2 Opening the session, the Chair advised the officials that the Committee recognised that the process whereby proposed secondary legislation needed clearance from the Cabinet Office Committee on Parliamentary Business and Legislation (PBL) was creating a degree of uncertainty and consequent difficulties for the Department as well for SSAC. Having discussed the matter with Pete Searle

¹ Another paper – an Equality Analysis in relation to the Housing Benefit run-on – was sent to the Committee shortly before the meeting commenced and too late for Committee members to have it available at the meeting itself.

(SCS, Director Working Age), it had been agreed that the minutes of this meeting in relation to them could therefore be published in the normal way, despite not having cleared the PBL triage process. This was because the Chancellor of the Exchequer had previously signalled the abolition of waiting days in Universal Credit (UC) and the Government's intention to provide a Transition to Universal Credit Housing Payment for claimants moving to UC in his November Budget announcement, and therefore these two issues were already in the public domain. The third aspect of the proposals being presented at the meeting however was not in the public domain, and it was agreed that the minutes in relation to it would not be published until PBL clearance had been achieved.

2.3 Fiona Kilpatrick explained that the Government was triaging all Statutory Instruments (SIs) as part of a central function, overseen by the Cabinet Office, to approve the laying / making of SIs. The Department had discussed with Cabinet Office the potential impact this might create for the Committee. Fiona advised that the system was beginning to settle down and the Department was now factoring this into future planning so that draft proposals could come to SSAC with sufficient time for scrutiny after Cabinet Office approval had been secured.

2.4 The following main questions were raised in discussion by Committee Members:

Abolition of Waiting Days

- (a) **Whilst welcoming the proposal, the decision announced by the Chancellor was clearly made against a background of growing concern over the length of the period a new UC claimant had to wait before getting their first payment of benefit. It was understood that 25 per cent of claimants did not get their first payment on time. By abolishing waiting days, did the Department see this as answering those concerns, or was there an appreciation of the need to look at additional ways of reducing the delay and speeding up the decision-making process?**

The Department appreciated the need to look beyond the abolition of waiting days for reducing delays in getting out first payments of UC. The Programme was looking closely at a number of different ways to secure better average clearance times with a focus on identity and housing verification including the Landlord Portal, and general improvements in processing procedures. The system of making advances was also being revised so that claimants would be able to receive 100 per cent of their benefit, including housing costs, with repayments being extended from six to 12 months. Given that payments of UC were made monthly in arrears, there would always be a period of at least a month before the first payment would be made. Given also that the calculation of each payment was based on the claimant's circumstances at the end of the assessment period, there would always be some activity within the Department at that time to determine the correct amount and get it paid a week after the end of the assessment period. Nonetheless the Department recognised that there was an ongoing challenge to meet clearance targets and, in cases where waiting days would have applied, that challenge could be greater. The Department would always be reliant upon claimants producing information and evidence requested of them promptly in order to help them

meet targets and it should be remembered that not all new UC claimants currently serve waiting days. Some would migrate from legacy benefits and would be exempt; others were exempt because they satisfied certain conditions set out in the legislation. The fact that the Department would no longer need to investigate whether an individual was an exception to the waiting day rule would mean that, in some cases, there was less work to do.

(b) What proportion of claimants were required to serve waiting days?

It was thought to be around 45 to 50 per cent, but the Department would obtain the latest available figure and send it to the Committee.

(c) How did average clearance times relate to those who needed to serve waiting days? Was it significantly different from those exempt from the rule?

The Department undertook to look into that and come back to the Committee.

(d) When the Government responded in 2015 to the Committee's recommendation that waiting days should not be introduced, it was said that claimants coming new to UC and having to serve waiting days would generally be coming from the world of work and would have savings which could reasonably be expected to carry them over this initial seven day period. With the Department's evaluation of UC, was that found to be the case?

The decision to abolish waiting days had been taken before any test and learn exercise could be conducted in relation to this policy area.

(e) Nonetheless it was important to get information about savings in order to understand the circumstances of those claiming UC.

Noted.

(f) When waiting days were introduced the Committee was advised that the savings would be used to fund other schemes, in particular schemes targeted as support for the longer term unemployed. Would the costs associated with abolishing waiting days come from within the Department's own budget or was it new money? In other words would there be any dilution in the support currently being offered to the longer term unemployed?

The funding was part of a wider package of budget measures from HMT and was not being funded from within the Department's own budget.

(g) Paragraph 16 of the Explanatory Memorandum stated: "Although the original rationale for waiting days (which was to deter people from making claims to Universal Credit to cover very short periods of unemployment or sickness) remains, upon review it has been found that the fixed monthly assessment periods provide a sufficient safeguard

against this happening in many cases.” What was the evidence base on which “it has been found” was grounded?

It was from qualitative analysis and from listening to what people were saying. The point being made in that paragraph was that although the rationale for introducing waiting days in the first place was still valid, the UC system of monthly assessment periods and determining circumstances at the end of each assessment period provided a deterrence of its own. In practice a person contemplating making a claim for UC when set to return very shortly to employment (with remuneration above UC levels) would probably not be entitled to UC and may therefore be deterred from making a claim. In that way the policy rationale for waiting days had been overtaken by the way UC worked in practice.

2.5 The Chair advised the officials that, subject to providing the information requested in the course of the discussion, the Committee was content that the proposal to abolish waiting days in UC could proceed without formal reference.

Transition to Universal Credit Housing Payment

- (a) Could the Department explain the statement in paragraph 11 of the Explanatory Memorandum that “claimants who move on from specified or temporary accommodation will not be entitled to receive these additional payments”?**

The Department had changed the rules for claimants in specified or temporary accommodation because the system of monthly assessment periods in UC did not fit well with short term spells in such accommodation where the landlord was often unreimbursed. Rather than paying housing costs in UC, claimants would retain an entitlement to Housing Benefit. That meant that the problem of funding rented accommodation when moving to UC did not arise for these claimants. The key point was that although housing costs in these cases were met by Housing Benefit, the claimant would have already transitioned into UC.

- (b) What would happen if a person currently on Jobseeker’s Allowance and Housing Benefit moved into temporary accommodation in an area where they had to claim UC?**

They would receive the additional payment.

- (c) In that case paragraph 11 could be clearer.**

Noted.

- (d) What would happen when a claimant on Housing Benefit whose rent was paid direct to the landlord moved to UC?**

The policy was that everyone would receive a two week run on of Housing Benefit. There was no need for claimants to make a separate claim for it – it would be paid automatically. Whatever payment arrangements were in place

already would apply for the additional payment unless it was a change of address, in which case the payment would go to the claimant rather than the landlord.

(e) How many landlords would benefit?

It was difficult to know because the Department did not have details on the proportion of claimants who were in arrears with their rent. However, for the landlord to “benefit”, the claimant would have to be on direct payment in both the Housing Benefit system and the UC system and also up to date with their rent.

(f) Where new claims for UC would be made in these circumstances, what would be the proportion where the payment would go to the landlord?

The exact proportion was not known but would be very low. The Department would endeavour to get the figures and pass them to the Committee.

(g) This policy could give an incentive for landlords to request direct payments in advance of their tenants being migrated to UC. There was also a more fundamental issue of taxpayers’ money intended to benefit claimants going to landlords.

These points had been considered by Ministers, but the proposals now being presented had found favour. The underlying philosophy of UC that claimants should take responsibility for their own financial affairs meant that very few UC claimants in the private sector would have their housing costs paid directly to the landlord. As far as landlords anticipating the process of migration to UC was concerned, it was unlikely that they would know when the transition would take place and who would be affected.

(h) If the claimant had arrears of rent and the Housing Benefit payment was made direct to the landlord, would the tenant’s account be credited with the bonus? This question was asked in the context of an understanding that where a landlord had a property in which several tenants reside, payments of Housing Benefit or housing costs in UC were made in the form of an aggregated sum accompanied by a list of the tenants but without specifying the individual sum attributable to each tenant.

The Department was not aware that that was happening. There were difficulties in finding out the precise practice in each individual local authority, but attempts would be made to discover more and get back to the Committee. It would however be surprising if such a practice was widespread as, ultimately, there needed to be a reconciliation between the payments and the individual rent account. On the question about the landlord crediting the tenant’s account with the additional Housing Benefit, certainly that was what the Department expected to happen. If the claimant had rent arrears then the sum should be used to reduce them.

(i) Some claimants on rent direct would not know that an additional payment had been made to the landlord and would not appreciate that it

was for them to ask for it back. Regardless of whether the landlord offsets rent arrears with the additional Housing Benefit or credits the tenant's account with the sum, the legal position was that the money belonged to the tenant and not the landlord.

That was correct. The Department would ensure that this message was communicated effectively.

(j) What was the estimated overall cost of making this double payment?

The Department had calculated that there were 2.3 million people affected who would each receive an average payment of £233. This equated to an estimated total of around £540 million.

(k) If the migration to UC was planned, was it not possible to plan a way out of this difficulty?

No amount of planning could navigate the essential problem that arose when a claimant moved to a benefit which was paid in arrears at longer intervals than that to which the claimant was accustomed.

(l) Was any consideration given to clawing back this sum over a period?

Yes, but Ministers had decided that help with rent should be given to people at the point at which they needed it. It should be remembered that this was not an ongoing issue. Once people had been migrated from Housing Benefit to UC, the problem was over.

(m) The purpose of the measure was clear, but how did Ministers arrive at a decision that a two week payment would be sufficient to close the gap?

That decision was reached more on the basis of providing a significant level of help, together with other measures being put in place, whilst recognising the need to contain costs, rather than on the basis of any evaluation which concluded that a two week payment would resolve the problem in all cases.

(n) Would it be possible for a claimant to receive a two week Housing Benefit run-on payment and still get 100 per cent advance of their housing costs?

There would be little incentive for a claimant to apply for an advance of their housing costs when the need for it had been addressed. In practice making an advance in these circumstances would be unlikely.

(o) Could the Department not consider providing a five week Housing Benefit run-on, but legislate so that entitlement to UC in the first assessment period in these circumstances did not include housing costs?

The Department would consider that suggestion and come back to the Committee, although an initial reaction was that this would simply defer rather than solve the problem.

(p) Why did the run-on apply even where a claim for UC had not been determined, and could presumably be disallowed?

This provision was needed to ensure that help was available even when the claim for UC was in the process of being determined. In practice the circumstances set out in the draft regulations envisage situations where a claim for UC is required because the claimant has fallen out of work, or where the Department is moving them to UC as part of the planned migration. In such circumstances the prospects of the claimant not being entitled to UC would be remote.

2.6 The Chair advised the officials that the Committee had decided to take this particular proposal on formal reference, but would do so without conducting a public consultation. The Committee would therefore draft a report for the Secretary of State which would, in due course, be laid in Parliament with the regulations and together with the Secretary of State's response to the recommendations of the Committee.

Surplus Earnings

[These proposals were originally shared with the Committee in confidence as Parliamentary Business and Legislation Cabinet Committee approval had yet to be achieved. This section of the minutes was therefore not published until 23 January when such approval had been received]

2.7 This particular proposal was introduced by Ronnie Haynes (G6, UC Policy) Bridget Hornibrook (G6 lawyer, Universal Credit and Housing Support) and Fiona Kilpatrick (Head of Legislative Strategy). The Chair reminded Committee members and officials that he had agreed with the Department that the Committee would be notified as soon as this proposal had received PBL clearance so that the minutes could be published as soon as possible afterwards, and ahead of the regulations being laid.

2.8 Introducing this subject, Ronnie Haynes explained that the Department had identified a need to adopt a different strategy towards calculating surplus earnings in UC because the original intention to take into account all earnings in the period of up to six months between the termination of the earlier award of UC and the start of a repeat claim for UC could not be processed electronically. The RTI data had not proved capable of providing the information on a claimant's earnings in a way which would meet the original policy intention. After being twice delayed by 12 months, the Universal Credit (Surpluses and Self-employed Losses) (Digital Service) Amendment Regulations 2015 was now due to come into force in April 2018. The proposed amendment was being put forward by the Department to ensure that it was workable.

2.9 The proposal was focused on calculating the surplus earnings as they stood when the claimant's award of UC ended and setting that surplus, subject to a de minimis amount of £300, against the earnings in the relevant assessment period

when a repeat UC claim was made. This process might mean that a claimant receiving a substantial bonus in a particular month would need to make successive unsuccessful claims for UC in the succeeding months in order to ensure that their surplus earnings were fully eroded. Ronnie Haynes explained that the Department had decided to make a temporary and very substantial increase to the de minimis limit, possibly increasing it to £2,500, in order to ensure that the policy could be applied safely and that it could be tested during the 2018 to 2019 period. The intention was that in April 2019 the de minimus figure would return to £300 a month. In the period 2018 to 2019 an estimated 11,000 fluctuations would trigger the surplus earnings rules, although that would not necessarily equate to the number of claimants, as some claimants could trigger the surplus earnings rule two or three times in a year. The proposed amendment would also apportion a straightforward 50/50 split on the surplus earnings when a couple split rather than a split which sought to attribute the surplus earnings to the partner who had worked for them. It also removed the time bound element from the self-employed losses, which was previously set at 11 months.

2.10 The following main questions were raised in discussion by Committee members:

- (a) **The Explanatory Memorandum advised that an equality impact had been conducted and that the “amendments concerning Surplus Earnings and Waiting Days are considered beneficial measures, with no adverse impacts on those with protected characteristics identified”. If surplus earnings were to be apportioned on a 50/50 basis between partners who split, would that not impact more on women when the surplus earnings were more likely to be those of a man? The Department’s approach would appear to put the proposed legislation at risk of challenge.**

There were provisions within the draft regulations for a decision-maker to attribute a different split where it was reasonable to do so. This was a simplification measure that was easy to explain for claimants.

- (b) **Was it reasonable to require a partner with mental health difficulties – another protected characteristic – not only to make a claim for UC in their own right, but to represent that surplus earnings should be apportioned on a different basis than a simple 50/50 split?**

The Department would expect a claimant to report a drop in earnings if they had gone off UC so that their surplus earnings could be adjusted. This was not a new requirement of this policy. The Department always asked claimants to report changes in their circumstances.

- (c) **How would the possibility of having a different split be communicated to the partners, particularly as one of the partners would probably be making a claim in their own right for the first time?**

This was exactly why a 50/50 split would be more beneficial to claimants as it would help them understand the expectations on them. As part of the changes to this policy the Department would need to develop amended communications to claimants to ensure they were aware of the expectations on them at the point of claim and at the point a surplus was triggered.

- (d) **In developing the Equality Impact was any analysis done? An analysis was done in relation to the original Surplus Earnings etc Regulations that the Committee saw two years ago. Since then the test and learn approach in UC should have allowed for a further analysis of the impact of the proposals.**

The Department had calculated the numbers that were likely to be impacted by this proposal. It would also check further into the extent to which the original analysis had been conducted in relation to those with a protected characteristic. The Department would come back to the Committee with more information on that particular issue.

- (e) **Two years on and we were now in a different environment. The amount of the work allowance, for example, had been changed. Had the Department undertaken any up-to-date analysis which took into account the changes that had occurred?**

The Department would again come back to the Committee on that question.

- (f) **How would claimants know that they have to make a repeat claim if there had been a reduction in their earnings since going off UC?**

This would be made clear to them in the information they would receive when their earnings took them off UC.

- (g) **Could the Department confirm that a claimant who deferred making a repeat claim for UC for three months could be better off than someone who had claimed in each of those three months?**

Yes, that would be true if, in the succeeding three months the earnings had continued to be high. That was why the information given to claimants by the Department would make it clear that they should make a repeat claim if their earnings reverted back to the level it was before they received the spike which took them off UC. Essentially the Department wanted people to report a change in circumstances and to reclaim when it would have a favourable impact upon any UC entitlement.

- (h) **But that assumed a simple change of circumstances where it was easy to determine the effect. In practice there may be several changes in circumstances which may make it difficult to predict whether the impact on UC would be positive or negative. This would appear to present a problem for the Department in its messaging.**

Noted.

- (i) **Would it be possible for a person to make a late claim for previous months when it became evident that it was in their interests to do so?**

The rules on backdating claims in UC were tightly prescribed and it was unlikely that these circumstances would allow the Department to backdate a claim.

- (j) **Could a person make a repeat claim and, if it seemed likely that it would have a detrimental effect on any potential UC entitlement, withdraw it before it had been determined?**

Yes, provided that intention was communicated to the Department in a clear and timely manner.

- (l) **This rule was likely to affect the self-employed more than others. Given that they were often tied up with trying to make the business viable, how realistic was it to expect them to repeat claims in order to reduce the level of their surplus earnings?**

It had been estimated that it would only take around eight minutes for a person to make a repeat claim in these circumstances where the only change was in earnings.

- (m) **Did it make sense to defer the introduction of these rules until the precise communications to claimants and staff could be worked out?**

The regulations had already been deferred twice for a year. Putting it off for a further year would prevent the Department learning from the process and would also cause difficulties for the self-employed who had monthly assessment periods where there were significantly high expenses or a significant drop in income. A deferral in this policy would also defer the introduction of self-employed losses which was favourable to claimants. There would also be savings from this measure once the de minimis level had reverted to £300 a month, so that further deferral would probably be met with resistance.

- (n) **Was there not an issue when it came to reverting the de minimis figure back to £300? Claimants with highly fluctuating earnings would have got used to a far higher figure by that time.**

The onus would be on the Department to explain the change effectively. The alternative would be to introduce the rule at the £300 level and this would be difficult during the period of test and learn.

- (o) **But would a de minimis figure set at a very high level as proposed in the interim period not give a different set of results since it would also extend to very different types of work and patterns of work?**

Yes some of the claimant groups impacted would ultimately be different. However, there was still the benefit of learning from the introduction of this policy now as well as the benefit of self-employed losses for claimants.

- (p) **The explanatory memorandum stated that this proposal would benefit claimants. Where was the benefit?**

The gainers would be those who had subsequent months where there were further spikes in earnings. When they eventually reclaimed UC no account would be taken of further surplus earnings – it would only be the surplus earnings at the point at which they came off UC that would be factored in to

the calculation. The Department did not estimate that there would be many in this category. Bonuses, for example, were typically paid annually.

(q) In which case what was the policy objective?

The policy objective was to find a fair way of managing UC, which was based on monthly assessment periods, when claimants experienced high levels of fluctuations in their earnings. The original intention was to use RTI data to assess earnings during short periods of non-entitlement to UC but this has not proved possible. In fact the entire UC programme would be put at risk if Department tried to build in an RTI capture of this information.² That meant a different approach and the proposed solution had been devised as the simplest and fairest for all affected and the easiest to operate. As UC did not assess earnings on an annual basis, this was the fairest way to ensure that large increases in earnings that took a person off UC were not discounted in the event of a subsequent reclaim of UC.

(r) Returning to the communications the Department would need to provide for claimants, the message would have to be that a person coming off UC because of surplus earnings should continue to live at or near UC levels for six months in the event that they might need to make a repeat claim. They could, for example, find themselves in real financial difficulties if they used the surplus earnings to pay off rent arrears.

The Department's approach was broadly in line with HMRC rules on tax credits where subsequent adjustments were made at a later date following spikes in earnings. It was reasonable to expect that benefits should be adjusted in line with earnings levels.

(s) In draft regulation 4(2) should the reference to "31st March 2018" not be "31st March 2019"?

The Department undertook to check that date.

2.11 The Chair thanked the officials for attending the meeting and answering the questions that were put to them. He advised them that the Committee was concerned, as was evident from the discussion, about the difficulties faced by the Department in effectively communicating the rules to claimants as well as to members of staff. He further advised the officials that the Committee would inform the Department of a decision on formal reference as soon as the Committee had been informed that the proposals had been cleared by PBL and ahead of the regulations being laid.

3 & 4 Private session

² The Department subsequently clarified that using RTI data to assess earnings during short periods of non-entitlement to UC would require new functionality to be built in the UC Full Service that would keep claim information alive and running in the background and provide a platform to which RTI data could be attributed. To build it would require a significant shift of resource away from the core UC build which would significantly impact the continued development of the UC IT platform.

[RESERVED ITEM]

5. AOB

Date of next meeting

5.1 The next meeting was scheduled to take place on Wednesday 24 January 2018 in Caxton House.

Attendees

Guests and Officials

Item 2: Dave Higlett (G6, UC Policy)
 Ronnie Haynes (G6, UC Policy)
 Geoff Scammell (G6, Housing Policy)
 Aidan Armitage (SEO, UC Policy)
 Fiona Kilpatrick (Head of Legislative Strategy)
 Bridget Hornibrook (G6, Lawyer)

Secretariat: Denise Whitehead (Committee Secretary)
 Paul Mackrell (Assistant Secretary)
 John Halliday (Assistant Secretary)
 Ateeqa Khan (Assistant Secretary)