

Social Security Advisory Committee
Minutes of the meeting held on 23 February 2023

Chair: Dr Stephen Brien

Members: Bruce Calderwood
Carl Emmerson
Kayley Hignell
Professor Gráinne McKeever
Seyi Obakin OBE
Liz Sayce OBE

Apologies: Phil Jones
Charlotte Pickles

1. Private Session

[RESERVED ITEM]

2. The Social Security Benefits (Claims and Payments) (Amendment) Regulations 2023

2.1 The Chair welcomed the following officials to the meeting: Graeme Connor (Deputy Director, Lead Analyst Universal Credit Policy); David Higlett (G6, Universal Credit Policy); Jackie Germain (G7 Universal Credit and Employment Policy), Zaidah Chisty (SEO, Universal Credit and Employment Policy); Rowena Fernandes (HEO, Universal Credit and Employment Policy) and Edgar Craven (DWP Legal).

2.2 Introducing the item, David Higlett noted that Fuel Direct has been in place for decades and the scheme has remained broadly similar since its implementation. Before April 2022, energy suppliers were able to request increases for ongoing fuel consumption. Due to the significant increase in energy prices from April 2022, the Department anticipated thousands of requests from suppliers for increases in deductions, which would mean that claimants could receive less benefit than expected. Unless the deductions were above a very significant level, there would have been no contact with the claimant. The Department was of the view that such an approach would not be right and put in place a temporary solution from April 2022 so that suppliers would not be able to ask for an increase in deductions, but claimants would. Primarily this was to ensure that the Department was not deducting very large amounts of money from a person's benefit payments. The regulations were put together very quickly and the temporary measures were only intended to be in place for a year. Less than 5% of claimants have altered their arrangements over this period. In Universal Credit (UC) more claimants than those in receipt of legacy benefits have ended their arrangements. A greater proportion of Employment and Support Allowance claimants have been requesting a new arrangement. During the

temporary easement the Department had a good relationship with the Department for Business, Energy and Industrial Strategy (BEIS) (now the Department for Energy Security and Net-Zero (DESNZ)). Where the Department became aware of concerning behaviour by an energy supplier, that was fed back to The Office of Gas and Electricity Markets (Ofgem) who has considered compliance action.

2.3 As the current regulations were intended to be temporary, unless new regulations are put in place, suppliers would be able to revert to requesting increases in deductions. The purpose of allowing energy suppliers to make new requests is to ensure the onus is on them to have an affordability discussion with the claimant to form a payment plan, and importantly evidence and inform the Department the claimant has consented to that. Suppliers will follow their guidance regarding energy saving advice. The Department did not ask energy suppliers what they wanted but worked with Ofgem and BEIS to help ensure they were meeting their obligations. Suppliers do have an obligation to help and meet the needs of vulnerable people. Ofgem does have conditions they have to abide by; that includes what support is available.

2.4 In developing these proposals, the Department had an informal meeting with Citizens Advice who regarded this as a sensible way forward. The Department has informed energy suppliers and energy UK on an informal basis regarding the plans; this will be done formally when the regulations are in place. The Department will continue to communicate with Ofgem and DESNZ if it appears that suppliers are not acting as they should.

2.5 The Committee asked the following main questions in discussion:

- (a) In terms of consent, how does the supplier know that the claimant can afford the deduction since they do not know what a claimant's other obligations are? How has that consent been obtained? How can the Department know whether any pressure has been applied and that the information given is reliable? Where is the claimant's voice?**

What the Department are building on is what Ofgem allows suppliers to do. Suppliers are supposed to have those conversations about affordability to support claimants. Ofgem has a licensing obligation which requires these conversations to happen.

- (b) Why is the onus on supplier to create the deduction and why can the claimant not propose what they would like to happen?**

The energy suppliers are best placed to have those conversations with the claimant. The agreement is between them and the claimant.

- (c) But why is the onus on the supplier to have that interaction rather than the claimant?**

The Ofgem supply licence agreement states that when a supplier recommends a Fuel Direct ongoing consumption arrangement to a claimant, they must explain to the claimant why this is the recommended payment method. The Department does not have the authority to negotiate what is affordable. The Department will make a reasonable attempt to contact the claimant where suppliers are unable to do so, to encourage them to contact their energy supplier as the DWP cannot negotiate affordability with a claimant; that must be done between the supplier and the claimant.

- (d) Once that conversation happens, someone then has to instruct the Department to make deductions. That is currently the responsibility of the supplier, why is that onus not on the claimant?**

Under the current regulations, when the claimant could have that conversation, the majority of claimants kept the same arrangements and did not increase their ongoing consumption payments. The Department wants to support claimants to avoid a build-up of arrears and would not know what the claimant's ongoing consumption cost for energy usage is; underlying arrears could occur. There are supplier initiatives to support customers and the Department wants that relationship to continue.

- (e) That argument is understood but the question is narrow and specific about who triggers the conversation. Who has power in this relationship? The question is, why is it better for the suppliers than the claimant to provide this information?**

The temporary arrangements are being strengthened. The previous scheme has been around for decades. The Department is taking this scheme that has provided protection and given claimants a mechanism to pay consumption and arrears in an era of unprecedented energy prices. That would take the Department to a different position before April 2022. It is a mechanism there for claimants who are struggling to pay for fuel; Fuel Direct is only one of the options open to claimants and the energy supplier.

- (f) So is it the case that the Department's proposal may not be optimal but what is being offered is slightly better than the status quo?**

The Department is building on the pre-April 2022 arrangements to ensure the claimant is engaged in agreeing the amount to be deducted for ongoing consumption.

- (g) The fundamental issue is that claimants have control, which is good. The specific mechanism for a claimant to consent is very important. To what extent can genuine consent be gathered before simply acting on suppliers' direction?**

Yes, it is instigated by energy suppliers but that is on the back of the supply licensing agreement and Fuel Direct is available for them to discuss with the claimant amongst other options. If the claimant contacts the Department and is not happy with the arrangement, they can tell the Department to stop the payment. The Department can contact Ofgem to let them know if a claimant complains that they did not give their consent and the supplier has told the Department they have done so.

- (h) How will the Department know that the consent from the claimant is independent of pressure from suppliers? The claimant may not be able to express their view freely – this is asked on the basis of recent reported examples of pre-payment meters. There has to be clarity that claimants have the freedom of choice. That has not been fully captured in your evidence so far.**

Another scenario may be where there has been a good conversation and the claimant has consented, but subsequently changes their mind. In such cases, do payments continue to be deducted? Also, what if the conversation has not been handled properly and the claimant regrets agreeing? Is representation to Ofgem the only course of action the Department can take? There may be other potential scenarios where conversations cannot happen at all. The Department needs to be more proactive regarding consent by monitoring this data so that patterns can be identified.

The claimant can ask for ongoing consumption deductions to be stopped and they will have another conversation with their supplier. The Department will need to see what happens. The Department has a good relationship with Ofgem and concerns will be fed back.

- (i) Will the claimant be told the arrangement can be stopped?**

Yes, the ability to stop arrangements will be communicated.

- (j) When will a claimant know that the supplier has made contact with the Department and when it will act?**

Once the first deduction is made.

- (k) When will the claimant first hear from the Department that it is going to act?**

For UC claimants, their online monthly statement will be updated. In terms of legacy claimants, that information will be provided outside of the meeting.

- (l) When the deduction is put on the journal, the claimant has a choice about whether to accept or not. How will it be communicated that, as of day zero, the claimant has the ability to change it?**

The Department will write to legacy claimants and is still working with operational colleagues on communicating with UC claimants. The Department needs to ensure that claimants are fully aware that, when new deductions are put in place, they can ask for them to be stopped or changed. The Department will review their proposed arrangements to ensure that happens.

- (m) There are two important bits of information to be made clear to all claimants: (i) Legacy and UC claimants must be aware that there will be a deduction because of their agreements; and (ii) Claimants must be made aware that they are in control of the deduction and that they can stop it at any time. It is essential that both of these points must be clear.**

There is a need to bear in mind that none of these deductions are guaranteed because until an assessment is made, it will not be known if there is sufficient benefit to make that deduction. Therefore advance notice may not necessarily happen as the system does not allow for that.

- (n) The Department cannot be precise but that does not mean it should not be communicating these points in broad terms. In respect of informed consent and whether the claimant can change their mind, it should be really clear what the options are, and what actions are required to make each happen. It would be worth reviewing how the Department's proposed approach compares against best practice. In this group there are a high number of lone parents and disabled people and there needs to be a high level of assurance that conversations are taking account of vulnerabilities. The Department is responsible for ensuring that happens.**

Vulnerable groups are part of the composition of benefits. This approach is informed by what is in the Ofgem license agreement. The Department is keen to learn about informed consent and knowing they can change their mind is key. The Department will monitor where a claimant says informed consent was not given. Circling back round, it can work both ways, sometimes energy providers will be in a better place to know what is best for the claimant.

- (o) A clear assessment is required of how risks would manifest requiring the Department to have more informal conversations, for example, talking to debt charities. The difficulties are understood in that there is a risk that this could go wrong for claimants and it is clear that this is for Ofgem to handle. However, the Department also has a role to play in risk management. On the informed consent point, the claimant will not know about a deduction until it has happened. How can a claimant know if**

they can afford the deduction if they do not know what the amount of benefit will be? How can someone have an affordability discussion without knowing what that impact will be? The Department additionally needs to be actively reviewing its communications approach so that energy suppliers know what their conversations should be and that it is clear that the Fuel Direct element will be a claimant choice.

On the first point, UC can vary over time due to earnings and so they cannot know for definite what their amount of benefit will be. Many claimants will have been on UC for a long time, with no earnings and have fairly settled benefits meaning that good conversations can take place.

- (p) If a claimant agrees to a deduction of £200 a month without knowing the amount of UC they will receive, how can this be an informed choice?**

UC is paid in arrears at the end of an assessment period with the award based on the claimant's circumstances at the end of the assessment period. If a claimant is not working or disabled, they will know what their UC award will be, so they can have an informed discussion. This is possible where someone is working too. There is an ongoing issue for those with variable earnings where this will be more difficult as they cannot be accurate regarding the amount of benefit they are due to receive. This links into what guidance will be there for the energy provider, perhaps a Fuel Direct deduction may not be best for claimants with variable earnings. The Department would provide further information on this outside of the meeting.

On the issue of affordability conversations, the amount must be payable by the claimant. UC claimants get a monthly statement setting out payments and deductions and so they have the relevant information. Therefore, only they will know what they will have left after an agreement is reached. The Department will not be in a position to know the detail, for example, the claimant could have other outgoings or debt.

- (q) On a more technical point regarding the additional provision, there is a difference between the explanatory text allowing for an increase for ongoing consumption deductions but the regulations reference a decrease.**

The claimant has to consent to an increase but consent will not be required for a reduction as that is in the claimant's interest. Where the supplier has indicated an increase without the claimant's consent, the existing rate is maintained until consent is obtained as the Department would not interrupt an ongoing arrangement.

- (r) Another technical point is that, for example, paragraph 8(4)(b) of schedule 6 to the UC, PIP, JSA and ESA (Claims and Payments)**

Regulations 2013 gives the Secretary of State a lot of discretion around estimates and yet the Secretary of State is not carrying out an estimation, as he is just nodding through the information provided by the supplier. Is there a worry that the Department could be challenged for not doing an active estimation?

This will be brought to the attention of DWP legal colleagues.

- (s) When we scrutinised the previous regulations in June 2022, the Committee emphasised that it was important that claimant voices were heard. We are pleased that you spoke to Citizens Advice. Can you talk us through the process; what were the questions they posed and your responses to them; what did you learn from that engagement and how did their feedback inform these proposals?**

The conversation was based on the policy proposal, and how it was envisaged it would work: the content of the process; the conversation between the claimant and supplier and how consent would be achieved. They understood that the Department did not have the power to influence that conversation but welcomed the fact that the claimant's consent was still required and that the Department would step in if there were any issues.

- (t) How did the Department take on board Citizens Advice's feedback and intelligence for the policy design?**

The Department talked about the pre-April 2022 position, the proposal and the engagement of claimants in the agreement to the amount to be deducted.

- (u) It appears that this conversation was not about the policy design, which was our previous advice. This was more of a stakeholder management meeting rather than engaging with them to help inform your policy.**

We did also work with Ofgem as they have a role too.

- (v) In June 2022, the Committee was very clear that, while you were getting the voice of the supplier, the voice of the claimant was missing. We wanted to make sure the Department understood the customer perspective and this is needed going forward rather than catering solely to the needs of the supplier and Ofgem.**

Yes, the Department can take that on board. The difficulty is that the solution put in place was intended to be temporary. Moving forward, the Department can look at setting forward a plan for capturing concerns from customer representatives.

(w) The Committee provided clear and explicit advice on this point eight months ago.

The focus was initially on the regulations for a temporary period and then new regulations. The Department will consider how the new policy can be evaluated moving forward.

2.6 The Chair thanked Graeme Connor, Dave Higlett and colleagues for attending the session and answering the Committee's questions. Following a private discussion, the Committee decided that it would not take the regulations on formal reference and that they may proceed accordingly.¹ The proposals represented a clear improvement on reverting to the default position which would likely have an adverse financial impact on claimants who may already be facing significant budgeting challenges at this time. However, in reaching its decision, the Committee noted that a number of issues had been raised in discussion which merited further consideration by the Department, for example ensuring that the customer voice is heard and ensuring that a strong claimant communication strategy is in place.

2.7 The Committee would continue to keep these issues under review, engaging with the Department at key points during implementation to ensure that, for example, an appropriate communications plan has been put in place and that there is a clear analysis of what has happened (e.g. claimant patterns); and that the effectiveness of the policy, and impact on claimants, is understood.

3. Date of Next Meeting

The next meeting is scheduled to take place on 8 March 2023.

¹ The Committee was not quorate at this meeting therefore action was taken in accordance with its formal Rules of Procedure which states: "*In the absence of a quorum, those Members present shall not make decisions on behalf of the Committee but may make recommendations for the subsequent approval of the Committee.*" Accordingly, this decision was made following consultation with Committee members not present at the meeting.

Attendees:

Guests and Officials:

Item 2: Graeme Connor (Deputy Director, Lead Analyst Universal Credit Policy)
David Higlett (Universal Credit Policy)
Jackie Germain (Universal Credit and Employment Policy)
Zaidah Chisty (Universal Credit and Employment Policy)
Rowena Fernandes (Universal Credit and Employment Policy)
Edgar Craven (DWP Legal)

Secretariat: Denise Whitehead (Committee Secretary)
Dale Cullum (Assistant Secretary)
Gabriel Ferros (Analyst)
Anna Woods (Assistant Secretary)