

**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)  
John Andrews  
Rachael Badger  
Adele Baumgardt  
John Ditch  
Colin Godbold  
Chris Goulden  
Gráinne McKeever  
Matthew Oakley  
Seyi Obakin  
Judith Paterson  
Nicola Smith

Apologies: Jim McCormick

Guests and Officials: See Annex A

## **1. Private Session**

*[RESERVED ITEM]*

## **2. The Universal Credit (Amendment) Regulations 2016**

2.1 Olwen Mitton (HEO) and Andrea Kirkpatrick (G7) – both from the Department's Universal Credit Labour Market Team – were welcomed to the meeting by the Chair. The Universal Credit (Amendment) Regulations 2016 were designed to fill a gap that had become evident in relation to the policy by which a person in receipt of Universal Credit (UC) could erase an unexpired period of benefit sanction, or a debt incurred through receipt of hardship payments, by working at a prescribed level of remuneration for six months. This incentive currently only applied to those in the 'work-related requirements' group. For the sake of ensuring parity, Ministers had decided that the same rules should apply to someone in the UC 'no work-related requirements' group.

2.2 Officials explained at the outset that the proposal was not about encouraging a person to take up work when the Department had already determined that they should be exempt from any work-related requirements. Rather it was a matter of ensuring equality of treatment for those who might be considering an opportunity of taking up employment. As such, it was less a question of the Department publicising the change as a work incentive and more about ensuring that anyone who approached the Department for advice would not be unduly penalised. It was emphasised that anyone in the no work-related requirements group who took up

employment would not be subject to any sanctions if they then decided to leave that employment for any reason.

2.3 The existing prescribed earnings threshold was the national minimum wage for someone of the claimant's age multiplied by the number of hours the Department had decided, in accordance with the legislation, was appropriate for them. That was called the Conditionality Earnings Threshold (CET). Because claimants in the no work-related requirements group did not have a CET, these draft regulations would effectively give them a CET of the national minimum wage for their age times 16 hours, converted to a monthly figure for those purposes.

2.4 Committee Members raised the following main questions in discussion:

**(a) How did the lack of parity come to light? Did it come through claimants or their representatives identifying inequality of treatment, or was it first recognised within the Department?**

It came from within the Department. Staff noticed that some claimants from the no work-related requirements group were taking up work but that there was no legal provision to exempt them from a sanction period or a hardship debt as there would have been had they been subject to conditionality.

**(b) The purpose of the draft regulations was understood and appreciated, but could there be a problem insofar as there appeared to be areas of non-alignment? By way of an example, the earnings rule for Carer's Allowance (CA) was set lower than the earnings rule to terminate a sanction. That would mean that a person in receipt of CA could try to escape a sanction or avoid recovery of a hardship debt and take up employment only to find that in doing so they had lost entitlement to CA.**

The primary focus of the Department was to apply the same rule across the board. The aim was to ensure that this rule was in place as a starting point and then evaluate how it operated in practice as a prelude to considering whether further refinements were appropriate. The question of how the proposal would affect anyone in receipt of CA was something that would be taken forward in discussion with DWP colleagues responsible for CA policy. It would be important that work coaches explained carefully the choices that a carer faced when considering employment.

**c) The same point arose in connection with Statutory Maternity Pay (SMP) where a woman on maternity leave could lose entitlement to SMP if she worked during her maternity leave. Did the Department consider a different form of alignment, such as providing that a woman with an outstanding sanction period who worked could erode the sanction period but that it would be at a nil deduction rate?**

That had not been considered but might be something that the Department could look at in the future.

**d) What numbers were likely to be affected by the measure?**

It would probably be in the region of around one or two per cent of the no work-related requirements group, but the Department would check the figures and respond to the Committee outside of the meeting.

- e) **How would the Department avoid providing an incentive to people to take up employment when doing so might have an adverse impact on their health or the well-being of their children or person for whom they provided care?**

The Department was anxious not to publicise the change unduly. The intention was that anyone approaching the Department for advice on taking up employment would be informed of this potential benefit, but the Department was keen not to be seen to be selling it as a specific work incentive.

- f) **If someone in the no work-related requirements group decided to take up employment but within the period of six months decided to leave, would they return to having to serve the original sanction period?**

Through being in the no work-related requirements group the sanction applicable to them would be at the lowest level, but it was true that they would return to where they had left off in terms of paying off a hardship debt or serving out a period of sanctioned benefit.

- g) **If the Department was relying on people in the no work-related requirements group approaching them before telling them of the possible advantage of taking up work, somebody might lose out through ignorance. Would it not be better to provide advice rather than passively wait for it to be requested? Was there not a serious communications challenge with the measure?**

The Department would train its work coaches to give appropriate advice to those who sought it. There was a balance to be struck and the Department's view was that it was best met through the provision of carefully considered guidance.

- h) **The Committee had scrutinised a lot of regulatory proposals where the change resulted in more detailed and specific guidance for decision-makers. In instances such as this where the expected numbers were very low, all work coaches would still need to absorb the new material because they might be approached for advice. Had the Department considered the additional impact on work coaches who would be expected to know about the new rules?**

The Department had considered the impact upon members of staff but took the view that work coaches only need to be put on alert about the changes so that, in the event of them receiving a specific query, they would register that there had been new guidance which they could then consult in more detail.

- i) **Was there any information available to the Department which would indicate how many people might take advantage of this measure and go into work?**

No because the Department did not measure outcomes of UC claimants exempt from any work conditionality.

- j) **There were some areas of work that were socially beneficial where the remuneration was not included within the definition of earnings for the purposes of DWP legislation. An example was foster caring which HMRC treated as self-employed earnings but where tax rules removed those earnings from any assessment. Someone doing that kind of work would not be eligible for having their sanction period or hardship debt erased under the proposed rules.**

That was something that went wider than this particular measure. The tendency within the Department was probably not to look at fostering as a business as such but akin to parenting. However the Department would look at that aspect again.

- k) **Would a woman on paid maternity leave be regarded as in employment for these purposes? They would not be engaged in work but would be in receipt of remuneration?**

In situations where people were in receipt of earnings then they should qualify for exemption from the sanction or hardship debt for the purposes of the regulations.

2.5 The Chair thanked the officials for attending and presenting the proposals. He advised them that the Committee was content that the proposals could proceed without formal reference, although the Committee would write to the Department setting out the concerns that had been raised during the course of the meeting.

### **3. The Social Security Administration Act 1992 (Local Authority Investigations) Regulations 2016**

3.1 The Chair welcomed Judith Hicks (G7, Fraud, Error and Debt: Strategy and Policy) and Frank Meakin (HEO, Fraud, Error and Debt Programme). The draft regulations were a consequence of the move towards single fraud investigations delivered by DWP Fraud and Error Service (FES) that had been fully rolled out in March 2016. The new service would mean that DWP would undertake all investigations of fraud involving social security benefits and, where the evidence was deemed sufficient to warrant a prosecution, the case would be submitted to the Crown Prosecution Service for a decision as to whether the person suspected should be prosecuted. In Scotland the decision would be undertaken by the Crown Office Procurator Fiscal. Previously local authorities in England and Wales were free to prosecute their own suspected cases of fraud where Housing Benefit or Council Tax Benefit was involved.

3.2 Section 112 of the Welfare Reform Act 2012 needed to be commenced with a Commencement Order. That would bring into effect a new section (section 116ZA of the Social Security Administration Act 1992) that would curtail the powers of local authorities in prosecuting their own cases of suspected fraud. However the draft regulations were also needed in order to provide a definition of an investigation in respect of a benefit offence as provided in subsection (8) of the new section 116ZA. Where the local authority had started proceedings under their own powers and in accordance with the legislation that previously applied, they could continue with those arrangements until any proceedings had been completed.

3.3 That meant that the draft regulations had the nature of a temporary measure designed to support the provisions to allow on-going cases to be completed under the existing prosecution regime until all the outstanding cases had worked their way through the system. At that point, FES would have responsibility for investigating all cases where benefit fraud was suspected. Officials advised that the changes would not affect the non-welfare benefit fraud work undertaken by local authorities, nor the administration and payment of housing benefit, which would continue unchanged.

3.4 Committee members raised the following main questions in discussion:

- a) **A 2014 National Audit Office Report into Housing Benefit (HB) fraud and error found that HB overpayments were proportionately the highest and were increasing in a context where resources for tackling it had decreased. The report also highlighted that the biggest single cause of HB overpayments was the fact that claimants did not always report changes in earnings. Was the Department confident, in the light of those findings, that resources were appropriately allocated?**

The Department had looked carefully at resources ahead of each Local Authority go-live date to make sure that staff were properly allocated within FES where they were needed.

- (b) **Following the replacement of the national discretionary Social Fund with local welfare assistance administered by local authorities, was potential fraud and error being investigated?**

Local authorities were clear that investigation of any fraud and error in relation to their own schemes of discretionary assistance were their responsibility. Each authority therefore needed to think about its own approach.

- c) **It was ironic that, at the same time as a single investigatory service was being established, separate local authorities were being given responsibility for doing their own corporate fraud investigations.**

The Department did not have the power to conduct non-welfare benefit investigations on behalf of local authorities, although there was currently a test in a small number of local authorities looking at joint working on council tax reduction scheme cases. Some bigger authorities had also combined their investigation services.

- d) **How did HMRC fit in? In 2010 a Task Force suggested that three-way teams should work jointly together with representatives from the Department, local authorities and HMRC. In 2015, that was updated to take account of changes in benefits and their administration, but nothing was said about local authorities no longer being involved in that process.**

In practice those three bodies were often chasing the same people, and joined up team work was possible, for example, when it came to having joint prosecutions with a single hearing. HMRC were an integral part of the SFIS project and investigation of Tax Credit fraud was now the responsibility of DWP FES. In February 2015, 31 staff transferred from HMRC into FES.

- e) **It was understood that the Department took powers in the Welfare Reform Act of 2012 to treat tax credits as a social security benefit for the purposes of conducting fraud investigations. That meant that the Department was now conducting tax credit fraud investigations, although not cases involving child benefit. Did that mean that no HMRC investigation of tax credit fraud was taking place?**

DWP FES was now responsible for fraud investigations in tax credit cases and for referring any prosecutions to the Crown Prosecution Service. HMRC was still responsible for fraud in child benefit cases.

- f) **Was there anything structurally in place to ensure that lessons learned from the SFIS project were shared?**

Yes, lessons learned were fed back to Fraud and Error Strategy at a policy level, and the lower level operational issues were shared within the wider Business Transformation Group community. Regular liaison meetings were held between FES and local authorities where operational issues could be discussed at a local level with an agreed escalation process in place if required.

3.5 The Chair thanked officials for attending the meeting, presenting the proposals and dealing with the questions raised by Committee members. He advised that the Committee was content that the proposals could proceed without the need for formal reference.

#### **4. Private session**

*[RESERVED ITEM]*

#### **5. Current issues/AOB**

*Date of next meeting*

5.1 The next meeting was scheduled to take place on 18 May, with the Committee's stakeholder event taking place on the following day.

**Attendees**

*Guests and Officials*

Item 2: Olwen Mitton (HEO, Universal Credit, Labour Market Team)  
Andrea Kirkpatrick (G7, Universal Credit, Labour Market Team)

Item 3: Judith Hicks (G7, Fraud, Error and Debt: Strategy and Policy)  
Frank Meakin (HEO, Fraud, Error and Debt: Programme)

*Observers*

Catherine Hegarty (Private Pensions and Stewardship)  
Kezia Huttleston (Universal Credit Business Transformation Analysis)  
Raja Nadarajan (Welfare Reform Policy)  
Michael Allison (Private Secretary to the Secretary of State)

*Secretariat:*

Denise Whitehead (Committee Secretary)  
Henry Parkes (Researcher)  
Michael Coombs (Assistant Secretary)  
Paul Mackrell (Assistant Secretary)