Minutes
9 March 2016

Social Security Advisory Committee

Minutes of the meeting held on 9 March in room 5.21/5.22 Caxton House, Tothill Street, London, SW1H 9NA

Members:	Paul Gray (Chair) John Andrews Adele Baumgardt John Ditch Chris Goulden Jim McCormick Gráinne McKeever Matthew Oakley Seyi Obakin Judith Paterson
Apologies	Rachael Badger Colin Godbold Nicola Smith
Guests and Officials:	See Annex A

1. Private Session

[RESERVED ITEM]

2. The Tax Credits and Child Benefit (Miscellaneous Amendments) Regulations 2016 (Paper 10/16)

2.1 The Chair welcomed Steve Hickman and Denis Fitzgerald from HMRC's Benefits and Credits Directorate and Simon Gallagher Deputy Director for Welfare Spending & Reform within HMT. They thanked the Committee for the questions and concerns that members had shared with them in the lead up to the meeting and would seek to address them. It was proposed that the meeting would focus initially on the draft proposals, officials would then seek to address an outstanding action point from a previous session the Committee had had with HMRC officials in October 2015 and would finally speak about plans for future legislative changes affecting tax credits.

2.2 The miscellaneous package of measures comprising these draft regulations were, in the main, minor technical amendments with either a beneficial impact, or no impact at all, upon claimants. There was however one significant exception – the proposal to introduce a 50 per cent rate of recovery of tax credit overpayments for

those whose annual income exceeded £20,000. The effect of the change would mean that one half of the regular amount paid to the claimant by way of tax credits would be withheld and used to reduce the amount of tax credit debt they owed. The Committee's concerns were focused solely upon this particular measure.

2.3 Officials explained that the intention to introduce a 50 per cent rate of recovery had been announced in the Budget Statement of 2014. The rationale was the desire to reduce the overall size of the amount owed by claimants (£6.5bn), and particularly so in preparation for transferring the debt to DWP as Universal Credit rolled out and ultimately subsumed all awards of tax credits. HMRC recognised that claimants on lower earnings had a higher proportion of their overall household income deducted to recover their overpayments. Those on higher incomes, and therefore in the main, on small annual awards repaid their debts at a slower rate. The policy to introduce a higher recovery rate would only apply to claimants where total income exceeded £20,000.This would make the current system more equitable. The existing 25 per cent rate would apply if annual income was £20,000 or less. For those on maximum tax credits, any repayment of an overpayment would continue at the existing rate of 10 per cent. The 25 or 50 per cent rate would therefore only apply to those who were on the tax credit income taper and not in receipt of maximum tax credits.

2.4 An impact assessment had been completed in 2014 when the policy was announced. At that time an estimated 210,000 people stood to be impacted by the measure. That figure could have changed since then with some still being on tax credits, some no longer and others having repaid their overpayments. HMRC would monitor and evaluate the policy as it took effect. Officials also explained that there was a hardship scheme and that anyone who faced hardship as a result of having to repay any overpayment at a higher rate could seek a lower repayment rate. That would help to mitigate any risk of hardship faced by those whose awards of tax credits were high, for example because of childcare costs or disability-related additions.

2.5 For claimants not on RTI, HMRC would use the current year estimate of earnings, if available, to determine whether the claimant was above or below the £20,000 threshold. If that figure was not available, then the claimant's most recently reported income figure would be used. If changes in total income were notified during the course of the year, the recovery rate would be changed to reflect the new position and the change in rate would take effect from the next available pay-day. There would be no retrospection in such cases so that the new rate of recovery would only apply to payments from an onward date. The fact that claimants might be prompted to notify a reduction in income so that the lower recovery rate could be applied would enable HMRC to keep in touch with in-year changes in income, although officials recognised that it could reduce the incentive for a claimant to notify an increase in income.

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

(a) Would RTI data enable HMRC to know that the annual income figure had changed and adjust the recovery rate automatically?

No, the system was not that sophisticated. HMRC would require claimants to notify the change in order for a different rate of recovery to be applied. That information would be contained in one page inserts that those affected would be receiving with their notifications of the award.

(b) How would this work for those with high fluctuations in their earnings, perhaps on zero hours contracts, where their annual income could constantly change from being above the £20,000 threshold to being below it? Would HMRC be able to cope?

The monitoring and evaluation should pick this up if it proved to be a problem. HMRC was keen to see the impact that the change would have.

(c) For those with high tax credit awards because of childcare or disability elements, would HMRC be taking a proactive approach in identifying potential hardship?

No. HMRC would advise claimants to contact them in the event of hardship.

(d) Would that information be set out in the one-page notification?

The one-page insert in award notices, due to begin being issued from 14 March, would not contain specific information about the 25 and 50 per cent recovery rates. Instead it would signpost people to GOV.UK which would contain the details about the new rates. The one-page insert would also contain the advice that anyone in hardship should contact HMRC.

(e) Would there be a dedicated team within HMRC dealing with hardship?

Yes, there would.

(f) Would there also be a dedicated telephone line, bearing in mind it was not always easy for customers to get through to the main helpline?

Claimants would ring tax credit helpline. If there was a claim for hardship then the helpline staff would refer the case to the HMRC hardship team.

(g) Would the one-page insert with the current year's notifications be sent to everyone in receipt of tax credits?

No, it would only be for those with a tax credit overpayment – in other words, for those impacted by the new 50 per cent recovery rates.

(h) **How easy would it be for a claimant to work out how the new rules would affect them as an individual?**

They would be able to follow the GOV.UK link which would inform them. Secondly, they would know that their tax credit award had been reduced. Notifications of tax credit awards had never included details about any deductions for tax credit overpayments; that would remain the same.

(i) **Would the equality assessment be updated?**

Yes, although HMRC would not be able to share that updated information with the Committee. Numbers were already small and breaking them down into even smaller groups for the purposes of conducting an equality assessment would cast doubt on their statistical validity.

(j) **An obligation to produce an equality assessment still existed regardless of the size of numbers involved.**

Noted.

(j) **How would HMRC help people prepare for the change? Some people were likely to be impacted significantly. A large reduction in the amount of tax credits received, for example, could jeopardise a claimant's ability to maintain existing childcare arrangements which, in turn, could lead to them having to leave their job. They would need to know about the new rules so that they could plan.**

The impact of the change should become clear in the monitoring and evaluation process. HMRC would look again at the information contained in the one-page notification insert to see whether it could be more explicit. HMRC would be very happy to receive any input from the Committee as to how the messages about mitigating hardship could best be communicated.

(k) **For the purposes of the notification it might be helpful for HMRC to consider widening out the scope of the intended target group. Rather than merely identifying those immediately affected by the changes, those who might be impacted further down the line ought to be informed as well. In addition, the information on the GOV.UK website about the 10 per cent deduction rate was factually incorrect.**

Claimants incurring a tax credit debt in the future would receive the information they needed at that time. As far as the GOV.UK website was concerned, HMRC had asked for the error in question to be corrected. It was due to be rectified shortly.

(l) **Turning to HMRC's invitation to the Committee to give advice on communicating appropriate messages about hardship, DWP's**

experience on notifying claimants about the hardship provisions in relation to benefit sanctions showed that letters were not particularly effective. Frequently they were either not read, or read and simply not understood. Sometimes people had an aversion to brown envelopes and would not even open them. It was also the case that those most likely to be in need of hardship payments are the least likely of all to read the official material sent out, understand it and represent hardship. The lesson to be learned from DWP's experience was that the best approach would be for the Department to take the initiative and approach those identified to see whether hardship payments were appropriate. In the light of the need to align tax credits with Universal Credit in advance of migration, there was an added impetus to get the approach to hardship right.

Noted.

(m) There seemed to be two principal drivers of the policy with this change: a desire to get the overall debt stable and a desire to speed up the recovery rate. What was HMRC's estimated savings and to what extent was the overall debt expected to reduce? Also, what figure did HMRC believe should be set against projected savings in order to mitigate hardship?

The overall savings were originally scored in Budget 2014 at £80m, although the roll-out of Universal Credit which was at a slower pace than had been estimated might serve to increase that figure. HMRC was working on the principle that around 10 per cent of claimants repaying an overpayment would take advantage of the hardship provisions so as to lower the rate of recovery.

(n) Had HMRC budgeted for a surge in telephone inquiries?

Volumes of increased hardship applications were anticipated for the recent debt recovery changes. HMRC had increased its resources to deal with any potential increase in hardship applications.

(o) In the explanatory memorandum HMRC stated that the change would have no impact upon voluntary bodies, and yet the GOV.UK website advised claimants to go to Citizens Advice or other agencies for advice if the rate of deductions causes hardship. Could HMRC explain the apparent contradiction?

HMRC would take that query away and respond to the Committee in writing following the meeting.

2.7 Turning to the outstanding action point referred to in paragraph 3.1, the question arose at the Committee's meeting of October 2015 and related to as to whether HMRC had any analysis on, or information about, the type of self-employed

jobs that were being regarded as non-commercial and whether statistics on them were to be published. Officials explained that analysis into the “not for profit” test which had been devised was being tested. A monthly working group had been set up to track progress. The test was for application across the range of self-employed work. It was not the intention of HMRC to publish details as to the effect in different occupations. The following questions were raised by Committee members in discussion:

(a) HMRC might learn from the process if the self-employed work was segmented into different customer groups (for example, hill-farmers or actors) and then specific questions devised to test whether, in that particular occupation, the business could be said to be “not for profit”. With some occupations it might help to determine whether the test was satisfied if the person had a business plan which could be inspected. In other occupations people would be less likely to have a business plan (for example, a Big Issue seller). Nine months ago the Committee had given HMRC 12 examples of circumstances where points were made along these lines and HMRC had made an initial response, but it would be good to continue the discussion, if that were possible?

HMRC would check and respond separately on that point. HMT had been asking the same kind of questions, recognising that the area of low income self-employment was not particularly well understood. Experience had shown that segmentation was not easy because the characteristics of the work being done did not always fall naturally into a single category. Often there was a mixture of characteristics.

(b) There was some concern that people in receipt of JSA were often encouraged into self-employment and yet those appointed to mentor them would often say that their business was not yet ready to pass any “not for profit” test.

HMRC would take this up with DWP.

2.8 Finally HMT informed the Committee of forthcoming draft regulations that were planned. The Welfare Reform and Work Bill, currently nearing its final Parliamentary stages, would generate regulations in due course. In particular there would be regulations on exemptions from the legislation limiting benefit entitlement to two children. SSAC’s help in tackling such questions would be welcome.

2.9 The main issue remained the transition and customer journey from tax credits to Universal Credit. There was an obvious advantage in starting the planning early and, again, it would be helpful to get feedback from the Committee.

2.10 The Chair thanked the officials for attending and addressing the questions raised by the Committee. He had met recently with Damian Hinds, Exchequer

Secretary to the Treasury, where the Memorandum of Understanding the Committee had with HMRC/HMT in relation to draft proposals affecting tax credits, child benefit and guardians' allowance had been discussed and a commitment given to making the process work effectively. The Chair would write separately to Damian Hinds expressing his appreciation of the desire to ensure a positive engagement with the Committee in the future. On outstanding concerns that the Committee had with this particular set of draft regulations, the Chair would write separately to officials. The main issue for the Committee remained the communication of the hardship provisions for claimants from whom overpayments were to be recovered at 50 per cent, and how they would operate in practice.

2.11. Officials thanked the Committee for the session and stated that they intended to set up an expert group which would look specifically at the hardship provisions and the communication of them.

3. Private Session

[RESERVED ITEM]

4. Current issues/AOB

Postal regulations

4.1 The Committee agreed that, as recommended by the Postal Regulations sub-Committee, the following regulations could proceed without the need for further consideration at the meeting:

- *The Universal Credit (Care Leavers and Looked After Children) Amendment Regulations 2016*[1]
- *The Jobseeker's Allowance (Extended Period of Sickness) Amendment Regulations 2016*[2].

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[1] Separate correspondence between Committee members and officials took place prior to the meeting. Amongst other questions, a question was raised as to whether adding 'looked after children' to the definition of 'care leaver' would preserve the status quo in Scotland. DWP acknowledged that there would be some cases where the addition of "looked after children" to the definition of a care leaver in Scotland could, in theory, give rise to potential losers. Under regulation 8 of the Universal Credit Regulations (applying the current definition), a 16/17 year old in Scotland who was the carer of a severely disabled person or in the latter stages of pregnancy would be able to claim Universal Credit even if being looked after by the local authority. Under regulation 8, as amended, they could not. However, DWP also advised that making the change was a sensible approach because (1) it brought the position for Scotland into line with that in England and Wales and removed an anomaly whereby the young person could claim Universal Credit whilst being looked after but would lose entitlement if they ceased to be looked after before reaching the age of 18; and (2) the change would not remove any actual entitlement as Universal Credit was not currently available to 16/17 year olds in Scotland. Also, because it ensured that the definition included young people who remained looked after up until the age of 18 it was entirely beneficial for those aged 18 and over who were relying on their former care leaver status to exempt them from waiting days and the shared accommodation rate rule.

4.2 The Chair instructed the secretariat to write to the relevant DWP officials to inform them of the Committee's decision.

Date of next meeting

4.3 The next meeting was scheduled to take place on 6 April 2016.

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[2] Again, separate correspondence between Committee members and officials took place prior to the meeting. In response to a question as to whether it was still necessary to retain the current wording which refers to a 'specific' disease or disablement, DWP advised that they would change the wording in regulation 55ZA (1)(b) to ensure, beyond doubt, that the provision would still apply if a person was suffering from more than one health condition. In response to another question about the wording of regulation 55ZA(c)(ii) and whether it meant that single periods of sickness under the existing rules would have to be included within extended periods of sickness, DWP advised that such an interpretation would be contrary to the opening words of that sub-paragraph. They would however ensure that the guidance would clarify how the provision was to be interpreted.

Annex A

Attendees

Guests and Officials

Item 2:	Steve Hickman (Deputy Director, Benefit and Credits, HMRC) Denis Fitzgerald (G7, Benefits and Credits Directorate, HMRC) Simon Gallagher (Deputy Director, Welfare Spending & Reform, HMT)
Observers	Helen John (Head of DWP Stewardship Team)[3] Natasha McKeever (HEO(D), PIP Strategy and Analysis)[2]

Secretariat:	Denise Whitehead	(Committee Secretary)
	Henry Parkes	(Researcher)
	Michael Coombs	(Assistant Secretary)
	Paul Mackrell	(Assistant Secretary)
	Eirteqa Sultan	(Assistant Secretary)

[3] Item 2 only