

24 January 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  
Carl Emmerson  
Colin Godbold  
Chris Goulden  
Jim McCormick  
Grainne McKeever  
Seyi Obakin  
Judith Paterson  
Charlotte Pickles  
Liz Sayce  
Victoria Todd

Apologies: Dominic Morris  
Rachael Badger

Guests and Officials: See Annex A

**ITEMS 1 & 2 Private session**

***[RESERVED ITEMS]***

**3. The Loans for Mortgage Interest and Social Fund Maternity Grant (Amendment) Regulations 2018<sup>1</sup>**

3.1 The Chair welcomed Tim Roscamp and Anne Brown (G7 and HEO respectively in the Homeowners Housing Support Strategy Team), Fatima Uzzaman (G7, Children, Families and Disadvantage) and Clare Kerr (G6, Legal Services). The single proposed legislative vehicle comprised two changes in different policy areas – namely that of loans for mortgage interest and that of the Social Fund Maternity Grant. The Committee considered them each in turn.

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<sup>1</sup> After having presented these draft regulations to the Committee, the Department subsequently decided that, in relation to loans for mortgage interest, more time might be needed in individual cases to determine whether an existing claimant lacked mental capacity and required someone to be appointed by the Courts to act on their behalf. A revised draft of the regulations was therefore presented after this meeting which proposed extending the time limit during which any such arrangements could be made. Other drafting amendments were also made by DWP to the revised draft, although none of them related to substantive policy issues. The Committee agreed that the revised version of the draft regulations could also be laid in Parliament without the Committee having requested formal reference.

## Loans for Mortgage Interest

3.2 Opening the discussion on the first part of the proposed legislation, Tim Roscamp explained that, having introduced the Loans for Mortgage Interest Regulations 2017 last year and brought them to the Committee for information under the six months' rule, the Department had become aware that some amendments were required. Some were corrections – for example, inserting a provision to ensure that a person whose income exceeded requirements could still get a loan if they would have been entitled to Support for Mortgage Interest (SMI) under the pre April 2018 regulations. Others had been picked up as a beneficial measure from further consideration as to how the loan scheme would work in practice – for example, the 30 day freeze on interest when claimants signaled an intention to pay off a loan.

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

- (a) **A person needed to serve a qualifying period before any help with mortgage interest – either a payment or a loan – could become available. Unlike the legislation in respect of legacy benefits, it would appear that UC legislation required a person to be entitled to UC before they could trigger a qualifying period. That would indicate that a person whose income prevented them from being entitled to UC but who would have become eligible for SMI under the pre-April 2018 legislation might be offered a loan for mortgage interest but that, without any change in their relevant circumstances, they would never actually get it. Was that understanding correct and, if so, was it intentional?**

That was not the intention. UC worked differently from the legacy benefits as regards loans for mortgage interest, but the Department had no interest in creating false hopes to no purpose. DWP would look at the wording of the provision carefully to ensure that the policy intention was met.<sup>2</sup>

- (b) **With a mortgage payment protection insurance policy (MPPI), would payments under a MPPI usually be enough to pay the interest on the mortgage?**

Yes. At the very minimum any MPPI policy would be expected to cover interest payments on the mortgage. If, exceptionally, there was a shortfall a claimant would have the option of taking out a loan from the Department. If payments under the MPPI exceeded required interest payments a loan would not be offered, but neither would the excess be taken into account as income in calculating benefit entitlement.

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<sup>2</sup> DWP subsequently confirmed that, unlike the legacy benefit rules, the UC regulations require a claimant to be in receipt of UC for nine consecutive assessment periods before they can get SMI benefit, there being no concept of “underlying entitlement” in UC. The intention was to mirror this position for SMI loans in the Loans for Mortgage Interest Regulations 2017 so that a claimant had to have been entitled to UC for nine consecutive months before they can both be offered, and receive, an SMI loan. To ensure that these amending regulations reflected this position, the Department undertook to amend the definition of single and joint claimants in the Regulations so that limb (b) of the definition only applied to legacy benefit claimants.

- (c) **Had the Department taken into account the effect on the MPPI market of offering a loan and perhaps been in contact with the industry to discuss possible disincentives the offer of a loan would have to taking out a protection plan?**

The MPPI market remained very small, continuing to suffer by association from the poor reputation acquired as a result of the mis-selling of PPI schemes. If anyone felt that their circumstances were such that they needed to protect their mortgage, the obvious choice would be to take out an MPPI policy – the advantages of receiving payments would outweigh any benefits in having to take out a loan.

- (d) **A person could still calculate that, rather than pay the up-front costs of taking out a policy, they would prefer to take out a loan retrospectively which, in practical terms, they would not need to pay back because it would subsequently be taken out of the equity in the home.**

That was possible, but there would be greater certainty with an MPPI policy. In contrast, the interest payable on the loan was subject to change.

- (e) **Was there any risk for welfare agencies giving advice in respect of mortgage interest loans? Anecdotally the Committee was aware of some confusion within the voluntary sector as to whether they might be vulnerable to breaching standards set by the Financial Conduct Authority (FCA). Apart from that there was uncertainty as to precisely what advice ought to be given.**

The Department appreciated the difficulties faced by organisations giving advice and information. It was acknowledged that those giving voluntary help to benefit claimants were not financial advisers. However, it was not really a case of recommending one financial product as opposed to another – the loan available from the Department did not really fit into that kind of classification. In practice a person on benefit and with a mortgage had a number of options to consider. Examples would be renegotiating the terms of the mortgage with the lender, enlisting the help of family (who would probably be in line to inherit) to contribute towards the mortgage costs and down-sizing. For many, taking out a loan would be all that was left after exhausting all the other possibilities.

- (f) **Could an advice agency be penalised by the FCA if a claimant believed they had been given wrong advice?**

The Department had had a meeting with the FCA in order to determine whether the LMI scheme would fall under FCA rules. Nothing had been put in writing but the FCA were clear that the LMI scheme was not a financial product that came within the ambit of FCA legislation. Departmental lawyers had also confirmed that position. That was not to say that a claimant could possibly take legal action if they believed they had been given incorrect advice, but any action taken would not be under FCA Regulations. The Department undertook to engage with advice agencies on the subject of LMI. The Department had involved advice agencies and others in the policy

formulation stage, holding workshops with them and speaking about the advice which could be given to claimants. It would be helpful however to go back to them again in order to find out where current sticking points might be.

- (g) The position for welfare agencies giving advice on LMI would appear to be similar to that for advisers, both within and outside DWP, who gave advice on debt management. Although no financial products would normally feature in the discussion a common vulnerability to being sued for giving wrong advice would seem to exist.**

The way the Department saw it working would be less in terms of recommending a person take out a loan, and more in terms of a conversation that led finally and inexorably to a loan where the claimant had no other options. In some ways “loan” was a misleading word insofar as the person would not have to pay it back other than from the equity in the property at the point at which it was released. There were some situations where it would not be paid at all and the Department would write it off.

- (h) Could an individual make a payment which would reduce the amount of the loan rather than pay it off in a single sum?**

Yes, subject to a minimum of £100 being paid.

- (i) And would the 30 day freeze rule apply to partial payments?**

No. The purpose of the 30 day freeze was to avoid the complication and embarrassment of telling a claimant the amount outstanding on the loan, only for further interest to accrue during the period between a completion statement being issued and receipt of the settlement amount. The 30 day freeze would allow time for the account to be settled without additional interest accruing. That problem would not arise in the same way with partial payments.

3.4 The Chair concluded that part of the discussion. He said that on the issue of advice agencies being at risk of legal challenge for giving incorrect advice, it was for them to take their own legal advice as to their position.

### **Social Fund Maternity Grant**

3.5 Opening the discussion on the second part of the proposed legislation, Fatima Uzzaman explained that the main purpose of the amendment was to address an anomaly within the current regulations that had been identified. That anomaly arose if a carer already had responsibility for a child that was not their own and started a family of their own. The amendment sought to rectify that position.

3.6 The following main questions were raised by Committee Members in discussion:

- (a) Paragraph 18 of the Explanatory Memorandum referred to the Department exploring how to pay for children for whom care was being provided under informal arrangements and what further evidence and**

**verification would be required from claimants. Had any progress been made and what sort of evidence did the Department envisage collecting?**

The position had now moved on. The Department had considered this issue but concluded that further verification was not required. Numbers of potential beneficiaries were low, and the risk of anyone manufacturing a story about caring for children not their own seemed remote.

- (b) Paragraph 17 of the Explanatory Memorandum referred to the exemption only applying to individuals who already had a kinship carer arrangement in place and then subsequently had a child of their own. Was this compatible with the UC two child policy where an exemption applied where a claimant adopted a third or subsequent child, or entered into a formal or informal arrangement to care for a third or subsequent child in circumstances where the child would otherwise fall into local authority care, but not the other way around? The policy did not seem to be aligned.**

The circumstances in which a Sure Start Maternity Grant (SSMG) was awarded and those in which a two child exemption in UC would apply were not directly comparable. The large majority of kinship carer arrangements take place when the child had passed the baby stage and no longer needed for kinds of items the SSMG was designed to meet. The scenario that Melanie Onn MP and others presented to Ministers as requiring help was where a person was caring for a child under a kinship carer arrangement and then had a child of her own. The point of the request was that, in normal circumstances, she would lack the kind of equipment needed to care for the baby and therefore stood in need of an SSMG.

- (c) Was it possible to receive two SSMGs?**

It was only possible to receive two (or more) SSMGs because of an initial or subsequent multiple birth.

- (d) What were the estimated numbers involved?**

Estimates suggested that there could be around 300 additional SSMG awards each year. This estimate includes both informal kinship care and formal adoptive and foster care arrangements. Due to limited data availability on foster carers, estimates for this group used a General Fertility Rate. The proportion of claimants who foster a child (or children) and then go on to have a first child is likely to be lower than that of the wider population. As a result, the number of additional cases is likely to be lower than 300.

- (e) Had any consideration been given to backdating that rule so that SSMGs could be made available for people who were already in this position?**

The legal powers to make that change retrospective did not exist. Although it was possible to take powers to do so, there was little appetite, or realistic opportunity, for doing so at the present time. Given that the SSMG was

designed to pay for the costs of equipment associated with the arrival of a baby, rather than being a simple cash payment, Ministers decided that the change should take place from a future date.

3.7 The Chair thanked the officials for attending the meeting and answering the questions that were put to them. He noted that the Committee were content that the regulations could proceed without the need for their formal reference. The secretariat would write confirming that decision. Meanwhile, the Committee would await a response from the Department on the specific points which arose in discussion where a full answer was not forthcoming.

#### **4. Passported Benefits and Universal Credit**

4.1 The Chair welcomed Trevor Pendergast, Gary Rodgers (G7 and SEO respectively in Universal Credit Cross-cutting Strategy) and David Greedus (Department for Education) to the meeting. The purpose of the session was to update the Committee on developments in the passporting rules for those in receipt of Universal Credit (UC).

4.2 Trevor Pendergast explained that the issue of passporting to other benefits had come to the fore with the introduction of UC which was in the process of replacing a number of income-related benefits as well as tax credits. Whereas a simple passporting rule was possible with income-related benefits which, apart from the 16 hour rule, was essentially for people out of work, the position under UC where benefit provision covered both in and out of work scenarios needed careful thought. Initially there had been a transitional phase where entitlement to UC was enough to provide a claimant with access to a passported benefit, but it was never intended that that would be the final position. As the roll-out of UC gathered pace, it had become more important that individual Government Departments and other agencies set their own thresholds for entitlement for UC claimants.

4.3 Trevor drew attention to the Committee's own report on passported benefits in March 2012. In that report, the Committee had set out various options for the Department's consideration. The report had also highlighted the need to avoid complexity and achieve a more co-ordinated approach between different Government Departments. DWP acknowledged the benefits of a co-ordinated approach, but stressed that defining the entitlement criteria for their particular benefit remained the responsibility of the authority administering that benefit. DWP were engaged in regular meetings with senior officials from (among others): the Department for Education; the Department of Health and Social Care; the Department for Justice; and the administrations in Wales, Scotland and Northern Ireland. Various Departments were in the process of setting earnings thresholds for UC claimants with the aim of mirroring the level of access for people which had applied under the benefits and tax credits UC was replacing.

4.4 David Greedus advised that the Department for Education had consulted on the eligibility criteria for free school meals (FSMs), the early years pupil premium (EYPP) and separately on the early education entitlement for disadvantaged two year olds. Until a decision had been reached, any parent or guardian in receipt of UC would be entitled to FSMs and early years entitlements for their children. The Department for Education were planning to reach a final decision on the earnings

thresholds to be applied and to publish their response by Spring 2018, with regulations planned for April 2018.<sup>3</sup>

4.5 Trevor Pendergast also advised that the Ministry of Justice had recently concluded a consultation on plans to introduce a zero earnings threshold for entitlement to legal aid for UC claimants. As with FSMs, entitlement to UC would be enough to trigger entitlement until a decision on the threshold had been reached. In the meantime, the Legal Aid Agency would continue to apply their general means test to determine the level of support to be given. The Ministry of Justice was aiming to publish their response to the consultation in the coming months, with changes possible in 2018.

4.6 HMRC was planning to introduce its Help to Save scheme from April 2018. The regulations on Help to Save accounts had recently been scrutinised by the Committee. They enabled people on low incomes to build up savings from their tax credit entitlement with the Government paying a bonus at prescribed intervals. The scheme would also be available to those on UC who had earnings at least equivalent to 16 hours a week at National Living Wage rates. Other Government departments were due to consult soon on their changes. The fact that the Work and Pensions Select Committee was discussing the issue of passported benefits on the same day as this Committee meeting was noted.

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

- (a) **What consideration had the Department taken of the combined impact of different passported benefits having a similar threshold which, for people at the border line of entitlement to UC, might present a work disincentive and undermine the message that people were always better off in work?**

Although the Department was not in a position yet to say anything about the combined effect of thresholds of different passported benefits, it was likely that there would be differences in threshold levels. The Committee's report of 2012 referred to a research finding that claimants tend not to take account of the fact that entitlement to passported benefits may be lost when weighing up the option of taking a job. DWP Ministers also believed that potential loss of passported benefits was not a disincentive to work for claimants.

- (b) **Was there a plan to check the impact on work incentives when the various thresholds had been set?**

DWP was very conscious of the importance of work incentives and there was a keen desire to make certain that, with UC, work always paid. One of the driving factors behind UC had been the desire to avoid a situation where people always ensured that they did work below the 16 hour threshold because of fear of what crossing it would mean.

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<sup>3</sup> The Department for Education subsequently published its [response to the consultation](#) on 7 February

- (c) Was there an unwarranted deference to Other Government Departments? Whilst it was acknowledged that individual Departments had responsibility for their own benefits, was there not a case for No 10 or the Cabinet Office having a strong overview to ensure a good outcome for claimants?**

The Senior Officials' Cross-Departmental group was led by the Cabinet Office who had some oversight over the process. There was a general awareness of the risk of creating confusion for claimants by having different thresholds for different benefits, although on the positive side, it avoided a very sharp cliff edge.

- (d) Having an earnings threshold for FSMs would create a cliff edge for claimants whereas a principle in UC was the avoidance of cliff edges.**

It was true that the UC system of work allowances and a tapered rule on earnings above the work allowance avoided a cliff edge. However extending that principle to FSMs would be difficult at a practical level. The Department for Education viewed FSMs as a binary benefit – either pupils got a free school meal or they did not. A partial payment towards the weekly cost, or a free school meal for two or three days out of five in the week, would be difficult to administer and confusing for schools, parents and pupils. Ministers had also been clear that eligible pupils should actually receive a free school meal; it was for that reason that the option of 'cashing up' in the context of passported benefits had been ruled out in the early stages of UC rollout.

- (e) If there had to be a cliff edge with FSMs, was there a case for giving eligible parents a month's run-on after UC entitlement had ended?**

That particular suggestion had not arisen during the course of the consultation. Those currently entitled to FSMs would continue to be protected under the proposals on which the Department for Education had consulted. As a result the effect of any cliff-edge would be lessened.

- (f) Nonetheless that would only be a matter of putting off "the evil day". In steady state there would inevitably be a cliff edge. Turning to another question, how would schools cope with determining entitlement to FSMs when UC claimants had fluctuating earnings?**

The Department for Education was very aware of this issue. A final decision following the consultation had yet to be reached, but thought was being given to whether earnings could be averaged over a three month period. Other Government Departments were facing the same issue. On the Warm Home Discount scheme, the Department for Business, Energy and Industrial Strategy was considering basing entitlement on whether there was entitlement to UC in any of the 12 months preceding the application. Discussions were also on-going as to data sharing needed to support this. The Department for Education had a live data-feed for FSMs and needed to ensure that the new IT interface worked in relation to the proposed earnings thresholds. DWP was looking to provide information for the various Departments to help them confirm eligibility for individual claimants. Using the UC journal monthly



statement as proof of benefit entitlement was a possibility for some Departments, and this was being discussed. The Department for Education had designed an IT system which would enable them to receive information relevant to determining entitlement to FSMs.

- (g) Were communications being reviewed to ensure that people do not slip through the net and that everyone who was eligible was made aware of that fact?**

DWP were currently in discussion about the wording of the UC award notice so that details of different thresholds were conveyed in it. Relevant information was also being put on GOV.UK.

- (h) Could the data-feed not be programmed to tell the Department for Education who was below the threshold so that that FSMs could be automatically awarded?**

There were legal obstacles on data-sharing. The current requirement in primary legislation for a claim to be for FSMs would also prevent an automated system. The Department for Education noted that take-up for FSMs remained high; it was estimated that current take-up was around 89 percent.

- (i) Court proceedings can be very protracted. Did the zero earnings threshold rule in legal aid apply throughout the process or, if at a single point in time, where was that?**

It was probably at the point of claim, but that would be checked with the Ministry of Justice.<sup>4</sup>

- (j) It had been stated that there had been a desire in UC to move away from the 16 hours of work a week threshold. Did the 16 hours of work in the Help to Save Scheme not undermine that message?**

In introducing the Help to Save Scheme HMRC had set an earnings threshold which was set at a figure which equated to 16 hours at the national minimum wage. It was therefore not quite the same as a strict hours rule.

- (k) There was no Northern Ireland Government in place at the moment. How did that affect the issue of introducing thresholds for passported benefits in Northern Ireland?**

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<sup>4</sup> The Ministry of Justice (MoJ) advised DWP officials that the process was that MoJ would respond to a claim for legal aid by issuing a certificate based upon an initial means test. Thereafter, the client might be subject to a random reassessment to check whether their circumstances had changed. A reassessment might also be conducted if a doubt had arisen as to the client's means. The general process, however, was that after the initial test, MoJ expected the client's solicitor to notify any change in the client's circumstances that might either affect the validity of the original certificate or indicate a more favourable outcome to the original application.

The Department had had a telekit with counterparts in the Department for Communities (DfC) in Northern Ireland earlier in January, and aimed to continue these on a regular basis. The only real involvement between the DfC and other Departments had been in relation to FSMs and the School Uniform Grant, where a net earnings threshold of £14,000 a year for UC claimants had been set. DfC had plans to consult on a threshold for legal aid and the Warm Home Discount although, due to the political situation in Northern Ireland, some difficulties in launching a consultation had been encountered. Prescriptions were free in Northern Ireland and there were no plans for change. Regarding costs related to health items such as dental and optical needs, legislation would be needed to introduce thresholds. A consultation has been undertaken, but the political situation meant that legislation could not be introduced at the moment. So, UC claimants were continuing to be assessed under the existing scheme's low income criteria. UC was at an earlier stage of roll-out in Northern Ireland and the pressure for resolving the issue of passported benefits quickly was less pronounced.

- (l) **In 2012 when the Committee produced its report on passported benefits there was a recommendation that the Department should include modelling and analysis in order to know the numbers of people who would benefit from whichever option was under consideration. That should still be the case. The Committee also said that any modelling could be concentrated on the three main passported benefits – FSMs, prescriptions and legal aid (other passported benefits either involving relatively small sums of money or affecting low numbers of people). That point would be worth repeating.**

That was a very helpful point and one which would be put to the cross-departmental senior officials group.

- (m) **At the time of the Committee's report the predicted roll-out of UC was much faster and the Committee were advised by the Department that a more strategic solution would be sought for passported benefits. Was this still the case?**

At present, Departments had been concentrating on delivering the changes to introduce thresholds for determining eligibility to passported benefits for people on UC. The Senior Officers' Group would be considering whether there was a more strategic solution for the longer term.

- (n) **The Committee's report had also highlighted the fact that there were a wide range of charities, voluntary bodies and third party organisations offering their services free to people on benefit who would need advice when UC was introduced. There had been talk of the Department offering guidance to such groups. Would this be happening?**

The Department undertook to take that point away and come back in writing to the Committee.<sup>5</sup>

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<sup>5</sup> The Department subsequently informed the Committee that officials had since spoken to the Charity Commission, who advised that charities should decide whether to make payments on the basis of

**(o) Was there a plan to include passporting in better-off calculations?**

The Department would find out more and come back to the Committee.

**(p) Were there any plans to undertake large data collection statistics so that things like the provision of FSMs could be linked to future academic achievement?**

DWP had no plans to collect large statistics of this nature but the Department would take this point away. The Department for Education would continue to collect pupil level data on eligibility for FSMs and wider data on attainment for the purposes of accountability.

**(q) If the Department did not collect data, how could the impact of thresholds on work incentives be assessed?**

The Department would be collecting some data. It was also anticipated that there would be some tracking undertaken in order to assist evaluation. The Department would find out more detail and come back to the Committee.

4.8 The Chair thanked all the officials for attending the meeting and for contributing to what had been a very useful session.

## **5. Private session**

*[RESERVED ITEM]*

## **6. AOB / Current Issues**

### *Postal Regulations*

6.1 The postal regulations sub-group had indicated that they had scrutinised the following two sets of draft regulations and was content that they could be cleared postally:

- *The Social Security (Invalid Care Allowance) (Amendment) Regulations 2018* – increasing the earnings limit in Carer's Allowance; and
- *The Universal Credit and Miscellaneous Amendments Regulations 2018* – the Department had decided to increase the work allowance thresholds in Universal Credit. This was an additional aspect which the Department intended to add to this package of amendments, other aspects of which had been considered in the previous two meetings of the Committee.

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need. They also advised that DWP should contact the National Council for Voluntary Organisations to see if they had developed any advice for charities.

The Committee agreed that both sets of regulations could proceed without formal reference.

**Date of next meeting**

6.2 The next meeting was scheduled to take place on Wednesday 7 March 2018 in London at a venue yet to be determined.

**Attendees**

Guests and Officials

Item 3: Tim Roscamp (G7, Homeowners Housing Support Strategy Team)  
Anne Brown (HEO, Homeowners Housing Support Strategy Team)  
Fatima Uzzaman (G7, Children, Families and Disadvantage)  
Clare Kerr (G6, Legal Services).

Item 4: Trevor Pendergast (G7, Universal Credit Cross-cutting Strategy)  
Gary Rodgers (SEO, Universal Credit Cross-cutting Strategy)  
David Greedus (Department for Education)

Observers: Alison Hulme (G6, Strategic Design & Planning (Quarry House, Leeds))  
Gita Rajamanickam (HEO, Work & Health Unit)

Secretariat: Denise Whitehead (Committee Secretary)  
Paul Mackrell (Assistant Secretary)  
John Halliday (Assistant Secretary)  
Ateeqa Khan (Assistant Secretary)