

Social Security Advisory Committee
Minutes of the meeting held on 26 April 2023

Chair: Dr Stephen Brien

Members: Bruce Calderwood
Carl Emmerson
Phil Jones
Gráinne McKeever
Seyi Obakin
Charlotte Pickles
Liz Sayce

Apologies: Kayley Hignell

1. Private Session

[RESERVED ITEM]

2. The Social Fund Maternity and Funeral Expenses (General) and Social Security (Claims and Payments) (Amendment) Regulations 2023

2.1 The Chair welcomed the following officials to the meeting: Angela Kidd, (G7, Social Fund Team Leader), Sidonie Edey (Head of Life Events), Alfair Mackoon (Lawyer), William Redfern (Senior Lawyer) and Ron Butler, (HEO, Social Fund Policy advisor).

2.2 Introducing the item, Angela Kidd explained that claimants are only eligible for a Sure Start Maternity Grant (SSMG) if there are no other children under the age of 16 in their family (the first child only rule) (subject to exemptions)). The intent behind the proposed change is to allow those who fled or were evacuated, from Afghanistan and Ukraine, to claim an SSMG where there is an existing family member who is under the age of 16 and so the first child rule will not apply. This exemption mirrors one that applies already in the case where refugee status or humanitarian protection has been granted. The Government introduced a different scheme for the people arriving from Afghanistan and Ukraine as they were not being granted refugee status or humanitarian protection. The Department looked to expand the group to give them the same eligibility.

2.3 The Committee raised the following questions in discussion.

- (a) **Are there any other potential groups this policy might extend to? People fleeing Sudan with children may be in an analogous position. Would there be the need for another set of regulations?**

That is currently being reviewed to see what the approach would be. If they do not fall under the refugee or humanitarian status, the Department will look at other government schemes. There are two or three sets of regulations relating to the habitual residence test (HRT) and the regulations need to be tied in with HRT regulations, for example, the dates within the schemes for people arriving from Afghanistan and Ukraine, did not tie-in with any previous HRT regulations. British nationals and third-party nationals are covered if they satisfy the new HRT tests. The proposed regulations were drafted to mirror the eligibility to the HRT exemption introduced following the invasion of Ukraine and the collapse of the Afghanistan Government. The intention is that the Department takes a consistent approach when extending benefit support to these groups. Should there be a need to extend support in any future scenarios, the Department would aim to take a similar approach.

- (b) **Is there a potential gap for people coming from Sudan who are out of the six months temporary absence period?**

That will depend on the HRT and reliant on whether a relevant benefit is in payment.

- (c) **People returning from Sudan are likely to be quite a small group. Has the Department thought about having a generic regulation which could capture all groups rather than having to introduce new regulations for each group?**

That was considered but this was a complex piece of work. If colleagues working on income related benefits could future proof their regulations, that would help. Going forward, it is hoped that there can be a generic set of regulations covering each group.

- (d) **Turning to the amendments in respect of time for claiming, a claim for SSMG can be made within six months of the date of birth of the child or the date the regulations come into force; however, parents may have already equipped themselves with baby items?**

The Department did not want anyone to lose out; the SSMG is for baby items, but it does not specify what it should be used for. It may be that someone who has made a claim may already have, for example, a pram but may still need other baby items. The Department received a pre- action protocol letter in December 2022 in which it was claimed that the Department was acting

unlawfully by discriminating against those arriving from Afghanistan and Ukraine compared with other refugees and a response was required by January 2023. Disallowance decisions can be revised for official error but the regulations had to be formalised. Any support received in the interim will not be taken into account.

- (e) Is it possible for an earlier disallowed decision to be revised and then that claimant can make a new claim meaning they will receive an additional £500?**

No, a claimant will only be entitled to one SSMG.

- (f) How many people have been affected by this change?**

The numbers are low; there are only a few hundred to date. The Department's relationship with stakeholders is good and so the Refugee Council and Child Poverty Action Group are aware that claimants should make a claim for SSMG. The Department will engage with both organisations to explain the changes.

- (g) The requirement, as part of the conditions of entitlement for an SSMG, for a claimant to have received advice from a health professional is to be removed. The Department of Health introduced that requirement about 20 years ago and processes have moved on. What evaluation was carried out and what was the result?**

The Department of Health and Social Care has confirmed that consideration of entitlement to SSMG does not form part of their commitment and process for delivery of antenatal and maternal care; they have moved on regarding processes for encouraging mothers about antenatal care. The Department has not been sighted on any evaluation.

- (h) The requirement was introduced to provide intervention and it is not clear what changes have taken place so that the intervention is not relevant, especially with the new groups arriving. It would be good to understand the evidence base other than the Department being busy as it should provide intervention; this feels like a regressive step unless further information can be provided.**

The Department does have information about the various processes in place regarding antenatal care which are now far more advanced and so have now superseded the need for a health professional statement. This will be taken away as an action point and the Committee will be provided with that

information outside of the Committee meeting.

- (i) **There are many vulnerable groups not accessing that support. How did the Department satisfy itself that it was a good way forward. Who was the controlling mind behind that decision?**

The Department has never had any evidence that entitlement to SSMG was a driver in getting mothers to attend with antenatal care. The Department was considering the policy and Covid emphasised the importance of looking at it. It was a challenge to complete the statement during that period, and so meetings took place with policy counterparts to ascertain what was in place. Another key factor is the benefits of removing the statement will bring in terms of enabling greater improvements to the customer journey via the potential creation of an on-line claim process.

- (j) **It is understandable that many processes fell by the wayside but the issues during the Covid period are not there now. The pause was understandable due to capacity but why continue now? What did the Department hear so that it was satisfied that this change was the right move. There is a lot of evidence base out there, the Government should be seeing the value of that.**

This links with the need for the Department to provide the Committee with the information in respect of new processes in place for antenatal care. That reassurance will be provided outside of the meeting.

- (k) **Will there be a requirement for a pregnancy to be certified even for children born before people had to leave Afghanistan and Ukraine. How can that be met given that the whole point is that they left with nothing.**

There are many other ways to obtain verification of a birth, for example, the birth certificate, the fact that they are seeing a midwife or a Mat B1 claim form. Existing children will be included in the claim for Universal Credit. Verification of a birth would only be required for a child born in the United Kingdom.

- (l) **There is not much data about protected characteristics in the Equality Analysis. Is that information not readily available? Did the Department consider further analysis or did that not happen because the changes are thought to be beneficial only impacting a small number of people?**

The information is not available as it is not gathered by the Department; it is not gathered via claim forms. If there was going to be an ongoing clarification due to possible detrimental effects, there would be access to that information.

- (m) Did the Department go through a process of what might be different for the possible groups affected?**

It was clear from the information already held that a lot of the claims would be from mothers, because their husbands would be fighting in Ukraine but this is less likely in Afghanistan, there were more families.

- (n) The approach seems to be to consider what information is already available and then fit that in the regulations. It is understandable that it may be difficult to obtain relevant data but why not start from the beginning? Age should be a factor, will that result in an unintended consequence? It is likely women will benefit but the Equality Analysis does not say that and pregnancy has not been included. 'Gender' has also been referred to when this should say 'sex.' It seems that the exercise has not been carried out in the way it should be.**

This is feedback for a number of policy teams; changes may be beneficial but the Department still needs to go through the process. The financial flow for different groups of people is changing. Logically certain groups will benefit but that needs to be laid out resulting in a better impact analysis.

Noted.

- (o) On the matter of Devolution, how do benefit systems interact? Has there been any thought on the impact, for example, on someone who made a claim for SSMG in Scotland and then moved to England?**

If the conditions for an SSMG are satisfied, operations would check to see if the claimant has claimed the Best Start Grant in Scotland. This is not a matter that policy has discussed but there is an operational process to ensure that there is no duplication.

- (p) It would be good to have reassurance to make sure people do not fall between the two grants.**

That can be provided outside of the meeting

- (q) Was there any consideration given to the matter of kinship care for someone who has a child and then takes on the care of a baby?**

For these regulations, the Department only considered looking at people arriving from Afghanistan and Ukraine.

- (r) **Is this an opportunity to consider? In other regulations, kinship has been flexed to be either/or?**

The Department will look at other regulations to see if there are any further opportunities to address this issue.

- (s) **Matters may be too far down the line but does the route by which someone arrives from Afghanistan and Ukraine, legally or illegally, have any bearing on their entitlement?**

Entitlement to an SSMG is passported from an income related benefit and so as long as someone satisfies the HRT, or falls within an exemption, and is entitled to a relevant benefit, the circumstances of their arrival are not looked at when an SSMG claim is decided.

- (t) **This links to an earlier question on special schemes for future regulations. There are lots of benefits, can the Department group the category of people who get this?**

Having gone through this exercise, there is a better relationship and understanding with colleagues working on international areas and so there has already been discussion about people arriving from Sudan so that these matters can come under one umbrella.

- (u) **Could the wording be simply changed from Afghanistan or Ukraine to Sudan. What are the barriers to adding one more country or scheme?**

There is the Home Office point of view for different schemes which the Department would not be aware of. It is hard to generalise because those schemes are slightly different. The Department is trying to align as much as possible.

- (v) **Is there a reason why the schemes are not named rather than just setting out the conditions?**

The schemes will be relying on the HRT and aligning with that criteria.

2.4 The Chair thanked Angela Kidd and her team for attending the meeting and answering the Committee's questions. Following a period of private discussion, the Committee confirmed that it would not take the regulations on formal reference, but asked that the Department provide a corrected and strengthened version of the Department's assessment of impact which addresses the concerns raised in discussion. This should be shared with the Committee before the regulations are laid.

3. The Universal Credit (Childcare) (Amendment) Regulations 2023

3.1 The Chair welcomed the following officials to the meeting: Graeme Connor (Universal Credit Policy Lead), James Snelling (Policy Team Leader), Jack Davison (G6, Analyst), Nimah Parker (G7, Universal Credit Policy) and John Vinton (HEO, Universal Credit Policy).

3.2 Introducing the item Graeme Connor explained that the intent behind these regulations delivers commitments made in the Spring Budget 2023 and allows parents to claim back up to 85% of any Flexible Support Fund payment (FSF) made for upfront childcare delivered in that assessment period. That money can be used towards their next set of childcare costs. The measure benefits parents moving into work or significantly increasing their working hours. A further change relates to the childcare costs' caps (maximum amounts) which have not changed, as a standalone measure, since 2006.¹ This measure significantly increases the current maximum amounts.

3.3 The Committee raised the following questions in discussion.

- (a) A claimant may receive a payment from the FSF and the childcare element of Universal Credit (UC) creating a double payment. While the rationale for this is understood, what options did the Department consider to avoid or mitigate a double payment?**

Parents can claim back up to 85% of any FSF payment made for upfront childcare and so they will receive 185% of the costs, so basically double. This is not a perfect solution but the Department did work through many different options, for example, the budgeting loan system, but other options required fundamental changes which would have been difficult, risky and/or time consuming to deliver. The change provides reassurance for claimants which can be delivered quickly and through work coaches.

- (b) Was a monetary assessment carried out regarding the double payment? How much will it cost the Department?**

The Department produced a costing note for the Office for Budget Responsibility as part of the Chancellor of the Exchequer's Spring Budget process, which estimated the cost for the change as a whole to the Department to be around £65 million a year by 2027/28, including expected

¹ There was a rise in 2016 to allow claimants to benefit from a change in the reimbursement proportion from 70% to 85%.

behavioural effects. This figure excludes any additional receipts to the Treasury from the expected increase in employment.

(c) Was there any consideration given to ways of recovering the money over a period of time?

That can be considered as part of the policy design. In respect of the first change, the childcare costs cap is being increased which has not changed, as a standalone measure, since 2006.² The childcare costs cap will be increased, in line with the Consumer Price Index since 2006, from £646.35 for one child and £1,108.04 for two or more children, increasing to £950.92 and £1,630.15 respectively from 28 June 2023. This allows parents to claim back more for their childcare required in each assessment period. Costs for annual uprating of the UC childcare cost caps have also been agreed but this would form part of the annual uprating exercise.

Officials presented a slide to visually explain the FSF up-front measure. It was explained that the top line demonstrates what happens now in UC if a claimant claims childcare costs; namely that claimants need to pay childcare costs upfront and then their childcare element is paid in arrears at the end of their assessment period. The second line is where they currently get help from the FSF to pay their upfront childcare costs (paid directly to the childcare provider) which is only funded up to a certain amount and essentially pushes the issue to the next month where the parents will still have to find the money in advance, themselves. The third line reflects the new measure and is the same as the payment through the FSF but includes the change that they can claim back 85% of the FSF payment paid directly to the childcare provider, as if they had paid it themselves, in the same assessment period. They can then use that money for their next set of childcare costs, getting them into the childcare costs payment cycle.

(d) Has there been any thought given to recovering the FSF payment from the last UC payment?

UC may come to an end for various reasons, one being that earnings have increased for a short period. This would lead to a complex process and, potentially, the need to totally redesign the UC system.

(e) If, for example, a mother's employment was terminated after 12 months' maternity leave, but was re-employed by the same employer five weeks later, does she qualify for the new policy for childcare costs again? Or, if

² There was a rise in 2016 to allow claimants to benefit from a change in the reimbursement proportion from 70% to 85%

a parent is not working but accepts a 12-week contract of employment and so benefits from the new policy, then returns to UC when the contract ends and then accepts a further contract with the same employer, would they qualify for the support again?

Yes, they can qualify again in the circumstances described. This will be a discretionary matter for work coaches following a discussion with the claimant. The Department has to be realistic about moving parents into, and keeping them in, work. The Department will be monitoring this process for anomalies and multiple take up. If there is an increased prevalence, the policy will be reviewed.

- (f) That will be challenging for work coaches as they will need to differentiate between those who, due to the nature of their work, have always moved around jobs and others who may change their behaviour.**

It is an issue that will need monitoring. There are a number of reasons why a FSF payment is made, for example clothing for interviews, and so it already forms part of the work coach conversation. Therefore, there are parallels for the Department to draw on and think about in respect of childcare costs.

- (g) Is it the case that the FSF is for people moving into work, but not for those who are part-time and want to increase their hours?**

The FSF is for claimants who are increasing their hours as well as for those moving into work.

- (h) How will the Department ensure that work coaches get the balance right in their use of discretion?**

It is envisaged that 95% of cases will be straightforward and that work coaches will only have to use discretion in a small number of complex cases.

- (i) The FSF is said to be one of a number of areas of support; what are the other areas of support and why does this policy not apply to them?**

This policy only applies to childcare costs. The criteria for a FSF payment is not provided for in the legislation and is set out in operational guidance which can change. Making amendments to the legislation can have unintended consequences when operational guidance is changed. The change for childcare costs will allow the Department to consider future guidance changes without having to amend the legislation.

- (j) What percentage of people who can receive the UC childcare element are covered by the FSF rather than other relevant support? What is an example of other relevant support?**

There is no other form of relevant support. Lawyers are referring to 'other relevant support' in order to build in capacity for the Department to apply similar changes for any future iterations of support.

- (k) In relation to the Equality Analysis, the protected characteristic should be 'sex' rather than 'gender.' It also observes that no-one with a protected characteristic will be adversely impacted as it is a positive change. There will, however, be groups who are positively impacted and those who are not. For example, did the Department look at those who are seeking childcare costs for disabled children which is more expensive, and disabled adults who are more likely to be in receipt of Employment and Support Allowance (ESA)?**

There is no information held regarding the difference in the cost for childcare for disabled children; it may be that other help is available in those circumstances. The key point is that the Department can expand on the change. The latter point around ESA and permitted work is fair as such claimants may not benefit from the change. Another group that may not benefit are those who are on tax credits. The Department will need to consider these groups.

- (l) The Equality Analysis predominantly focuses on 'discrimination' rather than providing an 'impact' assessment. The Committee needs to understand whether all groups can take advantage of this policy change but it is not clear if parents of disabled children can benefit from this change. If that is the case, then that needs to be acknowledged. It could be that the Department is trying to help a particular group to get into work and so it needs to be clear which group will benefit and which groups will not.**

There has been a lot of thinking around these issues and so have been in narrative form. This can be taken away and the points raised can be addressed in writing for the Committee.

- (m) In terms of the Family Test, the supporting papers provide a record of the questions considered, but none of the answers have been provided. Can the Committee have that additional information?**

There has been a lot of thinking on the issues raised and that can be provided outside of the meeting.

- (n) **The two measures under discussion today were recommended by the Work and Pensions Select Committee. They made further recommendations which are beyond the scope of the Department, but others were relevant to these changes i.e. for research to be carried out on reasons why parents do not take up the UC childcare offer. Has the Department considered commissioning the research on the back of these changes?**

There has been plenty of thinking about why people do or do not take up certain offers. A lot of the time it was because people cannot afford the upfront costs, which is what this policy is remedying. The Department has undertaken research into reasons why claimants do not take up the childcare offer.

- (o) **The Department is looking to see how work coaches can better understand the childcare costs offer, but the Work and Pensions Select Committee also had concerns about the fact there is no calculator for childcare costs. How will that be improved?**

There is a website that can be used; it is definitely something that the Department continues to focus on.³

- (p) **Is there any learning from the devolved nations that the Department can draw on?**

The Department learnt from Northern Ireland following engagement with them to understand how their approach was designed and any behavioural changes. They are currently considering the change to increase the 'caps' or maximum amounts. The Department also worked with the Scottish Government as these changes roll out there in the same way but communications for both Scotland and Wales will need to be tailored appropriately to reflect their wider childcare offer. The Department understands that the new Scottish First Minister has childcare as one of his three priority issues and, therefore, the importance of working with Scottish Government colleagues.

3.4 The Chair thanked Graeme Connor and his team for attending the meeting and for their helpful, informative and constructive approach in responding to Members' questions.

³ [Childcare Choices | 30 Hours Free Childcare, Tax-Free Childcare and More | Help with Costs | GOV.UK](#)

3.5 Following a period of private deliberation, the Committee confirmed that it would not take the regulations on formal reference, but asked that the Department provide a corrected and strengthened version of the Department's assessment of impact which addresses the concerns raised in discussion. This should be shared with the Committee before the regulations are laid.⁴

4. Private Session

[RESERVED ITEM]

5. Date of next meeting

5.1 The Next meeting is scheduled to take place on 24 May.

⁴ The Committee was not quorate at the point this decision was made, 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: Angela Kidd, (G7, (Social Fund Team Leader)
Sidonie Edey (Head of Life Events)
Alfair Mackoon (Lawyer)
William Redfern (Senior Lawyer)
Ron Butler, (HEO, Social Fund Policy advisor).

Item 3: Graeme Connor (Universal Credit Policy Lead),
James Snelling (Policy Team Leader),
Jack Davison (G6, Analyst),
Nimah Parker (G7, Universal Credit Policy)
John Vinton (HEO, Universal Credit Policy).

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