

Social Security Advisory Committee
Minutes of the meeting held on 27 April 2022

Chair: Dr Stephen Brien

Members: Bruce Calderwood
Matthew Doyle
Carl Emmerson
Kayley Hignell
Phil Jones
Grainne McKeever
Charlotte Pickles
Liz Sayce
Seyi Obakin
Chris Goulden

1. Private session

[RESERVED ITEM]

2. *The Tax Credits, Child Benefit and Guardian's Allowance (Miscellaneous Amendments) Regulations 2022*

2.1 The Chair welcomed the following officials to the meeting: Kay Sayer, Gregory Coulter, Mick Ney and Ian Silk (all from HMRC's Policy Directorate). He noted that the Committee's questions would focus on two of the eight amendments in the regulations as follows:

- the issue of Child Benefit (CB) and bank accounts,
- the new claims to Tax Credits (TCs) following late Section 17 applications.

2.2 Introducing the item, Kay Sayer began with an explanation of the child benefit issue that the regulations were seeking to address. The Post Office Card Account (POCA) was intended to be a temporary measure to help people get used to managing money with an account. The deadline of the scheme had been extended on a few occasions, but it would now be closed. Once POCA accounts are closed, Child Benefit (CB) and TC recipients using them will be unable to receive payment unless they provide alternative bank or building society account details. Vouchers are available in limited circumstances but, in cases where they are not appropriate, TC and CB payments may be terminated once all measures have been taken to obtain bank or building society details without success. For TCs, a power already exists to enable termination of payment in these circumstances. This power is now being extended to CB. The termination has the advantage of providing individual claimants with a decision

- and therefore a right of appeal - otherwise the claimant would have their benefit suspended indefinitely. The impact of the change has been carefully considered, and the closure has been heavily trailed through media and individual communications since 2019. Customer engagement is vital. As long as customers engage then they can be helped. There were 142k of these CB POCA claimants in December 2019, and it is just under 6k currently, and since the first suspensions started in April there have been 3,000 calls to HMRC helplines on the matter, so the suspension is prompting that engagement.

- (a) **There is little analysis of the impact of the change in the paperwork presented to the Committee. For instance, the impact statement examines the characteristic of sex, recognises that the benefit is largely paid to women, but states that as the benefit is paid to both men and women there is no impact. Likewise, it states that there would be little impact of the removal of CB upon family formation, but without explanation. Is there any additional analysis that can reassure the Committee that any impact is proportionate across people with different protected characteristics? Also, why do POCA accounts have to end at all?**

It should be noted the impact of *not* introducing these changes is considerable. There is currently power to suspend but not to terminate, so if a claimant does not get in touch with HMRC their CB claim could be suspended indefinitely as it is no longer possible to make a payment into a POCA. A 'decision' to suspend cannot be appealed against. Termination brings in appeal rights, or they can make a new claim to CB, but with the current situation they would be left in limbo.

- (b) **Is there any way of allowing appeal rights to be given to the decision to suspend?**

That would require a fundamental change to legislation as the decision to suspend does not engage the decision-making powers which carry appeal rights. The only route to challenge a suspension now would be Judicial Review on the basis of unreasonableness or a fettering of discretion. A claimant must engage with HMRC on an annual basis and there is an obligation to update any changes in their details. HMRC have been trying to get in touch with all of these claimants since October 2019, and the vast majority of those people have now moved to a bank account. Just under 6,000 have not engaged, and this is expected to nudge those remaining into action.

- (c) **Given the numbers left, could the data, for example - postal address, be incorrect rather than the fault being with the customer?**

Yes, that is possible, but they have a responsibility to provide that up-to-date information. There are letters sent, phone calls made, advertisements put

through intermediaries. There will be a proportion of that number (5,876 to be exact) who may be committing fraud or be deceased. A number of them will no longer be entitled. One positive effect of the cessation of payments is that it prompts customers to contact us. Also, it is important to recognise the POCA contract comes to an end in November 2022. This is not an HMRC decision, the product is ending, and therefore a change must occur to maintain the flow of monies. The DWP runs a similar programme but with a customer base ten times higher and they have been undertaking a similar process. There has been an exchange of information between HMRC and DWP, working hand in glove. Through section 127 of the Welfare Reform Act 2012, HMRC can access DWP's and other data sets. Also there has been shared communications with DWP and with the Post Office, with strenuous efforts made to contact all customers, including by phone. HMRC has committed a lot of resource to this process.

- (d) It was mentioned that within this remaining group there may be fraudulent claimants - is there evidence of that or is that a surmise that where there is no response there might be fraud?**

It is a surmise, there's no hard evidence on that but, unless individuals engage with HMRC there is no way of knowing whether they may have fallen out of entitlement. In protecting the public purse it is not unreasonable for HMRC to notify its decision to end entitlement in these circumstances.

- (e) A list of eight criteria for claimants who may continue to receive payment by vouchers is provided in the papers. Is that a comprehensive list? Also, it was mentioned that HMRC help claimants set up an alternative account – what does that support look like?**

On the support question, there is a dedicated enhanced support team who can signpost customers to third party advice organisations. The exemption list has become longer as more reasons have been added for POCA. If the customer engages with the team, their circumstances will be discussed and they will either be helped into the banking community, or they will receive payment vouchers – no one will slip through the net.

- (f) On the list of criteria for receiving payment by voucher could not one of those simply be “cannot access basic bank accounts”? Or is the list explicit to that effect?**

Yes, it is explicit.

- (g) A policy choice has been made between indefinite suspension and termination, each having different impacts on the claimant. What effects does the termination of CB have, that suspension would not have? For**

example, what effect does termination have on the child element of Universal Credit (UC), or on council tax reduction schemes? Receipt of CB is part of the qualifying criteria for certain benefits or payments, and in other cases receipt of CB is the evidence that someone is the responsible person for a child, which leads to benefits or payments. Could a list be provided of all these kinds of consequences, and have there been discussions with other areas of central or local Government responsible for these knock-on impacts?

The policy has been to suspend, there has been an attempt to engage over a considerable period of time, and if they do not engage then the claim will be terminated. If they need more time that can be extended, there is no desire to terminate the benefit if that can be avoided. It is a fair point - it is correct that a valid termination decision would have knock on effects like this. There has been some limited contact with other departments about these effects, but there can be more involved discussion with DWP and local authorities.

- (h) It is concerning that there have not already been in-depth discussions with other departments or local authorities, so they can be aware and prepared. On the issue of appeal rights, if these terminations will be legally valid, by what justification can someone appeal the decision?**

There may be reasons why they could not comply, and if valid the child benefit could be put back into payment.

- (i) There may be a variety of reasons that claimants do not respond, including that they may have difficulties with disability access and health. Is it known if there are reasonable adjustments that those remaining claimants might need, is there any data on how many of them have access requirements linked with say, a learning disability, or a visual impairment?**

The normal HMRC offer is to give enhanced support for visual impairment and other problems, but there is no data to hand on that. Our records should indicate whether customers need different media, such as different languages, and any customer with special needs would have had directed, targeted communications. Communications have also been made through engagement with representative bodies.

- (j) Earlier in discussion it was surmised that there could be fraud amongst the claimants who have not yet responded. If that can be done, could it also be surmised that amongst these claimants there will be lone parents who may be disproportionately affected, they will be more likely to be female, so has there been no effort to look at this issue?**

HMRC does not want to see anyone affected who should not be, but some people will have payments suspended and terminated. There has been a large-scale engagement over the last two years and, at a certain point once all reasonable attempts to engage have been made, the entitlement is drawn to a close. At the time of the decision to end the POCA contract early there was some analysis, but the biggest mitigation is via the attempt at engagement.

(k) The date of that original impact assessment was two years ago. Has there been any attempt to collect data since?

There should be up-to-date information for the number of customers, and the decrease of numbers shows that engagement was having an impact. There is the risk that in this remaining rump could be the most vulnerable, hence the extra steps to try to contact them, and the suspension of benefit should prompt them to communicate with HMRC.

Also, the Post Office has been advertising this change so, when receiving this money, they will have been told by the Postmaster that POCA is ending. Should all of that fail and the benefit is stopped, then someone - say a carer or helper - will see that money had stopped. There are phone numbers and ways to contact HMRC, therefore if they make contact there are people to help. If a call concerns POCA they leap to top of the waiting list, then speak to specially trained people to deal with the specific issue. HMRC, DWP and the Post Office have made every effort to make customers understand what is happening and what they must do, and there have been 3,000 calls since the beginning of April.

(l) How many payments are estimated to be made by vouchers in future?

Vouchers are used for a number of reasons, such as recently with Ukrainian refugees. Santander Bank are responsible for issuing them, so there is confidence that higher numbers can be met if necessary.

(m) CB has historically gone to more women than men, and it may in certain circumstances be their only source of independent income. That money could now be paid into their spouse's account. Could there be an impact because of this?

Where the recipient is female and does not have a bank account, they would be asked if they could use other accounts such as that of their spouse, but if they did not want to then that cannot be demanded. They would be able to receive voucher payments if there was a reason they should not use that account. The number of people who have been moved from POCA to vouchers since October 2019 is 27.

- (n) **HM Treasury advocate the use of a Credit Union account, but they do not provide full banking facilities, which can mean accessing monies is made more difficult. Is it known how many claimants have moved into this kind of ‘underbanked’ account and, if not, would it be useful to try to record and analyse this in future?**

That data is not known. It is up to the customer to decide, HMRC cannot suggest which product they pick. It may be useful to look into whether this information could be gathered, that will be considered.

- (o) **Moving onto the amendment regarding new claims in TCs, please could the intent of that change be explained?**

This regulation removes a redundant provision that allowed late TC renewal declarations to be treated as a new claim. However, as there are now no new claims to TCs this clause can have no effect.

- (p) **Please can it be explained why someone might be late in making their claim, and what would be considered an acceptable ‘good cause’ to be late?**

The TC renewal section 17 notices are sent after the end of the financial year. The claimant has until 31 July to make their declaration. If they fail to meet that deadline then the TC payments can be terminated. If they respond within 30 days of the date notifying them their TCs have terminated, they can be automatically put back into payment as the declaration is treated as a renewal claim with effect from the preceding 6 April. Once over those 30 days then it could still be accepted (up to the final cut-off date of 31 January) but only if they show good cause why they did not respond earlier. This uses the standard social security test of ‘good cause’.

- (q) **Is this considered to be purely a ‘tidying up’ measure?**

Yes. Anyone still using TCs can renew their claims. Previously a late response (without good cause) would have been accepted as a new claim. As there can no longer be any new claim to tax credits then they must claim UC.

- (r) **Is there a specific group of people who are consistently late with their section 17 responses and, if so, do they know there will now be a problem?**

Yes, it was recognised that about 5000 people every year were late in this manner. They were contacted, informed of the new rules, and the consequence that their late response could not be a new claim and they would have to move to UC.

(s) Does this link into the managed migration ‘move to UC’ programme?

This is not linked to managed migration or ‘move to UC’, rather it flows from a ‘wrap up order’ in January 2019 prohibited the making of new claims to TCs (and other legacy benefits) with two exceptions – those in receipt of the Severe Disability Premium with their benefits and EU frontier workers. Both groups are now able to claim UC and as a consequence are prohibited from claiming TCs. That is why this provision is only being laid now. However, it does support the ongoing transition of claimants from TCs to UC over time.

2.3 The Chair thanked officials for presenting the regulations to the Committee in accordance with the Memorandum of Understanding that is in place between HMRC and SSAC, and also for answering Committee members’ questions.

3. The Jobseeker’s Allowance and Employment and Support Allowance (Amendment) Regulations 2021

3.1 The Chair welcomed Victoria Hogan (Division Leader, Labour Market Policy), Manjula Pelpola (G6, Conditionality, Health Conditionality, Sanctions and Hardship), Leana Scullion and Marie Cousens (Sanctions and Hardship Payments Policy team), and Jessica Maddison (DWP analyst). He noted that this was a follow up session to discuss the dual claimant sanction issue raised earlier by the Committee during its scrutiny of these regulations in September 2021. An updated Equality Analysis and a letter from the Minister outlining a possible solution has been received and shared with Committee members.

3.2 Introducing the item, Victoria Hogan explained what progress had been made in the period following SSAC’s earlier meeting. She noted that, after SSAC had helpfully raised the dual claimant sanction issue, a number of options for a solution had been examined. The preferred solution is to reduce the New Style (NS) payment for dual claimants to £0 whilst their Universal Credit (UC) sanction is in place. This will ensure dual claimants will experience the same sanction reduction as UC or NS claimants. By reducing the NS payment to £0, it means no £1 for £1 reduction to the UC standard allowance part of the award, this allows the full UC sanction to be applied. This method deals with the disparity without affecting others. The change process is being worked upon now. Ideally there would be a UC build change but there is a big queue for this so there will be consideration of a manual way of delivering it. If the Committee have any suggestions the Department will consider them. The team can return to SSAC at a future date when there will be more detail.

3.3. The Committee asked the following main questions in discussion:

(a) Why not have identical decisions, could there not be automatic duplication of the decision?

This was considered however it was discounted as it would not be viable due to the two different computer systems, one could not move the decision from one system to other, there would have to be two decisions.

- (b) To be clear on the policy intent, it appears to be as far as possible to ensure the impact of sanctions on UC claimants, NS claimants and dual claimants is as consistent as possible?**

That is correct, and it was the same in 2012 when the regulations were introduced.

- (c) Why not just set the NS value to zero? Where there is a partner also working and claiming UC, as the partners earnings go up, the net UC would go to zero, but the NS benefit is protected. That protection would go if the NS value is set to zero. On the chosen method of reducing the dual claim NS benefit to zero only when a sanction is applied, in a dual claim scenario with an ESA claimant one can have partial sanctions. If one set the NS to zero for the period of the sanction as suggested, one could eat into the taper, but if rather than doing that one reduces the NS benefit by the amount of sanction then that works.**

That makes good logical sense. That will be looked into and considered if it could be an option.

- (d) In the letter received from the Minister for Employment¹ a concern is raised that claimants may be taking advantage of the discrepancy – is there any evidence of this happening?**

It is hard to determine what that evidence would be if someone opened a dual claim to avoid a sanction. They can only open a dual claim in certain circumstances and replicating this fraudulently in an attempt to avoid sanctions would be so hard to achieve it is believed the chance of it happening is virtually nil.

- (e) Thanks for sharing the Equality Analysis and data tables. It is reassuring to know that the decision makers have broad good reason discretion and that they have had diversity training. What impact have these mitigations had?**

The decision maker looks at each individual's circumstances. Work coaches send the request for a sanction to a decision maker and a large number of these

¹ Letter from Mims Davies MP, Minister for Employment to SSAC Chair, at annex B

are not accepted by the decision maker. From that it is known that the decision maker is using discretion and are taking into account the individual's circumstances. The NS sanctions have only just come in so training is still being undertaken.

- (f) This new start with NS sanctions allows the Department to look at the sanction trends. Will that analysis be undertaken?**

Yes, it would be informative to investigate and see if different groups are handled differently.

- (g) In the tables what stood out was a massive discontinuity between July 2018 and July 2019, with a big shift in age, gender, disability, and ethnicity figures. For example, the number of black people sanctioned doubled. Is there some statistical blip to account for this, or was there something about the considerations used in the sanctions?**

The volumes had been reducing greatly, which distorts the figures.

- (h) Would not the proportions still be similar despite volume shrinking? But there is a doubling across that period? Why are black claimants so significantly more likely to be sanctioned?**

That will be taken away and investigated.

- (i) Having those proportions was helpful, and by thinking about the percentages of each group on the benefit and the rates of change over time one can home in on the important information and were one to graph that, trends could be seen immediately. Looking at the table on disability there has been a large increase in sanctions, but it is not known if the proportion has gone up, is there a reason for this? Also, how is it known the people sanctioned are disabled?**

The benefit of charting the data will be considered, specifically in light of the questions and points raised above, that a time series chart would better illustrate changes in the data.

The available data has been provided, that is also known to be reliable. There will continue to be investigations as to how sanction data is available broken down by disability and not caseload data.

3.4 The Chair thanked officials for presenting the information to the Committee and for answering members' questions. The Chair remarked upon the much-improved

Equality Analysis and was particularly grateful for the approach of the officials in informing the Committee about the emerging policy solutions.

4. PRIVATE SESSION

[RESERVED ITEM]

Date of next meeting

The next Committee meeting is scheduled to take place on 25 May.

Attendees

Guests and Officials

Item 2: Kay Sayer (HMRC Policy Directorate)
Gregory Coulter (HMRC Policy Directorate)
Mick Ney (HMRC Policy Directorate)
Ian Silk (HMRC Policy Directorate)

Item 3: Victoria Hogan (Division Leader, Labour Market Policy),
Manjula Pelpola (G6, Conditionality, Health Conditionality, Sanctions
and Hardship)
Leana Scullion (Sanctions and Hardship Payments Policy team)
Marie Cousens (Sanctions and Hardship Payments Policy team)
Jessica Maddison (Analyst).

Secretariat: Denise Whitehead (Committee Secretary)
Dale Cullum (Assistant Secretary)
Richard Whitaker (Assistant Secretary)



**Department
for Work &
Pensions**

Dr Stephen Brien
Chair
Social Security Advisory Committee
Caxton House
Tothill Street
London
SW1H 9NA

Mims Davies MP
Minister for Employment

Department for Work and Pensions
Caxton House
Tothill Street
LONDON
SW1H 9DA

Tel: 0207 340 4000

Email: minister.employment@dwp.gov.uk

www.gov.uk/dwp

14 April 2022

Dear Stephen,

Further to my letter of 7 October, I agreed to write to the Committee and update you on two issues: the Equality Analysis for the new style sanctions process, and our progress with investigating the issue of a possible disparity between dual entitlement and UC-only and New Style-only claimants when they are sanctioned.

Since then my officials have been working on both of these issues.

On the matter of the Equality Analysis for the new style sanctions process, I understand that my officials have updated the Equality Analysis and sent it to the committee on 25 January.

Turning to the dual claims sanction disparity, my officials have compared the effect of sanctions upon dual entitlement claimants' awards with those of UC-only and New Style-only awards and can confirm a disparity does exist.

This is because the regulations were established in such a way that sanctions reductions in dual entitlement cases are taken from the UC award, and not the New Style benefit. In UC, however, unearned income such as New Style benefit awards are taken into account and reduce the UC award £1 for £1. Therefore, dual claimants do not experience the full impact of the sanction reduction.

This disparity was known when the regulations were laid. Due to the practicalities of running dual benefits on two different platforms the complexities of addressing it were deemed disproportionate to the small number of claimants it would affect. It was felt the only solution would be to sanction both benefits: this would require two separate decisions. A sanctions decision for the UC element and a sanctions decision for the NS part. This creates a risk of the claimant only being awarded a sanction on one of their benefits. It would also be resource intensive as decisions have to be made twice. The same problem applies to the appeals processes.

It was decided the disparity would be addressed if there was evidence it was being used as a loophole by claimants to avoid the full impact of sanctions. We have no evidence of claimants doing so. There was no sanctions process in New Style benefits until November 2021 and there is no evidence to suggest that UC-only claimants are moving to dual entitlement as a result of being sanctioned.

However, since this issue was raised by your committee in September 2021, my officials have been working to find a solution, because we want to ensure there is fairness in our benefits system.

Owing to the complexity of this issue, the process has taken time. I am pleased to inform you we have now done so.

Our solution is to reduce the New Style payment for dual claimants to £0 whilst their UC sanction is in place. This will ensure dual claimants will experience the same sanction reduction as Universal Credit or new style claimants. By reducing the New Style payment to £0, it means no £1 for £1 reduction to the UC standard allowance part of the award, this allows the full UC sanction to be applied. This is demonstrated in the table attached as Annex A.

Officials assessed a number of options to address this issue; this approach was chosen as it is the only way to completely eliminate the disparity between dual claimants and UC-only or NS-only claimants without negatively affecting or disadvantaging any of these claimants when they are not experiencing a sanction.

Work is underway to implement this measure, including a full assessment of the delivery implications. It will require a change to legislation to enable the suspension to be put in place; we hope to begin this soon and will of course come back to SSAC in good time so you can scrutinise the regulatory change and associated products.

I would like to thank the committee for raising these important issues.

A handwritten signature in black ink, appearing to read 'Mims', written in a cursive style.

Mims Davies MP
Minister for Employment