8 March 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 Colin Godbold Chris Goulden Jim McCormick Gráinne McKeever Judith Paterson Charlotte Pickles Liz Sayce Victoria Todd
Apologies:	Rachael Badger Carl Emmerson Dominic Morris Seyi Obakin
Guests and Officials:	See Annex A

1. Private Session

[RESERVED ITEM

2. The Social Security (Personal Independence Payment) (Amendment) Regulations 2017 (Paper 17/17)

2.1 The vice-Chair welcomed James Bolton (Deputy Director Disability Benefit, Decision Making and Appeals), Kerstin Parker (Head of PIP Policy) and Tom Foster (PIP Programme Deputy-Director) to the meeting.

2.2 Opening the discussion, the vice-Chair explained that Paul Gray, the Committee Chair, would take no part in the scrutiny of the regulations, either in private with Committee members or in this meeting, on the grounds that his role in conducting a second review of the Personal Independent Payment (PIP) would present a conflict of interest. On the same grounds Liz Sayce, as CEO of Disability Rights UK, had also decided that she should similarly absent herself from any part of the Committee's deliberations. Victoria Todd had also declared that, as a member of the First-tier Tribunal, she was regularly involved in determining PIP appeals, but confirmed that had not been involved in any of the cases which provided the background to these regulations. The vice-Chair confirmed that no conflict of interest arose in Victoria's case, and that she would therefore participate in the scrutiny

process. While it was particularly unfortunate that Liz Sayce was unable to participate in the scrutiny of these regulations given her particular focus on issues affecting disabled people and those with chronic health conditions, the vice-Chair emphasised that other Members had considerable knowledge and experience on these issues.

2.3 Introducing the regulations, James Bolton set out the context in which the amendments were being made. The two separate judgments of the Upper Tribunal had both been received by the Department on 28 November 2016. Since that date DWP had estimated that there may be up to 50,000 new or reassessed awards to claimants whose entitlement would be affected by the judgments. On the Department's calculations, at the time of the judgments there could be around 165,000 existing cases where PIP could be awarded or increased on the basis of the judgment in MH[1] (the case involving the planning and following of journeys). The estimated cost to the Department over the forecast period up to 2021/22 was £3.7bn. The scale of the potential financial implications led the Secretary of State to lay the regulations in Parliament before presenting them to the Committee for scrutiny. In doing so he determined that, in the terms of the legislation,[2] it was expedient to do so by reason of urgency.

2.4 James Bolton also advised the Committee that, alongside several consultations on the reform of Disability Living Allowance (DLA), there had originally been a number of large consultation exercises in relation to the structure of PIP and the assessment criteria. This process had led to the refining of the different activities – two relating to mobility and ten relating to daily living. Each substantive version of the assessment had been rigorously tested before being incorporated into the final version of the PIP Regulations which Parliament had approved. Like DLA, PIP was a benefit which recognised the extra costs associated with disability, both physical and psychological, and sought to make a contribution towards them. Any national system which sought to ascertain each individual's extra costs and award benefit to meet them was felt to be impractical when PIP was originally designed. The activities set out in legislation were therefore designed to serve as proxies which determined an overall level of need. Each activity was set out in a way that represented an ascending scale of need, with a higher number of points being scored as the need increased. Such an approach would inevitably mean compromises, but overall it was believed that a fair and reasonable approach had been developed and this was demonstrated through the testing that had been undertaken.

2.5 PIP had never been based on a person's individual health condition, but on the limitation in function caused by a particular condition or conditions. Unlike DLA, the assessment criteria were set out in secondary legislation precisely because it would give greater flexibility in amending the wording, as the need arose. Since

[1] MH v Secretary of State for Work and Pensions (PIP) [2016] UKUT 0531 (AAC)
[2] Section 173(1)(a) of the Social Security Administration Act 1992 c.5

being introduced, there had been the development of case-law as judges of the Upper Tribunal determined appeals from the First-tier Tribunal. Some of those decisions had agreed with the Department's position and others had not. However this set of regulations would represent the first occasion on which the Department would have acted to amend and clarify the wording of a descriptor on the basis of a legal judgment. In fact the amendments being introduced by these regulations would be the first substantial changes to the PIP regulations since their introduction.

2.6 Turning to the first of two particular judgments that led to these regulations, James explained that daily living activity 3 (managing therapy or monitoring a health condition) and its point-scoring descriptors had been framed on the general proposition that assistance with the management of therapy at home, including supervision or prompting, indicated a higher level of need than assistance with managing medication or monitoring a health condition. This was the issue central to the judgment in LB.[3] James assured the Committee that the Department had always been clear, both in its published response to the consultation on the PIP assessment criteria and regulations (dated 13 December 2013) and in the guidance provided for decision makers and others, that there should be a distinct demarcation between medication/monitoring a health condition and therapy. In determining a case where the assistance given to the claimant in monitoring their health condition was demanding and fairly time-consuming, the Upper Tribunal judge had held that a fairer way of interpreting the legislation was to classify the help being given as 'therapy'. Effectively he blurred the boundary between two categories which the Government had always intended, and interpreted, as being distinct. The amendment was being made to restore the original policy intention. The annual cost of leaving the judge's decision to stand was estimated to be £10m a year.

2.7 The second judgment (ie MH) concerned mobility activity 1 (planning and following a journey). Of the six descriptors in that category two included a reference to "overwhelming psychological distress". The issue for consideration was whether or not it was valid to include psychological factors in interpreting the other descriptors. Different judges of the Upper Tribunal had reached different decisions on that point and a tribunal of judges had been convened to settle the issue. Their decision was for a broader interpretation. Since this decision also contravened the original policy intention, the Department had decided to regulate in order to clarify the wording in order to ensure that the other descriptors within mobility activity 1 could only be satisfied for reasons other than psychological distress. This second judgment had far greater cost significance for the Government than the first judgment, but the same principle applied in both cases – the Department sought to respond quickly in order to restore the original policy intention.

2.8 James further advised the Committee that the Secretary of State had sought leave to appeal against both decisions. Leave had been granted in MH and a decision was awaited in LB. There had also been an Early Day Motion put down by

[3] Secretary of State for Work and Pensions v LB (PIP) [2016] UKUT 0530 (AAC)

the Liberal Democrats which sought the annulment of the regulations. No date in the Parliamentary timetable had yet been determined for that debate.

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

(a) Although the Department's position was that the original policy intention had been clear from the outset and understood, the judges in the mobility case evidently took a different view. What was the Department's best evidence as to the policy intention?

In its published response to the consultation exercise the Department had explained its position on mobility activity 1. That position was also set out in the PIP Assessment Guide, the relevant section of which would be sent to the Committee for information. The Department further believed that the legislation itself had always been clear, although the court had disagreed.

(b) The judges in the mobility case had looked at the documentation on mobility activity 1 and said that they could not discern the original intent from it.

It was true that the legislation was complex and that the interpretation favoured by the judges was one they were entitled to reach, even though the Department disagreed with it. The interpretation intended by the Government had been consistently applied by decision makers from the inception of PIP. It was also the prevailing view adopted by First-tier Tribunals.

(c) If the policy intention had always been clear, why had the Secretary of State made the concession in HL that psychological distress was a valid factor in determining whether mobility activity descriptor 1f was satisfied?

That concession had been a mistake. In the hearing involving MH the Department explained to the court that that concession had been erroneously made.

(d) The Equality Analysis stated that, in addition to wider data analysis, a small in-depth exercise had looked at actual cases where claimants with a psychological health condition were assessed as meeting mobility activity descriptor 1b before the judgment (ie needing prompting to be able to undertake any journey to avoid overwhelming psychological distress and scoring 4 points) and who might benefit from the judgment. How many cases were examined?

The Department had reviewed 64 cases to assess the likely impact of the judgment. Within the Equality Analysis, the Department reflected work that had also been undertaken to identify the most likely primary disability or

health condition experienced by those who would be affected by the judgment (or by any decision to reverse its effect).

(e) How did the Department identify particular conditions in cases where claimants had multiple psychological health conditions which might produce a cumulative effect but which were difficult to isolate?

A common sense approach had been adopted which identified the main disabling condition. As a benefit PIP targeted help on those with mental health conditions far more effectively than DLA had done. Of those with mental health conditions receiving the mobility component within DLA, only nine per cent had been entitled to the higher rate. With PIP, 27 per cent of claimants received the enhanced mobility rate. That proportion would be unchanged as a result of the new legislation. The Department had undertaken tests to ensure that the benefit was going to the right people and was confident that the system was working as intended.

(f) How precise was the 27 per cent as a group? Would it include claimants who had a combination of physical and phsychological impairments?

Because the Department only recorded and published details relating to a person's primary health condition, it was somewhat imprecise, although based on the best information available.

(g) The new form of wording in descriptor mobility activities 1c, 1d and 1f would require a decision maker to ignore any psychological distress experienced by the claimant. How confident was the Department that that was possible in practice when for some claimants, their physical and psychological impairments were closely linked?

Healthcare professionals were doing that already. Quality testing showed that correct advice was being given – not in every case, but broadly so – and, where any errors had been identified, they were corrected. Case managers also undertook standard sampling to ensure that guidance was being followed.

(h) Part of the stated rationale for according higher points for someone unable to follow a familiar route without another person because of a physical health condition was that psychological health conditions tended to fluctuate more. Given that PIP was structured to accommodate health fluctuations, and the fact that the Secretary of State has the discretion to make a fixed term award of benefit if he considered the person's condition might improve, could the Department not have allowed the judgment to stand and coped with the issue of fluctuations in its normal way?

The descriptors were set out in a way that prescribed a hierarchy of need. Claimants were then scored on the basis of the highest descriptor which

applied. In the MH judgment the judges had effectively broken down that hierarchy, and the regulations would simply restore it.

(i) If a person was partially sighted, but not to a level which satisfied descriptor 1f, and was also agoraphobic (which, on the basis of the Upper Tribunal judgment, would attract 12 points) would the Department expect the health care professional to separate out the different conditions?

Health professionals were experienced in undertaking PIP assessments having undergone comprehensive training and being put through an approval process. Part of their role was carefully drawing out the relevant factors when considering any activity and consequent descriptor.

(j) The cost estimates provided in relation to the judgment in LB were that it would be about £10m a year but could be higher. Did that mean that the £10m figure was the minimum cost?

The Department's costings had taken account of the possible increases in the number of claimants in receipt of the Employment Support Allowance and Carer's Allowance who would qualify for the disability premium, but had not included an amount for the disability premium in other benefits nor of possible exemptions from the benefit cap.

(k) In LB, where the cost implications were far less significant, why did the Department not defer legislating until it had taken soundings from stakeholders, and come to a more considered position? Why was 'urgency' invoked in overturning LB?

Although the point about costs was acknowledged, the principle of restoring the policy intention was applicable in both cases.

(l) In suggesting a more considered approach to revisiting the wording in daily living descriptor 3, was there scope for incorporating the use of digital intervention in prompting people in remote areas to take medication?

The Department would respond separately to the Committee on that point.

(m) Why appeal the decision of the Upper Tribunal in both cases when the Department was legislating to overturn their effect?

Without a favourable decision in the Court of Appeal the Department would be obliged to identify individuals whose entitlement would have been affected between the day of the judgment and the date the legislation came into effect.

(n) In the case of LB the demarcation between therapy and medication/monitoring a health condition had been deliberately blurred because, in that case the claimant's needs were higher and it was a way

of interpreting the legislation that recognised her needs appropriately. Was that not the policy intention?

In that particular case it was possible to see why the judge took the approach he did, but overall, it meant that a reinterpretation of 'therapy' introduces a new level of need that was never intended. It would also bring a large number of claimants within its scope when it was broadly inappropriate to do so. The criteria set out in the existing legislation had all been tested and found to be both a reliable and valid indicator. A changed approach following the two judgments would lack that testing and validation.

(o) Was it correct that the Department's approach set people in coherent groups and that something had to be found which set a line of delineation between them?

Yes.

2.10 After a time of private discussion the vice-Chair confirmed that the Committee did not intent to take the regulations on formal reference. Nonetheless the Committee had a number of concerns which it would express in writing to the Minister for Disabled People, Health and Work.

2.11 The vice-Chair thanked the officials for attending and addressing the Committee's questions.

3. The Social Security Loans for Mortgage Interest Regulations 2017 (paper 13/17)

3.1 The Chair welcomed Geoff Scammell (G6, Housing Policy Strategy), Tim Roscamp (G7, Homeowners Housing Support Strategy Team), Anne Brown (HEO, Homeowners Housing Support Strategy Team), Andrew Stocks (G7 Analyst, Housing Analysis Team) and Hannah Stokoe (G7 Lawyer, Universal Credit and Housing Support) to the meeting. He thanked them for bringing the proposals to the Committee for information when, under the 'six months rule', they were exempt from formal reference.

3.2 Opening the discussion, Geoff Scammell explained that the Department had always adopted a different approach in the help offered to home-owners through the social security system, as compared to tenants in rented accommodation. In general, the income-related benefits scheme overall met the cost of the rent, whereas with home-owners, the rationale for providing help was more about avoiding re-possession. He also advised the Committee that the main difference between the existing support for mortgage interest scheme (SMI) and the proposed replacement loan scheme, was in the fact that payments made by the Department under the scheme would become recoverable from the equity when the property was sold. In all other respects – qualifying for help, the ceiling on the value of the property for which a payment was allowed, the process of paying the mortgage lender etc – the rules would be unchanged.

3.3 One of the main drivers for moving to loans had been the recent practice of mortgage lenders making loans to people for a period of years that would normally be expected to extend into the individual's retirement. That meant that growing numbers of people in receipt of State Pension Credit were entitled to SMI. For claimants in that position, where the likelihood of taking employment and moving off benefit would become increasingly limited, the prospect would be that the Department would have to pay an amount under SMI indefinitely. The Government considered that the added costs generated by this change in the practice of mortgage provision could not be justified, and that other tax-payers should not be expected to fund an asset that would appreciate in value. The powers for moving to a loan system were therefore set out in the Welfare Reform and Work Act 2016. As far as many older claimants entitled to State Pension Credit were concerned, the only practical effect of the change would be that the loan payments made by the Department would ultimately reduce the value of the estate, thereby affecting the amount to be inherited by beneficiaries to the will.

3.4 The Chair advised officials that there were a number of detailed technical questions that Members wanted to raise, but rather than cover those in discussion, the secretariat would provide a note of them. He asked that a written response be provided outside of the meeting. The following main questions were raised by Committee members in discussion:

(a) The legislation required the claimant as owner, and any other legal owner within the benefit unit, to sign the loan agreement and mortgage deed before loans would be approved. What would happen if a joint owner who was not a part of the benefit unit refused to sign?

In those circumstances (for example where couples had separated), the loan would still be made, but the loan would be less secure and subject to a different type of recovery. The Department would secure an equitable charge over the equitable interest of the joint owner who was part of the benefit unit, rather than obtaining a legal charge. The Department would not have any legal rights over the property (as it would with a legal charge), but would be notified when the property was sold and would then seek to recover the outstanding loan under the terms of the loan agreement through normal civil debt procedures (following the sale of the property). The Department would send a formal note setting out the legal technicalities surrounding this issue.

(b) How many people would that affect?

The Department estimated that any recovery would have to be through the civil debt process in around ten per cent of cases.

(c) How would people understand the implications of the change and the charges on interest? Would they be able to access independent financial advice and what would it include?

The Department would be providing information through a third party Information Provider, setting out the available options for claimants affected by the change and signposting them to independent financial and legal advice. The average weekly cost of SMI for State Pension Credit claimants was currently about £22 a week. In some cases, relatives might prefer to take on responsibility for paying the mortgage interest rather than see the claimant receive loans which would be recovered when the property was sold. Some claimants might wish to take the option of down-sizing to cheaper accommodation and clearing the mortgage altogether. Although there were equity release schemes in operation, it was unlikely that financial advisors would recommend that option for claimants because the costs would be disadvantageous due to higher interest rates for these products. The Department would not point claimants towards equity release.

(d) Did the non-availability of loans for claimants in receipt of Universal Credit (UC) but working present any work incentive issues?

The Department did not consider that to be an issue. The UC rules on work already applied in relation to SMI payments and this would continue when the present system was replaced by loans. With UC a person would normally be better off in work and, in most cases that would still be true even where it would mean the loss of mortgage support. Owner occupiers tended to be in full-time work and any periods of unemployment tended to be for a shorter period.

(e) What if a person had been on benefit for 30 years and had a mortgage – would the prospect of losing any assistance with mortgage repayments not disincentivise them to try out work?

The numbers of owner occupiers being out of work for a very long period of time and then trying some part time work would be very small. Research showed that there was generally a very good work ethic amongst owner occupiers. It was commonly recognised that owner occupiers of working age generally take responsibility for finding work precisely to meet their housing and other financial commitments.

(f) Had any work been done on the numbers of older people with interest-only mortgages?

The Department understood that three particular peaks in these numbers had been identified. One had occurred in 2013 and a further two were estimated – one coming in 2020 and another in 2030. Whereas SMI had originally been devised to provide a short-term fix for people whilst they were out of work, changing demographics and practices in mortgage provision meant that this was no longer the case. Claimants were now in need of a long-term solution. It was in the interests of claimants to provide a sustainable longer-term system of help, but insofar as the new system of loans was intended to

prevent claimants from having their homes re-possessed, it was also in the interest of the Department who would otherwise face higher costs incurred through supporting claimants in rented accommodation.

(g) It was understood that a UC claimant in work would not be offered a loan. Was it also the case that a UC claimant receiving SMI loans would no longer be entitled to loans should they take part-time employment?

That was certainly the intention – if a UC claimant started a part-time job, the SMI loan payments would stop. The Department would check that the draft legislation actually secured that intention and respond on that point to the Committee separately.

(h) If an older person needed to move home, for example to accommodate their accessibility needs, would the loans be recovered from the sale of their home? If so that might prevent them from moving.

The loans would be recovered from the sale of the home, but the Department's work on this issue led to the conclusion that it was unlikely to be a significant consideration for the majority of claimants. From information provided by the Council of Mortgage Lenders, the average amount of equity in homes was in the region of £160,000. The recovery of loan repayments would be unlikely to make serious inroads into that sum. Although there was nothing in the proposals which would mitigate the scenario portrayed in the question, help with the costs of converting a home to accommodate disability needs would probably be available. The rules of the Financial Conduct Authority (FCA) would also be unlikely to allow a claimant in receipt of an income-related benefit to take out further borrowing. The Department would provide a written note which set out the position more fully.

(i) Why had the interest rates been based on the forecasted interest rates of gilts as opposed to actual interest rates applied retrospectively? Had the Department considered the option of making zero-interest loans?

This was done to be consistent with the Department of Health's Deferred Payment Arrangement (DPA) scheme for social care which charges the forecast gilt rate.

(j) How quickly would the loan system become a savings measure?

The loan was a savings measure from day one because what was a grant would become an asset on the balance sheet. Using the forecast gilt rate would cover the Government's cost of borrowing.

(k) Was there any prospect of looking again at the cap on providing help up to the value of £200,000?

Yes, the move to a loans-based system of support offered such a possibility for the future, subject to Ministerial agreement. This was the level that had

originally been proposed as a temporary measure in 2009, although it had since become permanent. Although few people actually received help up to that limit, the fact that the loans would be recovered opened up the possibility of reinvesting some of it and adjusting the scheme in other ways, such as increasing the level of the cap. The vast majority of people receiving help through SMI had mortgages less than £100,000.

(l) If a person lacked capacity, who would sign a loan agreement on their behalf? Would an appointee be able to do it if the claimant was in a care home for example?

A person appointed by the Secretary of State to act for a claimant judged incapable of acting in respect of their benefit claim (an appointee) would not be eligible to make decisions about SMI loans, including signing the loan agreement. An appointee can only act for benefit purposes and signing a loan agreement would go beyond the scope of their powers. If, during the course of a telephone conversation with a claimant, the Information Provider identified that the claimant needed someone to act for them in respect of SMI loans, they would refer the case to DWP. DWP would then take action, possibly by visiting the claimant, to establish the person's capacity. Where DWP determined that a claimant lacked capacity and did not have a person with a general power of attorney, a Deputy would need to be appointed by the Court of Protection (or equivalent person in Scotland) or an attorney to act specifically in relation SMI loans. The claimant's existing appointee may also be appointed in the role of Deputy or attorney. Alternatively, the Court of Protection would appoint an appropriate person.

(m) Would that not present a timing issue?

It could, although there was sufficient time for this to be done with existing cases (the process of appointing a deputy or an attorney takes about three months). The Regulations have transitional provisions that would allow existing claimants, considered by DWP to lack capacity, to act to continue to receive SMI as a benefit for a period after 6 April 2018 until an appointment of a Deputy or attorney had been made. This provision did not extend to new claimants on or after 6 April, as DWP did not expect mortgage lenders to take repossession action against vulnerable claimants in the process of having a Deputy appointed so that they could receive an SMI loan. Further work would be done with the Council of Mortgages lenders to ensure new claimants would be protected in this way.

3.5 The Chair thanked the officials for attending the meeting and answering the questions that were put to them. He reminded them that there would be further written technical questions which would require an answer outside of the meeting.

4. The Universal Credit (Approved Tenant Incentive Scheme) (Amendment) Regulations 2017 (paper 15/17)

4.1 The Chair welcomed Geoff Scammell (G6, Housing Policy Strategy) for his second session before the Committee.

4.2 In outlining the background to the proposals Geoff Scammell explained that the request for the change in legislation had come from a housing association in East Lothian, Scotland. The trigger for the approach had been the introduction of Universal Credit (UC) and the fact that, for claimants in rented accommodation, the onus for paying their housing costs was being firmly placed on their own shoulders. Whilst acknowledging that there would be exceptions to that rule, Ministers had been clear that handing back financial responsibility in this way was a matter of principle in UC and an important element in preparing people for moving into work. That decision had nonetheless created difficulties for social landlords and their tenants, particularly where there had been a tradition that payments of housing benefit were routinely paid directly by the Department to the landlord. In order to incentivise claimants to make regular rent payments, the housing authority wanted to reward tenants who paid by direct debit or standing order and who also engaged with them digitally. East Lothian's proposal was to reduce the rent by £10 a month for compliant tenants and by £20 a month in cases where, additionally, the tenant had no arrears of rent. The problem the housing association faced was that, without amending relevant UC legislation, the £10/£20 discount would be automatically clawed back by the Department through reducing the individual's award of benefit.

4.3 The amendments had therefore been introduced to facilitate the scheme proposed by East Lothian. The draft legislation gave scope for other housing associations to devise similar schemes of their own, but because the Secretary of State wanted to ensure that the details of a particular scheme did not conflict with the Department's objectives in the delivery of UC, each separate subsequent proposal is required to secure his agreement beforehand.

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

(a) The proposal was limited to tenants in the social rented sector. It would therefore seem to reinforce a pre-existing separation between that sector and the private rented sector. Could the scheme not be extended to the private rented sector as well?

The problem of rent arrears was prevalent across the social rented sector and the proposed solution to that problem arose in that context. The proposed change in legislation simply represented a response to an identified issue, although it was appreciated that it might look different from the claimant's perspective.

(b) The East Lothian scheme was not merely about rent arrears. The greater emphasis seemed to be on digital inclusion. How would the scheme be evaluated?

It was the landlord who would always be taking the risk with offering that kind of incentive. The decision they would face was balancing a drop in income in some cases but increased compliance overall. What happened in practice would determine how attractive the scheme would be for other housing associations to follow. The Department intended to bring forward a further set of similar legislative proposals relating to Housing Benefit but more wide-ranging. The Committee would be presented with them in due course. The aim was getting people into a new way of managing their finances which, in turn, would have a large beneficial impact on DWP and the administration of benefit. That approach would be tested rigorously as the Department would want to know about the people who responded, the numbers involved, details about those who had trouble in engaging etc.

(c) The Scottish Government planned to use their new powers to pay housing costs directly to landlords for social tenants in Scotland. Would that not tend to defeat the objective of the East Lothian housing association scheme?

It was agreed that this might make further schemes less attractive in Scotland but there was still the digital element. Ultimately, it was up to Scottish housing associations themselves to decide whether there was any value in running similar schemes. The regulations would simply enable them to run schemes if they wished to do so, subject to the Secretary of State's agreement.

(d) If a tenant on the scheme was receiving the maximum amount of reduction in rent and fell into arrears, they would face an increase in rent at a time when they could least afford it. Had a non-rent reduction, such as paying vouchers, been considered?

Managing rent payments was a key landlord function and social landlords needed to find ways of assisting tenants who were struggling as they did now. The East Lothian housing association had not been attracted to vouchers which would still be treated as taxable income, and therefore clawed back, in the same way as any cash incentive.

(e) This issue involved powers that had been devolved to Scotland. How did the process of liaison with the Scottish Government work?

In this case it was an easier process than it might otherwise have been because the issue was benign. The only slight point of contention was over the question as to who would approve each scheme. Although this was resolved in favour of the Secretary of State, he would only do so in practice after consulting the Scottish Government.

(f) Were there any practical difficulties in DWP administering the scheme and assessing the rent on the basis of the non-discounted amount?

This would not be a problem in the early stages because the Department would know which tenants were currently receiving benefits. The issue would arise where participants in the East Lothian housing association scheme who were currently not receiving benefit made a claim for UC. There was the capacity for confusion on part of the claimant and on the part of DWP staff in determining the correct rental liability. The small scale of the East Lothian project meant that there was little risk at present, but that was an issue the Department would wish to keep an eye on if such schemes started to scale up.

(g) Were there any problems the Department could foresee in scaling up this scheme?

So long as the difference between contractual rent and actual rent paid was understood, both by the claimant and DWP offices, it should work well enough given that DWP processes would remain the same in all other respects. At this stage the Department had no idea whether the scheme would be a success, although it was fair to say that East Lothian themselves were very positive about the outcome.

4.5 The Chair thanked the officials for attending the meeting today and addressing the questions raised. He advised them that the Committee was content that the draft regulations could proceed without formal reference to SSAC.

5. Current Issues/AOB

Postal Regulations

5.1 The Committee endorsed the recommendation from the *Postal Regulations Sub-Group* that the following proposed regulations may proceed without the need for further scrutiny at the meeting:

- *The Tax Credits (Definition and Calculation of Income) (Amendment) Regulations 2017*
- *The Social Security Benefits Up-rating Regulations 2017 (Reg 3: Persons not ordinarily resident in GB)*
- *The Housing Benefit (Executive Determinations) (Amendment) Regulations 2017*
- *The Social Security (Scottish Infected Blood Support Scheme) Regulations 2017; and*
- *The Universal Credit (Housing Costs Element for claimants aged 18 to 21) (Amendment) Regulations 2017*

5.2 The Committee was content that they could proceed without having been taken on formal reference and the Chair instructed the Committee Secretary to convey that decision to the relevant officials dealing with each set of draft regulations.

5.3 On the Housing Benefit (Executive Determinations) (Amendment) Regulations 2017, Grainne McKeever noted that a tele-conference had been held between members of the Committee's postal sub-group, officials from the Department for Communities (NI), DWP officials and members of the SSAC secretariat. Concerns had been raised about:

- the lack of relevant data necessary to complete a thorough equality analysis; and
- the process by which the Committee only saw the regulations after they had been laid (rather than coming for informal scrutiny when earlier proposed as GB legislation).

However the substance of the regulations themselves were considered benign and straightforward.

Date of next meeting

5.4 The next meeting was scheduled to take place on Wednesday 5 April 2017 in Caxton House.

Annex A

Attendees

Guests and Officials

Item 2: James Bolton (Deputy Director Disability Benefit, Decision Making and Appeals),
Kerstin Parker (Head of PIP Policy), and
Tom Foster (PIP Programme Deputy-Director)

Item 3: Tim Roscamp (G7, Homeowners Housing Support Strategy Team),
Anne Brown (HEO, Homeowners Housing Support Strategy Team),
Andrew Stocks (G7 Analyst, Housing Analysis Team), and
Hannah Stokoe (G7 Lawyer, Universal Credit and Housing Support).

Item 4: Geoff Scammell (G6, Housing Policy Strategy), and

Observers:

Item 2: Paul Gray (SSAC Chair)
Liz sayce (SSAC Member)
Joanne Antoniadis (G7 PIP Policy)
Jane Porter (G7, PIP Assessment Policy)
Hugo Phillips (HEO(D), DWP Private Office)

Item 3: Richard Mash (G6 Lawyer, DWP Legal Services)
Tom Alpe (HEO(D), Master Trust Policy)
Hazel Norton-Hale (G7, Arm's Length Bodies Partnership)
Amani Saeed (EO, Pensions Schemes Bill Team)

Item 4: Hannah Fitzpatrick (G7, Housing Policy Strategy)

Secretariat: Denise Whitehead (Committee Secretary)
Paul Mackrell (Assistant Secretary)