

Social Security Advisory Committee
Minutes of the meeting held on 21 July 2021
(via Microsoft Teams)

Chair: Dr Stephen Brien

Members: Bruce Calderwood
Carl Emmerson
Kayley Hignell
Phil Jones
Dom Morris
Seyi Obakin
Charlotte Pickles
Liz Sayce

Apologies: Chris Goulden
Grainne McKeever

1. Private session

[RESERVED ITEM]

2. The Housing Benefit and Universal Credit (Sanctuary Schemes) (Amendment) Regulations 2021

2.1 The Chair welcomed to the meeting Sinead Donnelly, Kelly Flett, and Sara Mason from DWP's Housing Policy team, and also Matthew James from DWP Legal Services. He thanked them for providing responses to a number of questions raised by Committee Members in advance of the meeting.¹

2.2 Introducing the regulations, policy officials noted that an exemption from the Removal of the Spare Room Subsidy (RSRS) was provided for anyone who is a victim of domestic abuse who has had their home adapted under a sanctuary scheme. These would be laid alongside other regulations which would introduce definitions for accommodation based domestic abuse support.

2.3 Committee members raised the following main questions in discussion:

- (a) Whilst the Committee welcomes the exemption, is the focus to ensure the Department is alleviating the financial pressure on domestic abuse sufferers, or only those in sanctuary schemes?**

¹ The Committee's questions, and responses received from the Department, are held at annex B.

The sanctuary scheme policy encourages the claimant to remain in their own home – these changes mean they can remain in their own home without having a potential financial shortfall. However, in practice many people in this situation are already receiving Discretionary Housing Payments (DHPs) for this, so there would be no shortfall. This provides clarity so they would not need to apply for a DHP in the first place.

- (b) There is a bigger pool of domestic abuse sufferers other than those covered by the sanctuary schemes – so is there a group not part of a sanctuary scheme who are paying additional costs, though their circumstances are somewhat the same?**

The conflict is about the person not having to move, this gives them additional assurance so they don't have to move somewhere else.

- (c) Must the property be adapted for security reasons as opposed to, say, remaining in a particular neighbourhood?**

Yes, the property must be adapted. Adaptations can be things like additional locks, fireproofed letterboxes, and panic rooms, although they are very rare. Any sort of security adaptation under a sanctuary scheme allows the claimant to qualify.

- (d) Is it automatic that those in a sanctuary scheme would qualify? Or is it down to individual claimants to raise the issue?**

There is no centralised record of sanctuary schemes, so there would not be any accessible information on that. The claimant would need to self-identify, they will be dealing with domestic abuse charities, police, or other bodies, and if their home is adapted, the Department would ask them to confirm that they were abused, and that the home is adapted.

A number of ways to identify claimants in scope of the measure were attempted – requests were made to local authorities, the Ministry of Housing, Communities and Local Government and the Home Office – but the information is not available.

- (e) How will individuals know to report that to the Department?**

The Department intends to speak to all stakeholders and domestic abuse charities, local authority leads, and it will issue guidance to all work coaches and staff supporting UC claimants to raise the question.

- (f) The supporting paperwork lists a number of relevant charities. Can they provide the Department with details of those for whom they have arranged sanctuary schemes?**

There might be a data protection issue there. It is not feasible, as they would have to continually update DWP with that information.

(g) Is there not a one off transition to deal with the ‘stock’, and then the flow in future?

The records are not centralised. Every local authority does different things with how they implement their sanctuary schemes, so it would not be possible to capture that data due to that variance.

(h) The scope of the regulations is tight – a number of households that might be in a sanctuary scheme are not covered. For example: (i) where the abuser is not a family member e.g. a stalker, (ii) where the abusive adult is living in the household e.g. where a child of the parents is now an adult, and is violent, (iii) while not an exact parallel as there is no spare room subsidy, the private rented sector raises similar issues, and the same problems could apply. Has DWP considered extending the approach to those circumstances?

On the private rented sector, the reason DWP does not extend the approach here is that the policies work very differently. RSRS applies in the social sector. The conflict between the RSRS and the sanctuary schemes are not there in the private sector. DHPs are still available when this circumstance occurs in the private sector.

For the other scenarios you raise there are DHPs to cover areas which fall outside of the regulations. Sanctuary schemes are for domestic abuse, not for other types of abuse. There is also the risk of having an abuser in the household actually increasing the benefit amount. There is a high level of complexity required in order to capture all circumstances, so instead the aim is to capture the narrower cohort that are in the sanctuary schemes.

In one conversation with a domestic abuse charity, they pushed back a little on the scenario where a perpetrator finds their way back into household down the line. If they move back in these regulations no longer apply. However, they accepted that the perverse incentive of payments where the abuser is present was deemed more important in weighing these factors up.

(i) The supporting papers mention that disabled people are more likely to be victims of abuse. On the definition of domestic abuse and it needing to be a family member – what about a situation where a live-in carer is the abuser, or where it arises in a shared or supported living arrangement? Why is the family member clause required?

The list of family members is the same as the cross Government definition, so the Department has aligned with that. There will be many permutations, and it is hard to legislate for every situation. Supported living arrangements should be covered by the Care Act 2014. The RSRS wouldn't apply to supported living accommodation.

(j) Does the Department have any sense about how many domestic violence victims are not in sanctuary schemes? Also, is the list of organisations

provided in the paperwork an exhaustive list of domestic violence charities. Is there a risk that some could have been missed?

This change is only for those victims in sanctuary schemes. Where they are not in a sanctuary scheme they will not be captured by the regulations. It is not known the numbers who are in sanctuary schemes, as there are no accessible records. It is not known now who is or is not a victim, and it is not often declared.

Regarding the list of organisations, it is not exhaustive – more organisations can be added where appropriate.

(k) Could someone be in a sanctuary scheme, but not have their home adapted?

No, that is an essential part of the sanctuary scheme. The definition by the Ministry of Housing, Communities and Local Government (MHCLG) is the one used – they have developed their definition of a sanctuary scheme, so that is the most reliable. There is not a registry of sanctuary schemes. If a local charity or housing association has in place a process which satisfies our definition of a sanctuary scheme, then it is one. There is no list of sanctuary schemes, or a list of properties adapted.

(l) The issue of domestic violence is secondary, the issue of being in a sanctuary scheme comes first?

The exception does not apply to anyone not in a sanctuary scheme.

(m) Regarding some possible exceptions, is there enough discretion to cover the following examples: (i) if the abuser is not a UK resident, (ii) if the domestic abuser is in prison, (iii) if the abuse victim is recently released from prison?

Nothing would exclude those examples.

(n) With the sanctuary schemes being quite ad hoc and individualised in different areas, does not backdating of payments become more relevant? It seems challenging to rely on claimants self-identifying themselves as eligible, so is there scope to extend the back dating rules?

Potentially a claimant has not had any loss, as they may have had a DHP. The claimant in the ECHR case was never at a financial loss, because she did have a DHP paid throughout. With these regulations no one has to make the DHP application, and it is hoped that no one has lost out financially thanks to the DHPs. If an application is made for backdating it is covered by the standard Decisions and Appeals Regulations. Ignorance of the law is not enough to trigger back dating, but there may be factors as to whether to backdate, and they would be entitled to appeal. Any decision by the Secretary of State can be reviewed.

The Department is raising awareness and will try to do that as much as possible, but it is very difficult to identify every single person affected.

(o) How can you evaluate these changes when it has been so difficult for you to gather any data on these schemes or people affected?

There are new rules coming in next year on local authorities recording this information. It will cover how many sanctuary schemes are in place in areas – which will create more visibility on the local level and those authorities can then be contacted.

2.4 Following a period of private discussion, the Committee agreed that it would not take the regulations on formal reference, but that the Chair would write to the Minister for Welfare Delivery regarding the Committee's concerns on whether the scope of domestic violence victims included was too narrow, the importance of communicating these changes to affected persons, and whether any thought had been given to the private rental sector.²

3. The Social Security Benefits (Amendment) Regulations 2021

3.1 The Chair welcomed Lyndon Walters (Decision Making and Appeals), Nicola Patrick, Michelle Haworth (both from Disability Services), and Pedro Imperico (DWP Legal Services) to the meeting, and thanked them for providing answers to questions raised by the Committee before the meeting.³

3.2 Introducing the regulations, Lyndon Walters noted that the catalyst for the regulations was a case where DWP made a large payment to a family, and were asked by their social worker not to make the payment, due to past history of addiction. Fortunately, in that case the payment could be made to the claimant's wife. Otherwise under legislation at that time the Department could not withhold that money, it was a legal entitlement, and DWP had to make that payment. Also, a couple of coroner's cases stated there was a link between the receipt of a large payment and the claimant inadvertently killing themselves through alcohol and drug intake. There have been a number of LEAP exercises around Employment and Support Allowance (ESA) and Personal Independence Payments (PIP) which involved large back payments, so options were considered to alleviate the problem. Staggering payments via instalments was another tool to give to staff, to increase the options as part of the discussion with the claimant. Consent from the claimant was required but there would be no pressuring for consent. Ideally there would be a third person who could receive payments, but such a person is not always present.

3.3 It was considered whether to allow an option to force instalments without consent – but that was not thought the right way to go. There is a legal entitlement to that money, caused usually by Tribunal and Court judgments – so it was not thought correct to force people to accept instalments. The Department wants to give staff some confidence that they have this extra tool. The regulations will allow for this across the

² A copy of the Chair's letter to the Minister for Welfare Delivery is attached at annex C.

³ The Committee's questions, and responses received from the Department, are held at annex B.

piece – except for Child Benefit and Guardians Allowance, which is administered by Her Majesty’s Revenue and Customs (HMRC). The Department will discuss these benefits with HMRC but it is hoped that it would never be required in those benefits.

3.4 The Committee members raised the following main questions in discussion:

- (a) **The supporting paperwork provides for how this works in PIP. Please could you talk us through how it works in ESA and Universal Credit (UC) – are they analogous processes, with the advanced customer support and safeguards?**

In ESA they are able to make that instalment offer now. The advanced customer support guidance is the same across the piece – so the new option will be added to the PIP guidance. The guidance is very similar across the board – and the Department can provide additional information to the Committee on that.

- (b) **What has the Department learned from the experience of instalments in other benefits?**

Regarding ESA, the experience is limited, there is an awareness of only one case where there were instalments. That experience will develop over time.

- (c) **On consent, it is the claimant’s money. But on joint claimant’s consent, is there not an argument that if one party consents, it should be sufficient for instalments to take place? DWP would be overriding one partner’s choice.**

There were thoughts about that in exactly the way that argument was presented. It is anticipated that the couple’s best interests will be the same. It is preferred to stay within the principles of Universal Credit with both parties providing the same consent answer. This will be monitored to see what the experience is, and whether there are adverse consequences, and it may be rethought. It is a balanced argument.

- (d) **It was a surprise to learn that people could receive payments into bank accounts before the Department tells them what it is for and that it is coming. You have suggested a courtesy call in advance. How often do notifications arrive after the payments themselves?**

That will be investigated, those figures are not to hand now.

- (e) **There is a rights vs safeguards balance to be achieved. How do staff know how to balance those risks, and how will they get ready for those conversations? Also, where the payments are made to a third party, is there any process for vetting the third party, or any checks and balances in place to safeguard against an exploitative third party? Or could not the third party be put under tremendous pressure to give out that money? Is there training, guidance and monitoring of how these decisions work and balance risk and rights?**

The advanced customer service teams deal with high profile and complex cases. It is felt this is a good extra tool to support vulnerable customers. The customer is now protected more than before. All staff have done mental health training, so there is empathy and understanding. If that customer wants that money that cannot be stopped. It is often asked that the Department not pay that money. There are attempts made to try to get corporate appointees in place – even if we have to pay we try and let someone in the claimant’s support network know.

(f) For those who are not vulnerable, why could they not get instalments if they wanted them?

That comes down to the nature of the benefit system; it is their money, the Department has processes in place, and to introduce instalment options would be the time consuming and involve huge administrative burdens, making the system unworkable. Non-vulnerable people do need to be responsible for their benefits and payments – there is no reason for them not to receive their legal entitlements.

3.5 Following a period of private discussion, the Committee agreed that it would not take the regulations on formal reference, but that the Committee Secretary would write to the Department seeking reassurance on how third parties who receive payments on behalf of claimants are monitored to ensure proper use of those payments.⁴

4. The Fines (Deductions from Income Support) (Miscellaneous Amendments) Regulations 2021

4.1 The Chair welcomed Kerstin Parker, Craig Dutton, Dave Higlett and Natalie Adu-Poku, all of DWP’s Universal Credit Policy Division, to the meeting, and thanked them for providing answers to questions raised by the Committee before the meeting.⁵

4.2 Introducing the regulations, Kerstin Parker noted that the regulations were regarded as a technical response to the legal judgment (*Blundell & Ors vs SSWP [2021] EWCH 608 (Admin)*). The 5% minimum deduction rate was already in place. Setting the rate at 5% takes account of this and ensures that claimants paying the minimum rate currently do not see an increase. A different figure would be relatively arbitrary, but this is less so as it is already there as the minimum.

4.3 The Committee members raised the following main questions in discussion:

(a) How does this policy change fit into the broader approach of looking at deductions generally?

By reducing the overall deduction limit to 25% there is less room to make deductions, so with court fines at the previous minimum of 5% there is the same

⁴ The Committee Secretary’s letter is attached at annex D. The Department’s response is held at annex E.

⁵ The Committee’s questions, and responses received from the Department, are held at annex B.

space for other deductions to be made within the cap, so it is consistent. There is also the new change to double the length over which UC advances are phased. Deductions above the 25% cap can be made for last resort deductions.

(b) How does the Department ensure the claimant does not face hardship, that reads across court fines and other deductions?

There are maximum deduction rates in place for claimants but also fairness that they should pay court fines and debts, like any other person would have to. Also it is different when the deductions are for the debt of other creditors, rather than DWP. For DWP debts we can pause or even waive them in exceptional circumstances, but for other debts, such as court fines, DWP believes HMCTS are the best agency to determine how and at what rate their fines are recovered. Furthermore, in relation to court fines – the above 5% rate was at the bottom of the priority order. So, usually people paying £108.35 had no other debts.

(c) So, the Department had discretion, but weren't using it properly, that was deemed illegal, so now we have the flat rate. What sensitivities are being balanced around this jump from there being discretion but it not being applied to there being just a flat rate? Are there any lessons learnt, or revealed on this?

It was difficult to operationalise anything other than the flat rate. The wider context is the Department are not looking for things which are operationally resource intensive as the priority is getting people into jobs, rather than fine tuning deductions for court fines. It is known that people with court fines often have other deductions, and, if this is the case, could struggle at an increased rate, hence the 5% was decided upon. It is necessary to look at each type of debt on a case by case basis, as its own policy subject. It is less of a policy shift than it looks – now the normal deductions cap has changed to 25% from 40% it is less likely that the £108.35 would be deducted and more likely that the previous 5% minimum would have been deducted.

(d) Where does the 5% sit in the priority order, and if, say, other deductions were 3% short of the cap, could DWP take the 3% left with a court fine deduction, or would the Department take nothing at all?

The existing regulations do not allow a deduction of less than 5%. The proposed amendment makes no change to that – and so if other standard deductions were 3% short of the overall cap, no court fine deduction would be made. Court Fine deductions are one of a number of social obligations in the priority order, all of which are prioritised ahead of Debt Management deductions such as benefit and Tax Credit overpayments.

(e) It is understood why DWP would want discretion and why a flat rate would be 5% rather than 10%. However, the Department could have continued to maximise deductions and removed the discretion – by fixing the rule as stating that DWP would always remove the maximum amount up to the upper limit. So, does this show a change of priorities?

In the Department's view, removing discretion as to the rate of deduction would not satisfy the judgment as individuals' circumstances would then have to be considered as part of the decision on whether to make a deduction for court fines, which would still be discretionary. In addition, by not deducting different amounts there is the removal of an operational burden of having to consider different deduction levels. Fixing the rule to always deduct the maximum possible within the deductions cap would require court fines to be last in the priority order otherwise no deduction ranking lower in priority than court fines would be made, this is likely to reduce the number of court fine deductions being made.

- (f) Could DWP not have chosen the priority order when designing the policy? This suggests there should have been more consideration of the whole issue in the round.**

The Department's objective at this time, given other priorities and operational considerations, was to address the legal judgment in a way that could be implemented quickly.

4.4 Following a period of private discussion, the Committee confirmed that it would not take the regulations on formal reference.

5. Private session

[RESERVED ITEM]

Attendees

Guests and Officials

Item 2: Sara Mason (G6, Housing Policy)
Sinead Donnelly (SEO, Housing Policy)
Kelly Flett (SEO, Housing Policy)
Matthew James (DWP Legal)

Item 3: Lyndon Walters (HEO, Decision Making and Appeals)
Nicola Pattrick (Disability Services)
Pedro Imperico (DWP Legal)
Michelle Haworth

Item 4: Kerstin Parker (Deputy Director, Universal Credit Policy)
Dave Higlett (G6, Universal Credit Policy)
Craig Dutton (G7, Universal Credit Policy)
Pedro Imperico (DWP Legal)
Vanessa Dockery (Observer)

Observers Matthew Doyle (SSAC member designate) *[All items]*
Vanessa Dockery (DWP Legislation Team) *[Item 5 only]*

Secretariat: Denise Whitehead (Committee Secretary)
Jaishree Patel (Assistant Secretary)
Richard Whitaker (Assistant Secretary)

Pre-meeting exchanges of questions from the Committee and responses from the Department

1. *The Housing Benefit and Universal Credit (Sanctuary Schemes) Amendment Regulations 2021*

Is there a difference between the cohort of people who would have received DHP in these circumstances previously, and the cohort who benefit from these changes?

Decisions about DHPs are made by local authorities, we do not have information about DHP awards made to claimants whose home has been adapted under a sanctuary scheme. The DWP guidance on DHPs recommends that local authorities consider supporting those in a sanctuary scheme as one of the objectives when making a DHP award decision.

Please could you explain the purpose of clauses 2(f)(iii)(aa) and (ab) in the Housing Benefit Regulations 2016, and how (aa) in particular will work in practice? Will a decision maker be deciding whether someone's circumstances are consistent with a domestic abuse situation and if so what factors will they look at? As evidence of the sanctuary arrangement is necessary it is not clear why these two additional qualifying criteria are needed and could they not create problems in practice?

It is for the person acting in an official capacity to confirm that the person's circumstances are consistent with someone who has had domestic violence inflicted upon or threatened against them. This approach recognises that those supporting victims are best placed to make these judgments.

(2)(f)(iii), and the equivalent in UC, provides clarity about what the evidence should cover.

Why do the regulations not come into effect until the AP after someone applies for this exemption? Could the effect not be sooner, given numbers are estimated to be so low?

Paragraph 32 of Schedule 1 of the UC etc. (Decisions & Appeals) Regulations 2013, establishes that where there has been a change in regulations, the superseding decision based on a change of circumstances only takes effect from the first Assessment Period after the legislation comes into force. Therefore, the commencement provision in these regulations is for clarity for the claimant, rather than procedural requirement and mirrors the standard approach across UC in applying regulatory changes.

Given the approach is for claimants to find out themselves if they qualify backdating may be important. Is there an argument that there could be backdating to the point when the regulations come into force?

Those providing the Sanctuary Schemes will be more than aware of this exemption, and will no doubt inform claimants of what their rights will be once these amendments come into force. Notwithstanding this, we do have the ability to backdate the application of a change of circumstances (so in this case, to backdate the application of the exemption from the Removal of the Spare Room Subsidy) if relevant conditions are met. The rules on backdating in such circumstances are set out in the UC etc. (Decisions & Appeals) Regulations 2013 at regulation 36 and in the Housing Benefit and Council Tax Benefit (Decisions & Appeals) Regulations 2001 at regulation 9. These rules would, in theory, allow for the application of the exemption to be backdated for a maximum of 13 months (or from the date when the change comes into force, if that is more recent), provided that, amongst other things, a claimant can demonstrate good cause for the late notification and that it is reasonable in all the circumstances to grant the backdating request. Though a claimant being unaware of the law applicable to their case would not constitute good cause, the provisions would allow DWP decision makers to take into account any circumstances particular to the claimant which may have made it difficult for them to notify us of their eligibility for the exemption in good time.

These regulations concern social housing. What happens in these circumstances in private sector housing?

Housing support in the private sector works differently to the social sector, where the removal of the spare room subsidy is applied. There are no deductions from which to exempt claimants in the private sector. If a claimant in the private sector has a shortfall between their housing costs and their housing support they can apply for a discretionary housing payment and the guidance will remain that LAs consider supporting those in a sanctuary scheme as an objective of DHP decisions.

Why is the exemption for people living with an abuser restricted to children/young people who are abusers? For example, a claimant might be living with an adult they care for who may on occasion be violent due to mental health difficulties, and a safe room is required.

There is a real risk of a perverse incentive in increasing the amount of housing support available to perpetrators of abuse. Something which is less likely to be considered for a qualifying young person. The exception for qualifying young people supports the family, where it has been considered safe, to let them complete their further education.

In the definition of 'family member' in the regulations it excludes some who might well be close to a victim e.g. uncle/cousin etc. Is this a standard definition of 'family member' for these purposes? If a claimant fell outside of these definitions, such as with the uncle example, would it be expected that the only remedy would be the application of a DHP?

The definition of 'family member' was taken from the established definition of domestic violence in the UC Regulations. We have reconsidered and decided to align with the definition of 'relative' in Section 63(1) of the Family Law Act 1996 as this is what is used in the Domestic Abuse Act 2021.

Anyone not covered by this is still able to apply for a DHP.

Please could you explain the interaction between these regulations and the Local Authority regulations that are being prepared? I note that you wished the Committee to clear the regulations before the meeting - do you have timing concerns about waiting for clearance (if granted) until the meeting on 21 July?

The definition of 'sanctuary scheme' in the DWP regulations is taken from the MHCLG regulations mentioned. It is our intention to align laying dates and so we had sought early confirmation to allow planning for this.

Will you be undertaking a review of these regulations (say, in 12 months' time) to ensure they capture the full cohort you intended, perhaps in consultation with the groups you have listed in your papers?

We keep all policies under review and will include this exception in our regular discuss with stakeholders.

It is noted in paragraph 8 of the Memorandum that you have consulted with the Scottish Government. Is there a Scottish devolution dimension regarding housing regulations that intersect here? For example, DHPs are devolved. Are there any other devolved housing powers that are relevant here? Has there been consultation with local authorities (or any stakeholders other than Citizens Advice Scotland) in Scotland to understand impact?

The Scottish Government have concurrent competence to make provision for the calculation of housing costs in UC for Scottish cases. We therefore consult the Scottish Ministers before making any such regulations on UC housing costs which would extend to Scotland. Scottish Ministers have now confirmed they are content with the proposed amendments.

The Scottish Government have a policy of fully mitigating the removal of the spare room subsidy through DHP funding.

Scottish local authorities are represented on the Department's local authority groups who we discussed these amendments with. We also wrote to all of the Local Authority Associations about the proposed changes.

See answer to the final question from the Department for Communities.

In terms of the DHPs, do you have evidence that claimants in these situations have been captured by the DHPs to date?

Decisions about DHPs are made by local authorities, we do not have information about DHP awards made to claimants whose home has been adapted under a sanctuary scheme. We asked local authorities for this, but they did not have it.

On identifying potential claimants can there be a more active approach? I note that you are making Local Authorities aware of these changes but are sanctuary scheme related claimants easily identified, and could more be done to shift the onus from telling claimants they can claim to facilitating that process in a streamlined way?

It has been incredibly difficult to find out information about this cohort. We are not aware of a way of identifying affected claimants. We have spoken to local authorities and MHCLG officials with responsibility for domestic abuse support. We also explored whether there was a route via police, as early sanctuary scheme pilots suggested that adapted properties might be flagged for priority response from emergency services. None of these have provided a way of identifying affected claimants.

Is there any detail you could share on what the Northern Ireland considerations are in relation to these regulations? Is there anything that would make the equivalent regulations more difficult, such as whether there are the same sanctuary schemes in operation? (This answer is provided by the Department for Communities)

The Department for Communities is currently considering the position in relation to this measure.

In the meantime, DfC officials have been working collaboratively with other Northern Ireland Departments to assist in the development of an action plan arising out of "The Year 6 Stopping Domestic and Sexual Violence and Abuse Strategy". This strategy been developed by Department of Health (DoH) and Department of Justice (DoJ) in conjunction with (DfC), Department of Finance (DoF) and Department of Education (DE).

The action plan will include actions across government to achieve better outcomes for victims of domestic and sexual violence and abuse.

One of the actions which DfC will be leading on relates to a Sanctuary Scheme operated by the Northern Ireland Housing Executive (NIHE) which helps its tenants remain in their own home after it has been made safe. The specific action for the year is to "Commission a research project to consider the extension of the Sanctuary Scheme to all Housing Association tenants, how the current scheme can be enhanced for Housing Executive Tenants and develop an action plan to address recommendations by March 2022".

IPSOS MORI have been commissioned to carry out a research project to deliver this action. Having established a Project Advisory Group to take the project forward the first meeting of this Group took place on 25 May 2021 with representation invited from the Police Service of Northern Ireland (PSNI); DoH; Women's Aid; Rainbow Organisation; and the Multi Agency Risk Assessment Coordinator, a post funded by the DoJ/DoH/PSNI.

2. The Social Security Benefits (Amendment) Regulations 2021

In the case of joint claimants, was there a consideration of requiring only consent from one of the claimants? For instance, where the partner of an addict wants the instalment plan but the addict wants the money upfront.

We did consider this but decided that consent of both should be required. We didn't think that it would be right to allow one partner to dictate the terms. The expectation with joint claimants is that they will always act jointly and not independently. We anticipate that in the vast majority of cases, the couple's best interests will be the same.

Also, if joint claimants don't agree on the instalment plan how will that situation be handled in practice?

I think we will have to be as persuasive as we can be, but if there is no resolution then we will have to pay the full amount. The SofS does have the option to consider whether there is a trusted third party that payment could be made to instead in the existing legislation which could potentially be used.

Was there any consideration that instalments could be made available to all people, not only the vulnerable? Wouldn't there be benefits to having this as a general right for claimants?

No. The law weighs against this. We should not be interfering with a basic benefit entitlement unless we have very good reason to do that. And, of course, this would significantly add to costs and administrative time.

When discussing PIP claimants, you mention "*PIP decision notifications are issued via Second Class post and often such large payments land in customers' bank accounts before they receive their decision notification*". Has consideration been given to using First Class post in such circumstances?

No. In this context we don't believe that receiving the decision letter any quicker would be helpful. For those deemed vulnerable we will discuss staggered payments. And in all cases where a one-off payment over £5,000 of PIP arrears is being made there will be a courtesy call to advise recipients that this payment is coming.

It is noted that in reference to Child Benefit and Guardian's Allowance not being part of these regulations, that HMRC was not consulted. Was it not considered prudent to get HMRC's view on the change rather than making assumptions about how HMRC may deal with their back payments?

On reflection, we will talk to HMRC.

What evidence is there from UC (or ESA) about the impact staggering repayments has had, if that is a mechanism that has been used previously?

We do not have any data, but not aware that we have made any staggered payments at all in UC and less than a handful in ESA. We are not aware that there has been any measurable impact to date.

Will the Department be monitoring the outcomes of the scheme – presumably the Department is already monitoring these harms (e.g. death, suicide, extreme abuse) so one could measure whether this scheme does reduce these harms? If so, would those results be published?

Yes, we will monitor the outcomes. We will consider publishing but further work is needed before a final decision is made.

It is noted that the reasons for not proceeding without consent involve discrimination and human rights considerations. Has it been considered whether you could test these objections - perhaps through consultation and/or research to see what is possible within these provisions, and what the counter arguments might be on the same grounds?

We did give this option serious consideration but for now we simply think that it would send all the wrong messages about the relationship between the department and claimants. These are payments that the claimants are entitled to which have been delayed, sometimes by a long time. It feels inappropriate to us to delay them still further without their agreement.

Will the rules and guidance surrounding how one goes about putting in place an instalment plan work in the same or similar way as to the rules and guidance on making payments to a third party?

No, the rules will be different because third party payments are not staggered. The guidance will be very similar with staggered payments being another tool in the Secretary of State's box of options. We will of course ensure that our guidance on discussions with claimants ensures that they give their informed consent, without feeling pressured into accepting the SofS's offer.

3. *The Fines (Deductions from Income Support) (Miscellaneous Amendments) Regulations 2021*

Whilst a flat rate of 5% is better than the larger amounts that potentially used to be deducted, was thought given to an approach of considering the individual's actual circumstances, and what might be an appropriate amount for them? If operational complexity is the barrier to this could you explain the nature of that complexity?

Over 200,000 deductions for court fines from Universal Credit (UC) are requested by HMCTS each month. This number has gradually increased since the covid-19 pandemic began and in turn the overall UC caseload has grown. Without additional staff resource, it would not be possible to give the due consideration required to exercise individual discretion around the exact amount of court fine deduction appropriate in each case. This would not be a once and done consideration – as claimant's circumstances and their UC award fluctuates, claimants may well wish to amend the level of court fine deduction on a regular basis.

A single, fixed rate of court fine deduction negated the need for any additional staff resource and could be implemented far more quickly. It also meant no UC claimant had a higher court fine deduction. The delivery implications were limited to minor developments in the UCFS system as well as updates to guidance.

As stated in evidence to the court, DWP still believes that the best party to consider what court fine deductions are appropriate is HMCTS.

It is noted that you considered increasing the flat rate above 5% - was any consideration given to lowering the amount? Why was 5% considered the right level?

A minimum 5% rate of deduction for court fines is already specified in the Fines (Deductions from Income Support) Regulations 1992. This aligns closely to:

- the rates of court fine deduction in Legacy benefits;
- the lowest third party deductions in UC;
- the 5% court fine deduction rate previously agreed and being introduced in Northern Ireland UC; and
- the lowest repayment HMCTS would accept in a private arrangement of £20 per month.

A deduction lower than 5% would mean UC claimants with court fines repaying them more slowly than almost any other individual and so was not considered appropriate.

In the scenario where there are one or two other debts higher up the priority list which amount to over 25% of the UC standard allowance, does this mean there can be no deduction for Court fines?

That is correct. Claimants with other higher priority deductions may have no deduction made for court fines, if either the maximum of three third party deductions are in place, or the 25% cap has been reached. Last-resort deductions can exceed this cap. Moving to a flat-rate which corresponds to the previous lowest rate of deduction means this scenario is no more or less likely.

Will this have a substantial impact on the rate at which Court fines are paid back? Do you have an estimated timescale for how much longer the average payee will take to discharge their Court debt?

It is expected to reduce the average court fine deduction from £33 to £17 without the uplift in UC. When this is compared to average court debt of £700 we estimate the time taken to repay increases from around 21 months to 41 months. However, this does not take into account that more claims will leave UC without repaying the debt in full and repay their debt quicker having left.

The Judicial Review judgment makes clear that hardship provisions don't apply to court fines and that a claimant would have to apply to the Court for a reduction in their court fine. The limitations of this process are discussed in detail. Following those criticisms has there been any consideration of addressing those shortcomings?

DWP still believes that the best Department to consider the appropriate recovery of court fine deductions is HMCTS.

In terms of hardship generally (not just for Court fines, but for other deductions), are claimants made aware how they can apply to have this considered? How does the hardship policy work in practice?

There are a range of tools to assist UC claimants in hardship. This is particularly true when DWP is the creditor. The overall cap on standard deductions has been lowered twice over the past two years from 40% to 30% and now 25% of the Standard Allowance. Claimants repaying benefit overpayments such as tax credits can agree lower repayments if they are experiencing hardship, and if appropriate, this will automatically ensure any deductions for rent arrears don't exceed 10% of the Standard Allowance. Also, claimants can ask to defer any advances in the following way, if appropriate:

- New Claim Advance – can be deferred up to 3 months
- Benefit Transfer Advance - can be deferred up to 3 months
- Change of circumstances Advance - can be deferred up to 1 month
- Budgeting Advance - can be deferred up to 6 months

We have worked to ensure that our guidance gives work coaches' clear instructions on how to advise and support claimants and ensure that gov.uk and the online UC account is clear about how a claimant can discuss their hardship with DWP.



Will Quince MP
Minister for Welfare Delivery
Department for Work and Pensions
Caxton House
Tothill Street
London
SW1H 9NA

28 July 2021

Dear Minister,

The Housing Benefit and Universal Credit (Sanctuary Schemes) 2021

The Social Security Advisory Committee scrutinised the above regulations at its meeting on 21 July. Following careful consideration of the proposals, the Committee has decided that it will not take the regulations on formal reference and that they may proceed as planned, but we did identify certain issues on which we would like further assurance.

We welcome the introduction of an exemption to the Removal of the Spare Room Subsidy that will enable individuals at risk of domestic violence to remain in their homes in the following circumstances:

- (i) The claimant lives in the social rented sector;
- (ii) There is evidence that additional security has been installed under a sanctuary scheme;
- (iii) The abuser does not live at the property.⁶

We were satisfied that the draft regulations presented to us achieved the specific and narrowly defined intent of removing the existing tension between the Removal of the Spare Room Subsidy and the Sanctuary Scheme, however we would welcome your response to the following concerns that arose during the course of our scrutiny of these proposals.

Narrow policy intent

As you will be aware, this change was introduced following a decision by the European Court of Human Rights (ECHR) that the reliance on Discretionary Housing Payments to cover any reduction in Housing Benefit or the UC Housing Element was not sufficient to

⁶ Unless they are a young person who is part of the claimant's household

overcome the conflict between the objectives of the Removal of the Spare Room Subsidy and the sanctuary scheme.

The Committee acknowledges the urgency with which the Department was required to respond to the ECHR decision. However, we were disappointed that, rather than looking at this narrowly defined aspect of the policy, the Department did not take the opportunity to look more broadly at whether similar exemptions to the Removal of the Spare Room Subsidy should be extended to other domestic violence cases where there were compelling reasons that a claimant should remain in their current home. For example:

- the regulations deal only with domestic abuse perpetrated by a family member. However, a strong argument could also be made for this easement to apply to claimants who are subject to violence from non-family members;
- the regulations apply only when adaptations to the home have been done through a sanctuary scheme. However, a property adapted outside of a sanctuary scheme still serves the same purpose of providing a sanctuary from violence and exposes the individual to harm if they have to move.

We are therefore concerned that there will be others living in vulnerable situations who, in practical terms, are facing identical risks to those who will benefit from this regulatory change. The narrow focus adopted by the Department could lead to inconsistent treatment of people at risk of violence because their circumstances fall outside of those defined by the regulations.

Communications

We understand that the onus is on claimants to identify whether or not they would benefit from these proposals. We welcome the Department's plan to promote the exemption by informing appropriate organisations (for example domestic violence charities and local authorities) and to raise awareness among DWP staff. However, given the vulnerable situations of those affected, there is a compelling case for the Department to examine what options exist in terms of proactively identifying those potentially affected. This should be supplemented by a strong communications strategy that sets out clearly the criteria for this exemption, along with guidance on how to access it.

There is a risk that a number of claimants entitled to take advantage of this scheme, particularly those who have already benefitted from a sanctuary scheme security adaptation prior to these regulations coming into force, will be unaware of this change. Given the vulnerable situations within which this group finds itself, there is potential risk of harm should these claimants remain unaware of the support available to them resulting in their leaving a home where additional security has been installed.

Private rental sector

Finally, we note that the Removal of the Spare Room Subsidy applies only to the social rented sector. The Committee would like to understand what steps are being taken to protect those at risk of domestic violence in the private rental sector. We understand that

Discretionary Housing Payments are available to help avoid individuals having to move out of properties where additional security has been installed. We would welcome your assessment of whether that approach is sufficient or whether further support might be appropriate?

We would welcome your early response to these points. I would, of course, be very happy to discuss any of the issues raised in this letter if that would be helpful.

A copy of this letter goes to the Baroness Stedman-Scott, Katie Farrington, Jonathan Mills and James Wolfe.

A handwritten signature in black ink, appearing to read 'Stephen Brien'.

Dr Stephen Brien
SSAC Chair

Lyndon Walters
Department for Work and Pensions
Caxton House
Tothill Street
London
SW1H 9NA

28 July 2021

Dear Lyndon,

The Social Security (Amendment) Regulations 2021

Thank you for attending the Social Security Advisory Committee's meeting on 21 July, at which you presented the above regulations for statutory scrutiny. Following careful consideration of the proposals, the Committee has decided that under the powers conferred by Section 173(1)(b) of the Social Security Administration Act 1992 it will not take the regulations on formal reference and that they may proceed accordingly.

While the Committee was satisfied that the regulations achieved the Department's policy intent of providing a further tool for helping people in challenging situations manage their monies responsibly, the Committee would welcome reassurance on a related issue, that of making payments to third parties. In particular, the Committee had the following concerns about the current DWP practice of making back payments to trusted third parties where the claimant consents:

- (i) **the third party may not use that money in the claimant's interest.** The claimant is in a vulnerable position and it may be that the monies could be withheld from them, or that the power granted to the third party may be abused.
- (ii) **the claimant could apply pressure to the third party, and potentially put them in a position of risk.** For example, the partner of an addict agrees to take the back payment of monies, but is subsequently threatened by the partner to release those monies.

The Committee would like to understand what safeguards have been put in place to satisfy the Department that third parties are unlikely to abuse the trust placed in them; what process exists to monitor the results of such third party arrangements; and whether any data or further information from that monitoring could be shared with the Committee. If no such monitoring is in place, the Committee would welcome the Department's views on the above risks.

I would, of course, be very happy to discuss any of the issues raised in this letter if you would find that helpful.

Denise Whitehead
Committee Secretary

Denise Whitehead
Committee Secretary
Social Security Advisory Committee
Caxton House
Tothill Street
London
SW1H 9NA

5 August 2021

Dear Denise,

The Social Security Benefits (Amendment) Regulations 2021

The ability to make payments to a third party where it is deemed necessary to do so to protect the claimant's interests, or, for Universal Credit, to protect the claimant's family or any severely disabled adult in respect of whom the claimant receives a carer element was introduced by the 2013 Claims and Payments Regulations. This mirrors similar provisions that already existed in the 1987 Claims and Payments Regulations and so is an arrangement that has been in place for some time.

You have raised the following concerns about the current DWP practice of making back payments to trusted third parties where the claimant consents:

(i) the third party may not use that money in the claimant's interest.

The claimant is in a vulnerable position and it may be that the monies could be withheld from them, or that the power granted to the third party may be abused.

(ii) the claimant could apply pressure to the third party, and potentially put them in a position of risk. For example, the partner of an addict agrees to take the back payment of monies, but is subsequently threatened by the partner to release those monies.

The ability to make payment to a third party instead of the claimant is a power granted to the Secretary of State that is only used in very limited circumstances where it is deemed "necessary" to do so. If the claimant asked us to do so, then depending on who the third party is, we may agree immediately if we have no concerns, e.g. they are as best as we can know a trustworthy family member or friend, but would try to get further information if we had any concerns eg if we thought the money was being used to clear a debt. The other circumstance would be as per the opening paragraph – a 'best interests' consideration.

The Department cannot, and should not take a role in managing how money is spent after an award has been paid, but payment will only be made to a third party who we believe will act in the claimant's interests. There unfortunately cannot be any guarantees that this will be the case, but if the claimant has agreed to the payment, and of course this will be confirmed, we would accept that they trust the third party and do not expect to be exploited in due course. If the department subsequently became

aware of any concerns over the arrangement, it may be appropriate for it to involve its Advanced Customer Support team to assess the situation and involve other authorities if appropriate.

Where the Department believes that payment to a trusted third party would put the third party themselves at risk, this payment should not be made. If the trusted third party subsequently contacts the Department, it is likely our Adult Customer Service leads would become involved and they would involve the appropriate authorities, including the police if appropriate.

We do not monitor third party payments, but we are not aware of any previous issue having arisen. It is likely that the third party will be a family member and we don't want to undermine their trust by asking them to account for how the money is spent. The money is the claimant's legal entitlement and it is not for the department to determine how it should best be used. It would also take a significant amount of resources to carry this out.

We note that the Department does not require anything in writing from the claimant in order to allow the third party payment, the discussion with the claimant suffices. We also note that there is no offer of a 'breathing space' to allow a claimant to change their mind. There would be detailed discussions with the claimant, following which they would be in a position to make a conscious and informed decision such that it would be taken as a final decision.

We understand the concerns that have been raised by the Committee, but both of the scenarios set out above could hypothetically happen today, irrespective of the introduction of staggered payments. The ability to pay another on the claimant's behalf is a tool that can be used in limited situations in order to attempt to mitigate an adverse outcome. The alternative is to pay the money to the claimant, against their wishes, and let events unfold. The intention is by introducing staggered payments, this will provide a further tool that could potentially be used in order to achieve this.

Lyndon Walters
Decision Making and Appeals
Department of Work and Pensions