25 July 2018

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 David Chrimes Carl Emmerson Dominic Morris Judith Paterson Liz Sayce Victoria Todd
Apologies:	Chris Goulden Phil Jones Jim McCormick Grainne McKeever Seyi Obakin Charlotte Pickles
Guests and Officials:	See Annex A

1. Private session

[RESERVED ITEM]

2. Welfare Conditionality – Professor Peter Dwyer (University of York)

2.1 The Chair welcomed Professor Peter Dwyer from the University of York where a five year programme of ESRC funded research into welfare conditionality has recently been completed. The project was led by York but delivered in collaboration with teams based at the Universities of Glasgow, Sheffield, Salford, Sheffield Hallam and Heriot Watt. Peter explained that the analysis had looked at the effects of having an approach to labour market requirements which relied on conditionality backed by benefit sanctions. In addition to interviews with 52 policy stakeholders and 27 focus groups conducted with practitioners, the project had undertaken a total of 1,082 repeat qualitative longitudinal interviews (i.e. wave a 481, wave b 339, wave c 262) with welfare service users who were interviewed up to three times within a two year period. The respondents were drawn from nine different policy areas: jobseekers, recipients of Universal Credit, people with disabilities, migrants, lone parents, offenders, social tenants, homeless people and those subject to anti-social behaviour interventions or family intervention projects. It took place in 11 different locations in England and Scotland.

2.2 The overall conclusion from the study was that welfare conditionality was not working. In general people were not being helped into long-term sustainable jobs. The pattern was more in terms of intermittent spells in temporary or short-term, low-skill work interspersed with a return to unemployment. Imposing sanctions tended to give rise to negative responses that militated against the overall objective of helping people into work. Many of those interviewed made it clear that welfare conditionality meant that their main focus was on doing whatever was necessary to avoid incurring a sanction rather than seeing it as a means to getting them into employment. Sanctions was not the whole story; the Department's language was as much about supporting people into work as about sanctioning people for non-compliance, but this was not how many of those interviewed perceived it.

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

(a) What criteria was used in determining the people to be interviewed?

In each category criteria for selection was drawn up so, for example, in the case of migrants, the gateway was defined by having been in the UK for at least 12 months, not being a British citizen at the time of the first interview and being in receipt of benefit and subject to conditionality.

(b) Was there a selection bias in those interviewed?

Any research of this nature into welfare conditionality would necessarily require an examination of those subject to it. It would not be possible, for example, to compare the experience of those on benefit but subject to conditionality with those not subject to conditionality because their circumstances would be so different. Anyone on benefit looking for work was subject to conditionality. What the research did was to take examples of people subject to conditionality and explore their lived experiences. In particular we wanted to see the changes in behaviours and the outcomes from the experience of being subject to welfare conditionality in a range of settings within and beyond the current UK social security system.

(c) Had the research picked up on anxiety about poverty being counter-productive when it came to finding work?

It was certainly the case that anxiety about poverty meant that the main emphasis was on avoiding sanctions rather than in finding work. Conditionality often helped create a 'tick-box' mentality so that claimants went through the motions in doing whatever was required, and some work coaches adopted a similar approach in putting claimants on courses that were self-evidently ill-suited to their particular needs. One only had to look at the data to see that the current conditionality regime was ineffective. The Department needed to move away from sanctions and towards support. Compulsion applied to claimants was a signal of failure. People needed to be supported into work.

(d) Would the numbers of people moving from benefit into work go down if sanctions were abolished?

No. The evidence was that it would make little difference. Those who move into work do so in spite of sanctions rather than because of them.

(e) The need was for the Department to conduct some randomised control trials to see what worked. They would need to think about what those trials would look like. Such an approach would fit in with the Government's industrial strategy.

2.4 The Chair thanked Peter for coming down from York and presenting the evidence which had emerged from the study.

3. The Universal Credit and Jobseeker's Allowance (Miscellaneous Amendments) Regulations 2018 and The Child Tax Credit (Amendment) Regulations 2018

3.1 The Chair welcomed the following officials to the meeting: Geoff Scammell (G6 Housing Policy), Dave Higlett (G6, Universal Credit Policy), Emma Walsh (G7, Universal Credit Policy), Liam Parker (SEO Universal Credit Policy) and Lucia Suggitt (HMRC).

3.2 The amendments being introduced were as follows:

- a rescinding of the rule by which housing support for some 18-21 year olds had been withdrawn from April 2017. The change in policy had been announced by the Secretary of State in a Written Statement in the House of Commons on 29 March 2018.

- an extension of the exception from the rule whereby benefit was not available in respect of a third or subsequent child in households with children who were adopted or being looked after in a non-parental care arrangement who might otherwise be in local authority care. On the introduction of the policy to provide support for a maximum of two children, an exception had been made for households where the third or subsequent child was adopted or cared for in a situation where they might otherwise be in local authority care. It did not, however apply to the first two children in similar circumstances. This amendment was being introduced so that the exception applied in both scenarios with a similar amendment being made to Child Tax Credit regulations; and

- the making of some more minor and technical changes –

    - correcting an unintended defect in the legislation affecting some of those entitled to Jobseeker's Allowance (income-based) (JSA). The amendment would ensure that where the claimant or partner was entitled to a Personal Independence Payment or an Armed Forces Independence Payment, the JSA award would include a higher pension premium or a disability premium;

- aligning the UC legislation with tax law to ensure consistency in the treatment of earnings derived by an employee of a company providing an intermediary service for the public sector;

- aligning the treatment of foster carers in privately rented accommodation to that available for those in the social rented sector; and

- amending the Child Tax Credit Regulations to include a reference to the Children (Scotland) Act.

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

(a) In para 3.4.2 of the Explanatory Memorandum it was said of the policy by which support in Child Tax Credit and Universal Credit legislation was limited to a maximum of two children that: "since the implementation of the policy we have kept the effects of it under review to ensure that the exceptions provide the appropriate level of support." What was result of that process in relation to the exception for children described as having "a non-consensual conception"?

Statistics relating to the take up of the exceptions during the first year of the policy's operation were published in June 2018. They show that the policy had been operating effectively, including in relation to non-consensual conception cases.

(b) The Social Security (Restrictions on Amounts for Children and Qualifying Young Persons) Amendment Regulations 2017 provided that no new claim to Universal Credit may be made by claimants with more than two children up to and including 31 October 2018. Was there a need to amend this regulation so that there was no gap between this date and the completion of roll-out for new claims to Universal Credit?

The regulations already contained a provision which would allow the Secretary of State to extend this date. The Government had already announced that this date would be extended to 31 January 2019, thereby avoiding any gap.

(c) Was the Department confident that the IT would be in place for the end of January 2019?

Colleagues working on the IT programme had given their assurance that the necessary IT changes would be in place.

(d) The change in relation to children who would otherwise be in the care of the local authority established a principle of symmetry. In other words the policy was that there should be an exception for a child on the grounds of caring for a child who would otherwise be in local authority care, regardless of whether that child was the first, second, third or

subsequent child in the household. Did the Department consider applying that same principle of symmetry where non-consensual conceptions were concerned? At present there was an exception if the third child was the result of a non-consensual conception, but not if the first or second child was conceived non-consensually and the third child was conceived consensually.

The policy intent had always been about choice and that remained the same in relation to the other exceptions. The emphasis of this change to the exceptions relating to children who were adopted or living in non-parental caring arrangements had been to recognise the importance of keeping children out of care. This was the reason for its introduction.

(e) When the Committee scrutinised the original legislation which set out the exceptions in the two-child policy, it made a specific recommendation in relation to children who were the subject of non-parental care. The recommendation was to extend the exception in precisely the way this particular amendment would achieve. It seemed obvious to the Committee at the time that the original policy was going to cause problems. That recommendation was rejected by the Government. Not long after the legislation had been introduced Ministers announced a reversion in policy in line with the Committee's earlier recommendation. Had the Department learned from that experience?

The policy as set out in the original legislation had been determined by Ministers in advance of implementation. It was important to see Universal Credit as a process that allowed for change when a need for change was identified.

(f) How had the oversight with regard to the application of the Shared Accommodation Rate to foster parents come to light?

The Department had spotted that a gap in provision existed when looking at the wording of the legislation to check on another matter. Practice had been in line with the policy intention rather than with the strict terms of the legislation so claimants had received the additional payments as intended. HMT had agreed that benefit erroneously paid out in these circumstances should be re-classified as extra-statutory payments.

(g) The revocation of the rule whereby housing support for young people aged 18-21 was withdrawn was welcome. The period of non-entitlement had meant that landlords had become aware that accommodation should not be let to young people in this age bracket because housing support was no longer available. What could be done to reverse that message?

The announcement of the change in legislation had been publicised and the Department had been working with homeless charities on this amendment. Although the date of the change had yet to be formally announced, a

communications plan was in place. Officials were not aware of landlords generally reacting to the withdrawal of housing support for some 18-21 year olds in the way suggested. As had previously been discussed with the Committee, there were few young people in rented accommodation who did not fall into one of the exempt categories in any event. Apart from landlords offering a degree of social support for young people, who would be likely to be aware of the announcement of this amendment in any event, the general sense was that there was a reluctance amongst landlords to rent to benefit claimants.

(h) The evidence suggested that there was very little property available at the Shared Accommodation Rate. In those circumstances how did the Department establish an appropriate local housing allowance?

The question of affordability was separate from the issue being dealt with in these regulations. Local Housing Allowances for each given area were determined by the Valuation Office. So it was known what accommodation was available within each of the established bands. Where there were local difficulties, the Targeted Affordability Fund was available as a means of mitigating them. Local authorities were also able to make use of discretionary housing payments to help particular individuals. Evidence as to landlord behaviour was difficult to come by.

(i) The Department was able to measure price and availability of rented accommodation. Was anything done to measure quality?

DWP provide financial assistance that allowed claimants to access the housing market. As with other goods and service, it was for the claimant, rather than DWP, to determine whether what they buy represented good value. Where the issue of quality arose the responsibility rested with the Ministry of Housing, Communities and Local Government.

(j) On the minor amendment to regulation 77(5) of the Universal Credit Regulations 2013, there would appear to be an existing problem of construction. That paragraph appeared to disapply the regulation to anyone deriving income from the company by way of employed earnings by virtue of chapters 8, 9 or 10 of the Income Taxes (Earnings and Pensions) Act 2003. Was this not a problem for someone who might have more than one engagement?

The purpose of the amendment was to mirror the position in existing tax legislation. The Department would check this particular question with lawyers and respond to the Committee outside of the meeting.[1]

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[1] The Department subsequently wrote to the Committee and advised that the drafting of the regulation had been reviewed by its lawyers who agreed that the current wording was ambiguous for those cases where a clamant had engagements as both an employee and as a self-employed contractor. Although the number of such cases was likely to be small, officials were considering how the regulation could be clarified to address this issue. A further amendment may therefore be proposed in due course.

3.4 The Chair thanked the officials for attending the meeting and answering the questions that were put to them. He advised them that the Committee was content that the regulations could proceed without the need for their formal reference. Meanwhile, the Committee would await an early response from the Department to the final question.

4. The Social Security (Treatment of Arrears of Benefit) Regulations 2018

4.1 The Chair welcomed Fiona Dunn and Kim Jones (G7 and A/SEO respectively in the Employment and Support Allowance (ESA) Policy and Performance Strategy team within the Department). The draft legislation had initially been brought forward because of the recent ESA underpayment issue which meant that some claimants could be owed a substantial amount of arrears of benefit, and which under current income-related benefit regulations could only be disregarded as capital in for a year. The disregard for payments exceeding £5,000 on the grounds of an error on a point of law was 12 months, whereas the disregard for payments made on the grounds of official error was for the life of the award. If a substantial payment on the grounds of an error on a point of law was made, this amount would be disregarded for 12 months after which any amount remaining would be added to their existing capital and the normal income-related capital and notional capital rules, and therefore risks, would apply. The amendment would avoid this problem. It was designed to ensure that the treatment of arrears of benefit was consistently treated within the legacy benefit system regardless of whether the cause of the benefit arrears was an error on a point of law or official error.

4.2 Fiona Dunn explained that the Department had decided to ensure these amendments were enshrined in law in time for the 12 month anniversary of when the first arrears payment of £5,000 or more were made to claimants on the basis that there had been an error on a point of law. However, further investigation of the legal position had since established that section 27 of the Social Security Act 1988 did not apply and that ESA underpayments arising during the conversion process from previous incapacity benefits were due to official error. That in turn meant that these claimants were entitled to have the arrears of benefit disregarded as capital for the life of the award. The urgent requirement to get these amendments in place for September 2018 had therefore been removed, but the Department still wanted to proceed with the same timetable for implementation.

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

(a) Did that mean that in every case where a decision had been issued in cases involving underpayments arising from the Incapacity Benefit to ESA migration process, that decision would have to be revisited so that it was clear that it was on the basis of an official error rather than an error of law?

Yes. The Department would need to review each case regardless. The previous exercise in giving arrears had taken the date of the initial court judgment as the critical start date in accordance with the understanding that this was an error on a point of law. Since it had established that such cases

should be determined on the basis of an official error, the start date for calculating arrears would need to be the date the individual had migrated from Incapacity Benefit to ESA.

(b) It was noted that protection was being offered to claimants who were moved from a legacy benefit to Universal Credit (UC). Would the same protection be available if they migrated to UC via State Pension Credit (SPC)? This could happen, for example, if a claimant on ESA moved to SPC and then formed a couple with a younger person on UC. In those circumstances the SPC award would be terminated.

Officials would check that position with colleagues responsible for UC and get back to the Committee.[2]

(c) The amendment would extend the period of disregard in error of law cases from a maximum of 12 months to the life of the award. However it was only being done for legacy benefits. Although it was appreciated that recent court judgments may not have affected awards of UC, it was perhaps naïve of the Department to think that a similar problem may not arise in UC in the future. With the migration of claimants on existing benefits to UC set to begin next year there was a possibility that a similar issue to the Incapacity Benefit to ESA exercise could arise again. What was the justification for not making the same change in UC?

There was a desire to retain simple rules in UC and there was an existing 12 month disregard rule in all instances where capital fell to be disregarded. However officials would come back with a more detailed justification after conferring with UC colleagues.[3]

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[2] The Department subsequently confirmed that a person moving to UC from any income-related benefit, including pension age benefits, would maintain the protection of their extended capital disregard for benefit arrears if they claimed UC for any reason within one month of their award to an earlier income related benefit being terminated. This would apply even if they moved to UC due to forming a couple or separating as a couple where the ex-partner made a new claim for the other benefit, whilst the claimant moving to UC has had their award of the other benefit terminated. This was different from what was proposed with the draft managed migration regulations, where entitlement to a transitional capital disregard for capital in excess of £16,000 would cease due to a relevant change of circumstance, one of which would be the formation or separation of a couple. The Department also advised that since the meeting, and in looking again at the draft regulations, officials had noticed that the wording of the provision did not fully protect the position for people either in receipt of State Pension Credit or Housing Benefit for people over the qualifying age for State Pension Credit. As a result some small amendments were to be made to the regulations to ensure that they applied to pension age benefits as well as to working age legacy benefits. Gratitude was expressed to SSAC for bringing this issue to the Department's attention.

[3] The Department subsequently advised the Committee that when UC had been introduced, one aim had been to simplify legislation and administration in order to make the system easier to understand and to support automation. Through simplification and automation the Department expected administrative error to reduce. The change being made would ensure that claimants moving from legacy benefits would continue to be treated the same when moving from legacy benefits to UC and, in line with the approach to developing and implementing UC more broadly, evidence from the operation of UC would be used to consider whether further changes needed to be made.

4.4 The Chair thanked officials for coming along and presenting the draft regulations. He confirmed that the Committee was content that they could proceed without a requirement for their formal reference. The Committee would appreciate an early response from the Department to the two questions where an undertaking had been given to reply in writing.

5. Current Issues / AOB

5.1 On behalf of the Committee, the Liz Sayce expressed the gratitude of the Committee to Paul Gray for his strong leadership of the Committee over the past seven years. Responding, Paul Gray said that he was grateful to Committee members, past and present, for their excellent work and support while he had been Chair, and he wished the Committee well in its future endeavours.

Date of next meeting

5.2 The next meeting was scheduled to take place on Wednesday 12 September at Caxton House.

Annex A

Attendees

Guests and Officials

Item 2:	Professor Peter Dwyer (University of York)
Item 3:	Geoff Scammell (G6, Housing Policy) Dave Higlett (G6, Universal Credit Policy) Emma Walsh (G7, Universal Credit Policy) Liam Parker (SEO, Universal Credit Policy) Lucia Suggitt (HMRC)
Item 4:	Fiona Dunn (G7 ESA, ESA Policy and Performance Strategy) Kim Jones (A/SEO, ESA Policy and Performance Strategy)
Secretariat:	Denise Whitehead (Committee Secretary) Paul Mackrell (Assistant Secretary)