

**Social Security Advisory Committee
Minutes of the meeting held on 27 January 2021
Caxton House, Tothill Street, London, SW1H 9NA**

Chair: Dr Stephen Brien

Members: Bruce Calderwood
Carl Emmerson
Chris Goulden
Phil Jones
Grainne McKeever
Dominic Morris
Seyi Obakin
Charlotte Pickles
Liz Sayce

Apologies: Kayley Hignell¹

1. Private session

[PARTIALLY RESERVED]

Postal Regulations

1.4 The Committee agreed the Postal Regulations sub-group's recommendations that the following regulations may be cleared by correspondence:

- *The Universal Credit (Childcare in Wales) (Amendment) Regulations 2021*
- *The Statutory Sick Pay (General) (Coronavirus Amendment) (No.7) Regulations 2020²*

The Chair asked the Committee Secretary to notify the lead officials accordingly.

2. The Loans for Mortgage Interest (Miscellaneous Amendments Regulations 2021^{2,3}

2.1 The Chair welcomed the following officials to the meeting: Geoff Scammell, (G6, Senior Manager, Housing Policy), Graham Walmsley (G7, Housing and Benefits Analysis and Research Team, Housing Analysis), David Reynolds (SEO, SMI Policy), Matthew James (Legal) and Emily Andrews (HEO, SMI Policy).

¹ On maternity leave

² Questions posed by the Committee, and responses received from DWP, ahead of the meeting can be found at annex B.

³ These regulations were subsequently laid as The Loans for Mortgage Interest (Amendment) Regulations 2021

2.2 Introducing the regulations, David Reynolds outlined the policy intent of the regulations, noting that the amended regulations would enable anyone with an existing Support for Mortgage Interest (SMI) loan to migrate it to a new property rather than having to repay it upon the sale of their property. The regulations also introduced flexibility and would improve the scheme to allow people to move homes, which was previously not possible. The proposals were likely to be particularly beneficial to people with disabilities, who might need to move due to changing health conditions, or families with children who were no longer able to share a room.

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

(a) Can you explain the purpose of SMI and the Department's objective for providing the loans?

SMI's policy intent is to act as a basic safety net to keep people in their home and to protect from repossession for those people who fall out of work.

(b) It would be helpful to have a greater understanding of the policy intent of the regulations, and whether they are actually met.

Agreed, introducing porting does shift the emphasis slightly and shows an evolution of the scheme from its origins but this has occurred anyway in some cases as the landscape of mortgages has changed since the scheme introduction. For example, more mortgages were being taken into retirement.

The Department had accepted the premise that homeowners can also be benefit recipients and homeowners long term. Regardless of the landscape, the recovery process remains true.

The taxpayer would still recoup the equity at some point where, in the case where porting was not permitted, homeowners may not move so recovery would still not be possible to recoup the loan.

It is not expected that many would take up the offer, particularly due to sector lending regulations and mortgage offers to those without income. It does however, give options to those who would be permitted.

(c) This applies to anyone who moves, but did the Department consider limiting it, and what led the Department to this loan being universal?

The Department considered limiting porting, but the overall risk is low to make this universal. For example, DWP would not want to prevent someone from moving home in search of better prospects. The Department was also conscious that it did not want to over-complicate the provision by setting eligibility rules or by asking staff to exercise discretion over who should be granted the ability to port. Porting did not put at risk the eventual recovery of the SMI loan, but without porting, it might limit the amount of equity to recover

from and that would be a risk. The Department predicts that the take-up would be relatively low due to sector lending landscape.

- (d) **Some of the people who use this would no longer be on benefit. The majority of people would have the financial capacity to get a new mortgage. Was it not unusual in the benefit system to delay repayment of debt from people with resources?**

The Department recognised that some people would no longer be in receipt of benefits but, if there were a problem with equity, they would not sell their house, in which case the SMI would not be recovered anyway. Alternatively, it was highly likely that they would pay off their loan when they had the funds to do so.

- (e) **Someone might be in a position where they had sold their house, but had not been able to find a new house within three months. What made the Department decide on a period of three months?**

Three months was a standard amount within the lending industry, and the Department had consulted lawyers (Morton Fraser and Womble Bond Dickenson) who had stated that 90 days was a reasonable amount of time to move. There was discretion in the regulations if someone was unable to move. For example, if a newly built house was not completed or the sale had fallen through, then discretion could be applied. But 90 days was the standard time allowed to find a new home.

- (f) **The original introduction of these regulations was in 2017. There was a judicial review in 2020, at which point the government successfully defended the original intent of the regulations which these 2021 regulations now depart from. At what point did you decide to make the change? Did the Judicial Review prompt the change?**

The challenge was whether the original regulations were wrong, and the Department successfully defended that as they were not discriminatory. DWP was, however, seeking this change as a policy improvement. By doing so, it does not imply that the previous regulations were not in line with standards.

- (g) **Have you seen any additional uptake of loans during the Covid pandemic, and what were the implications on costings?**

The Mortgage holidays and the moratorium on repossessions have meant that the Department had not been able to obtain figures on that yet. A higher proportion of people claiming Universal Credit were now owner-occupiers. The Department does not know how attractive the loan would be and who would request the mortgage holiday. In normal circumstances, people would get a job, but at present due to the current situation, job prospects were bleak and the Department would probably see a high proportion of people who would want to take the loan. The Department's view was that the holidays had triggered positive conversations with lenders.

(h) How would people know whether or not they were eligible for the loan?

At the end of the qualifying period, the Department would inform people. There was also an interview and the Department informed them what would happen. A letter was also sent as part of the Universal Credit claim process.

2.4 The Chair thanked DWP officials for attending the meeting and answering the Committee's questions. Following a period of private deliberation, the Committee decided that it would not take the regulations on formal reference and that they may proceed.

3. The Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) (Amendment) Regulations 2021²

3.1 The Chair welcomed the following officials to the meeting: Vicki Kennedy (SCS1, Deputy Director, Disability and Housing Policy), Eamonn Davern (G7, Housing Policy), Sarah Turner (G7, Housing Reform/Supported Housing Teams), Ursula Brennan (SEO, Housing Policy, Homeowners Housing Support and Housing Benefit and Housing Benefit in UC), Helen Gadd (SEO, State Pensions, Pension Credit Team, Pensioner Benefits and Carer's Allowance) to the meeting.

3.2 Introducing the regulations, Eamonn Davern outlined the policy intent of the regulations, noting that Savings Credit was treated as income when calculating Housing Benefit entitlement and, to offset this, the Housing Benefit personal allowance rates were set at the standard minimum guarantee amount of Pension Credit plus the maximum Savings Credit amount regardless of whether the pensioner's income included Savings Credit or not. Under the new State Pension reform, Savings Credit was not available for those reaching State Pension Age after 6 April 2016. However, there was a transition period of five years before removing the Savings Credit uplift in Housing Benefit, which would end in March 2021. Savings Credit uplift would continue to be available to those who reached Pension Age prior to 1 April 2021, or to couples where one member reached pension age before that date. The changes to the Savings Credit only applied to those reaching State Pension Age after 1 April 2021.

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

(a) What was the purpose of the regulations? Why would the Department want to reduce the allowance in Housing Benefit, and why was there a transition period? Was this a tidying up exercise, and what needed to be changed?

Yes, this was a tidying exercise to adjust for the change to the Savings Credit. With Savings Credit being removed, it was no longer necessary to compensate by including an extra amount in the Housing Benefit personal allowance. If the Department did not make the changes, there would be an anomaly, in that future pensioner Housing Benefit claimants would receive

compensation in their assessment in respect of a benefit income entitlement that had not been available to new claimants since 2016.

(b) Was that anomalous?

The new state pension white paper referred to making the change within five years with a transition period to allow pensioners to adapt. So it could be argued that it was generous to continue including an extra amount in Housing Benefit for a number of years after the policy justification had ended.

(c) Existing claimants of Housing Benefit would be able to keep their allowance. After April, what would happen for couples where the older partner died or they separated?

The change was based on birth cohort so couples where one member reached pension age before 1 April 2021 would continue to receive the higher personal allowance rate. If the older member of the couple died, their younger partner would receive the higher personal allowance rate for twelve months. If the younger partner died, the older partner would continue to receive the higher personal allowance rate.

(e) What about couples who separated?

There was no protection in that circumstance. The younger partner would not get a higher rate if they reached State Pension age on or after 1 April. Their assessment would be based on their personal income.

(f) At some point would they receive the lower rate of housing Benefit?

The amount of Housing Benefit received in the event that a couple separated would depend on their circumstances including, for example, their income. If Pension Credit was awarded, a claimant would be passported to maximum Housing Benefit.

(g) How many couples were likely to fall into that category? In terms of numbers, were there any figures?

The Department did not have any detailed figures, or other specific details.

(h) There would be a spread of financial effects, in terms of notional loss. Those who reached Pension Age, and were already in receipt of Housing Benefit or Universal Credit would see no change if they were getting their rent covered?

Newly retired people would receive less Housing Benefit than would have been the case if they had retired before this change, but their overall benefit income would be higher post-retirement as the rates of benefit were higher for people over pension age and, for those in the social rented sector, the removal of the spare room subsidy did not apply to pensioners.

- (i) **Most people would see more, or some, change when a member of a couple died.**

It was important to emphasise that this was not a savings measure. Housing Benefit was designed to assist people paying rent, and the levels varied across different geographical areas. This was a tidying up exercise and the numbers of notional losers would be small. The Department was unable to go into detail.

- (j) **Could you explain the housing and labour market issues?**

The measure in itself should not have a significant impact on work incentives.

- (k) **Some people who reached Pension Age were less able to work. How would the proposals affect people who work?**

There was a 65% income taper applied to income before it was taken into account in the Housing Benefit calculation, people who work would see a reduction in their Housing Benefit award but not pound for pound due to the taper.

- (l) **The policy was set in 2016, and this was a tidying up exercise. Were any alternatives considered?**

People were given five years to transition. The Department was mindful that five years were coming to an end and did not do a detailed costing of extending it. A policy change to continue with the uplift would have required approval from HMT. This is not what the Department had done, which was delivering the agreed policy put in place in 2016. The proposals reflected a tidying up process.

- (m) **The Equality Analysis looked at ages 66-69, and it would be good to understand why you focused on that age group. Could it be that this age group was potentially affected for many reasons? Why has the Department not looked at the characteristics of older people? The data on sexuality for ages 66-69 years, indicates 100% heterosexuality, is this true data? Does this taken together imply a weakness in the analysis?**

That was a fair point. This is the nature of people claiming Housing Benefit, however not a specific consequence of this particular change.

- (n) **Why did you not look at the 80-90-year age group?**

There were limitations to the data, and the Department has done the best it can with available evidence. But this is a helpful observation.

3.4 The Chair thanked DWP officials for attending the meeting and answering the Committee's questions. The Committee reflected on the proposals in private session and concluded that, while they would not take the regulations on formal reference, Members had identified a small number of issues during discussion which - if

addressed - could further strengthen the legislation and its delivery of the Department's policy intent. The Chair would [write to the Minister for Welfare Delivery setting out the Committee's conclusions](#).

4. The Social Security (Claims and Payments, Employment and Support Allowance, Personal Independence Payment, and Universal Credit) (Amendment) Regulations 2021

4.1 The chair welcomed the following officials to the meeting: James Wolfe (Director for Disability and Housing), James Bishop (G6, Policy Group, Team Leader) and Isobel Swarc (Head of Disability Research and Evaluation).

4.2 Introducing the regulations, James Wolfe explained that the Department was currently using telephony to assess claimants due to Covid social distancing requirements, but strategically would like to operate a number of different channels to conduct health assessments. The regulations were being introduced to maintain delivery service whilst face-to-face assessments were suspended, improve interaction with claimants and to provide a range of assessment channels to respond to claimant circumstances. The Department planned to consult further on the introduction of these channels in the forthcoming Health and Disability Green Paper. The Department had consulted with stakeholders and other organisations, on the introduction of the new channels as part of the pre-publication Green Paper consultation, and the changes needed to rapidly respond to Covid-19. At present, the assessment channels were restricted as assessment centres were not open for face to face assessments.

4.3 The Department had not been able to offer face to face assessments due to Covid, and planned to offer these once the level of Covid reduced, but that was not likely to be operating at full capacity for some time. The Department had been using telephony for a number of months, but was also undertaking a proof of concept to test video assessments.

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

(a) How had disabled people been involved in helping the Department come to this decision, or in evaluation and testing?

During March and April, DWP's choices were around remote assessment or no assessment at all. The Department prioritised claimants who were making a new claim for Personal Independence Payment (PIP), as they would not receive any benefit at all until they were assessed. For claimants who have not had their Work Capability Assessment (WCA), they would continue to receive some benefit until they were assessed. To involve disabled people, the Department's three health assessment providers engaged with customer representative groups and forums to understand how the telephony and video channels were designed and working in practice. Whilst working towards the Green Paper, the Department held a number of virtual events, from the end of summer to discuss conducting health assessments using new channels.

- (b) Were the regulations giving the Department greater flexibility on future channels, than it currently has? Or is it simply developing a stable regulatory base?**

The Department would not have progressed to telephony and video if the regulation did not allow it to. The long term strategy was to offer more channels to conduct assessments. The current context meant that claimants were unable to access the Health Care Professional (HCP) in assessment centres. The Department's stakeholder engagement that certain customer groups want remote assessments e.g. if they lived in a remote location or were unable to travel.

- (c) Was the Department offering assessors the ability to operate 'flexibly', and not necessarily giving choice to the individual? How were the proposals going to work? Will guidance be provided? Would the video assessment be accessible or not, and what was the guidance for Health Care Professionals? Under the Equality Act there would need to be good practice and to ensure that this was in place.**

Who decides what channel is used is something the Department would need to look at as part of the Green Paper and in future. The current situation was a good example - there was no claimant choice at present. Whether and when choice became available would depend on the context, particularly public health and the impact on capacity and availability. There would be constraints, to offering large volumes of face to face assessments as long as social distancing requirements were in place. The video assessment was currently a small proof of concept. In the short term video assessment was likely to be niche when compared to telephony. The regulations were in place to cover that. There was a running Proof of Concept (PoC) with claimants and Health Care Professionals, and DWP was learning from the experiences of this approach. There was emerging evidence from PIP and WCA telephone assessments, that claimants are satisfied with the new channel. As the Department moved forward, it was starting to think about how it compares video and telephone assessments, and consider how it develops a longer term evaluation strategy that would allow it to compare video and telephone with face to face when it is possible to reopen this channel. The Department also had a methods advisory group of academics who could advise the department on issues of evaluation design and their input would be sought.

- (d) The Department was relying a lot on telephone assessments. Had the Department noticed any impacts on decision making? Were there any issues in the current assessment by Health Care Professionals to claimants who are at a potential risk to suicidal ideation, and how was the Department dealing with safe guarding issues?**

The Department had been looking closely at this since telephony was started in March. Currently the Department were not aware of a significant shift in assessment outcomes. The Department would not know the full impact until cases had completed their appeals process.

(e) What was the Department's view on appeal rates?

The Department was not aware of any increases in appeal rates.

(f) Safeguarding in face to face assessments was visible, but what about safeguarding of Health Care Professionals in telephony? Had any issues been identified?

The checks for safeguarding were consistent, and the Department had not seen any significant difference in outcomes. Neither had there been a dramatic increase or decrease from providers, but the Department was looking for triggers.

(g) It was good to see variation being explored as to how claimants were being seen. This is a good idea, but there are concerns about the evidence that the regulations are built on. There is some evaluation which has not yet been published, but could the Committee see this? The Committee made recommendations on collecting data and evaluating the outcome of the assessments in the Covid report, and were concerned about what the data from Stat-Xplore and monthly data from DWP was indicating on assessment outcomes. Is there anything you could share with the Committee, including more on the data, and the nature of the experiments. What could the department build on, and what would it consider 'success' to look like? This is not just about statistically relevant outcomes, but adaptations to the process of assessment across different channels?

The Department's intention with these regulations was to provide clarity and transparency that the Department was using different channels, not to determine a long term approach. PIP data was published up to October 2020. The data for Employment Support Allowance (ESA), WCA and mandatory Reconsiderations (MR) would not be available until nine months had passed, as these are in arrears, and would not capture the full report. The data for appeals from Her Majesty's Courts and Tribunals takes thirteen weeks or longer to record. Tables published to March 2020 for WCA show specific outcomes. The Department commenced a Proof of Concept for claimants using telephony with 500 PIP and WCA claimants, and a small number of IIDB claimants. On the point of evidence, the Department will come back to the Committee on what can be shared confidentially.

(h) It is reassuring that you are carrying out qualitative research. Is there any quantitative data the Department can share?

DWP does not have this for video currently. The Department contacted claimants who wanted to take part in the proof of concept on a voluntary basis. Most claimants stated that it was working well, and the Department also checked the quality of data.

- (i) **The ONS data referred to in the Equality Impact Assessment is general and not specific to the claimant population. Had DWP surveyed claimants to find out what the current telephone and digital access was? Are you able to provide any data on this?**

DWP was currently pulling together existing data on digital inclusion for this claimant group and exploring opportunities to gather additional data.

- (j) **The internet skills of claimants are lower than average. How well can DWP engage with claimants, and have the Department produced any statistics on claimant access, which DWP can use to design this work.**

It is particularly significant that DWP has found a way to work differently. There is a broader discussion taking place widely in the Department on how DWP can improve customer service. Is this to bridge a new way of working digitally, and part of a broader piece of work DWP is working on?

There was lots of work going on that the Committee would be interested in, and could be a contributor to. There are lots of reasons why the Department sees remote channels as part of its future offer, as they can better meet customer needs, are currently safer for claimants, allows suppliers to recruit across a wider geography and has potential to be more cost effective.

4.5 The Chair thanked DWP officials for attending the meeting and answering the Committee's questions. Following a private discussion, the Committee reflected on the proposals and concluded that they would like to ask the Department to:

- be more transparent in its evaluation of the involvement of disabled people in helping the Department come to this decision.
- share data in the results of the telephone assessments, to see how this learning has been used to improve the guidance.
- consult SSAC on future proposals on channels developed following consultation on the Green Paper.

4.6 The Committee agreed that the chair would [write to the Minister of State for Disabled People, Health and Work](#) to follow up on these points.

5. Private session: AOB/Current issues

Date of next meeting

5.1 The Committee's next meeting was scheduled to take place on 17 March.⁴

⁴ The date of the meeting was subsequently changed to 31 March.

Attendees

Guests and Officials

Item 2: Geoff Scammell (G6, Senior Manager, Housing Policy)
Graham Walmsley (G7, Housing and Benefits Analysis and Research Team (HOBART), Housing Analysis)
David Reynolds (SEO, Homeowners Housing Support and Housing Benefit and Housing in UC)
Matthew James (Legal)
Emily Andrews (SMI Policy)

Item 3: Vicki Kennedy (Deputy Director, Housing Policy)
Eamonn Davern (G7, Housing Policy)
Sarah Turner (G7, Senior Manager, Housing Reform/Supported Housing Teams, Housing Policy)
Ursula Brennan (SEO, Housing Policy, Homeowners Housing Support and Housing Benefit and Housing Benefit in UC)
Helen Gadd (SEO, Policy Advisor, State Pensions, Child Maintenance & Devolution, Pension Credit Team, Pensioner Benefits and Carer's Allowance)

Item 4: James Wolfe (Director for Disability and Housing)
James Bishop (G6, Policy Group, Team Leader)
Isobel Swarc (Head of Disability Research and Evaluations)

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

Annex B

Pre-meeting questions raised by Committee members, and responses received from the department.

The Statutory Sick Pay (General) (Coronavirus Amendment) (No.7) Regulations 2020

- 1. DWP has changed "relevant notification" from specifying notifications to self-isolate to be given in writing to allowing for it to be given orally or in writing. Does this need to be further extended to allow for notification to be given electronically: this is specifically thinking of those who are told to self-isolate by the NHS app (does this count as being in "writing")?**

The department can confirm that electronic notifications to self-isolate by the NHS app are already covered under "written notifications" in our regulations.

"Writing" is defined in the Interpretation Act 1978 as including "typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form, and expressions referring to writing are construed accordingly". Legal advice received when drafting SSP regulations referencing written notifications advises this includes, app notifications and texts for example.

The Loans for Mortgage Interest (Miscellaneous Amendments Regulations 2021

- 1. It would be helpful to know what evidence the Department has that the current rules are stopping people from moving.**

In the majority of cases, repayment on sale or disposal of the property will not create any undue difficulties. However, for those selling to move to a new property, the repayment of the loan may erode equity to such a degree that the purchase of a new home is no longer viable. This may be particularly problematic where there is a pressing reason for the move. For example, where a disabled person needs to move to accommodation more suited to their requirements or where the claimant's children are now too old to share a bedroom.

Porting was recommended in response to two Judicial Reviews that challenged the department on the grounds of disability discrimination. The key argument was that a deteriorating health condition or disability may necessitate a move to a more suitable property. However, the requirement to repay the loan when the property is sold may erode the claimant's available equity for the purchase of a new home. The High Court found in the

Departments favour, and dismissed all claims but the Department is committed to the measure.

2. Could the Committee have a few examples of how the current rules diminish a claimant's potential equity?

The Department requested some examples from David Abbey, managing director of My Safe Home. My Safe Home provide help and support for people with a disability to buy their own home through the Home Ownership for people with Long-term Disabilities (HOLD) scheme and have helped 1,500 homeowners to date. David provided us with the following examples;

- During calendar years 2018 and 2019 the department had eight people with complex needs who moved home because their current home no longer met their needs. Of these, three owners were forced to enlist the help of family members to clear their SMI loans (of between £1,800 - £3,800) that had accrued after SMI changed in March 2018.
- Since 2018 the department had two owners who've approached us to move, having located a suitable property, and when advised that their SMI loan must be cleared on moving they hadn't accounted for this. Consequently, one individual's still looking for less expensive properties whilst the other's waiting until their SMI loan can be ported. In both cases though the owner's current property no longer meets their needs, so remaining there's obviously having an adverse impact on their health and well-being.

3. Has the Department made any estimate of the proportion of people affected who will still be on an income-related benefit when they move?

The Department has analysed the Understanding Society survey, which shows that a very small number of income-related benefit recipients who are home owners moved house. As it would be difficult for those on income related benefits to secure another mortgage, we expect that the majority of those who port their SMI loan would no longer be in receipt of benefits. However, there are other considerations that would suggest that benefit recipients might take advantage of porting; for example, some ESA claimants within the HOLD scheme with long-term disabilities might be in a position to secure a move while still on benefit or income-related benefit claimants who decide to downsize to free up capital.

It is important to note that any estimate made can only ever be speculative as we are looking at the behavioural impact of an untested policy.

4. The Department said that 'porting was recommended in response to two Judicial Reviews'. Who recommended it; could the department give us a reference?

Porting was recommended to Ministers by Department officials in

responses to the legal challenge. My Safe Home strongly supported the measure to support disabled homeowners.

5. Could the Department tell us about the Judicial Reviews?

Case names were: R(JD) v SSWP and R(Vincent) v SSWP.

Precis of the two JR's as follows:

- a. This claim was brought by three claimants who had previously been in receipt of grants under the Support for Mortgage Interest (SMI) scheme, following the change in 2017 to LMI. All of the claimants were disabled, and stood no prospect of returning to work.
- b. The main focus of the challenge was the requirement to repay the LMI on sale of the property against which the LMI payments are secured by way of charge. The claimants argued that it is indirectly discriminatory against disabled people to not allow them to transfer (or port) their LMI balance to a new property on sale of the original property. It was also argued as Thlimmenos discrimination, which is the failure of the Department to treat different situations differently.
- c. The way the claimants sought to define the status of those being discriminated against was, for the Vincent claimants, severely disabled people with partner in receipt of Carer's allowance, and/or dependent children of such persons. The JD claimant's status was narrower, namely of a disabled person with an enhanced risk of needing to move house.
- d. The basis of the claim was, in essence, that these categories of people were more likely to need to move, and more likely to need to unlock the equity in their property to buy somewhere appropriate and/or make adaptations to new properties so that they are suitable for their needs. The repayment requirement may make it unaffordable for them to do so, and result in them remaining in unsuitable accommodation. Their argument was that it was objectively unreasonable for there to be no discretion on the repayment requirement should the disabled person need the money when they move property
- e. These claims failed on multiple fronts. The HC considered the status in JD to be unsuccessful as part of the qualification of a status in discrimination cases is that "it must be possible to identify those who meet it and those who do not", and that "the features or criteria said to define it are far too nebulous to produce an objectively identifiable cohort".
- f. For the Vincent claimants, the HC found that the status of a severely disabled person whose partner was in receipt of Carer's Allowance did not create a sufficiently discernible group to justify why the Department should treat them differently. Many other vulnerable recipients of LMI would be equally affected by the repayment requirement – for example the other claimant in this case, who would not fall into their category.

- g. The attempted status of children of severely disabled people in receipt of Carer's allowance was dismissed by the HC "as tenuous in the extreme".
- h. The HC went on to consider the further limbs of the discrimination test, to evidence why the claims would have failed in any event. The HC acknowledged that although there were several reasonable possible alternative solutions that were available to the Department with regard repayment, "it does not follow that it was manifestly unreasonable for the Minister to decide that there should be no exceptions to the [repayment on sale requirement] or that the failure to make an exception for cases of that nature produces a measure that is manifestly disproportionate to its legitimate aims. There is room for more than one reasonable view on the subject."
- i. This was also tied to the logic that once the property was sold, the purpose of LMI, namely preventing the home being repossessed, was fulfilled. It was never the objective of the scheme to assist the claimant in accumulating enough wealth to purchase another property



Vincent-and-JD-approved-judgment.pdf

<http://beta.bailii.org/ew/cases/EWHC/Admin/2020/1976.html>

6. Has there been consultation with Scottish lawyers, since the draft undertaking applies only to the law in England & Wales?

The Department formally commissioned Scottish Legal Firm Morton Fraser LLP who specialise in Scottish property law to advise on the porting process and the undertaking. The Department will have a separate undertaking to align with Scottish property law before regulations come into force.

7. Committee members have also raised a comment, to use the statutory term in the equality assessment of 'sex' rather than 'gender'.

The department have also apologised for using the incorrect term in the equality assessment, 'gender' rather than 'sex' and have provided an amended version of the Equality Analysis.

The Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) (Amendment) Regulations 2021

1. Committee members would like to know why the regulations are being referred to SSAC before the LA consultation is closed?

Have you had any responses to the local authority consultation so far?

MINUTES

Although the department aim to have completed the statutory consultation with the Local Authority Associations (LAAs) ahead of referring regulations to SSAC, this wasn't possible on this occasion. However, the department have spoken and written to local authority representatives when the department were developing the changes. The department haven't received any comments from the LAAs yet and should the department receive any these will be forwarded to the committee.