

Social Security Advisory Committee
Minutes of the meeting held on 24 May 2023

Chair: Dr Stephen Brien

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

Apologies: Kayley Hignell
Phil Jones

1. Private Session

[RESERVED ITEM]

2. The Social Security (Income and Capital Disregards) Amendment Regulations 2023

2.1 The Chair welcomed the following officials to the meeting: Graeme Connor (Deputy Director, Universal Credit Policy), Dave Higlett (G6, Universal Credit Policy), Sam Mitchell (SEO, Universal Credit Policy), Oliver Tanner (HEO, Universal Credit Policy) and Jack Davison (G6, Analyst).

2.2 Graeme Connor introduced the regulations explaining the three main changes which are: a full disregard for Grenfell Tower payments and Post Office compensation payments; also the extension of a disregard for vaccine damage payments to the partner of a person receiving them. In relation to Grenfell Tower payments and the Post Office compensation payments, no recovery of benefit would be sought by the Department's Compensation Recovery Unit.

2.3 In respect of impact on protected groups, the Department does not have information on who the postmasters are but understands from the Department for Business and Trade that they are likely to be at the upper end of the working-age distribution. Similarly, the Department does not have data on those impacted by the Grenfell fire, however they may be more likely to be living in rented housing and to be people from ethnic minorities. For the vaccine damage cohort, this will be a very small number of people. It is not known how many people will take up the disregard.

2.4 For Grenfell, the approach was from the litigation teams representing people who have been affected and therefore know the position. The Department has engaged with the representatives to inform them of these policy changes. On the postmasters' schemes, the Department has been working with the Department for Business and Trade as they are the Department responsible for sponsoring the various payments. This will continue and there will be further discussions about next

steps, including communicating the impacts on benefits for those receiving payments.

2.5 The Committee raised the following main questions in discussion:

- (a) Will there be any data connection for those on benefits or will the Department be reliant on individuals contacting the Department? In which case they would need to have awareness of capital disregards.**

The Department will be reliant on the claimant to make contact but will look to make sure that communications with people receiving payments explain the need to do this.

For Grenfell a disregard is already in place, and these new payments take that into account. Lawyers representing the victims of Grenfell Tower contacted the Department and raised the issue of the further payments, and a decision was taken that the existing legislation would not cover the additional payments so needed to be expanded and future proofed. If other similar payments are established the same level of capital disregard will be applied; that is a straightforward change.

The Post Office scheme was originally established by the former Department for Business, Energy and Industrial Strategy¹ who worked with a number of different groups who have been a victim of a miscarriage of justice. There are a number of different elements to the compensation schemes, for example, loss of earnings or savings and psychological damage. Ultimately, there are many strands that need to be future proofed. These payments will also be excluded from the recovery of benefits.

In relation to Vaccine Damage payments, to date, payments to individuals have been covered by the personal injury disregard provisions. Between 1979 and 2020 in the region of 50 people per year received payments under the scheme. Since the roll-out of the COVID-19 vaccination, those numbers have spiked and include cases where people have lost their lives; however, this represents a small group of people compared to those on benefits. It is anticipated that numbers will reduce again over time. These regulations will allow the Department to ensure that payments made to partners are disregarded by the Department.

Prior to the meeting the Committee had asked about the need to change legislation each time a new capital disregard is required. It was explained that Primary legislation allows the Secretary of State to prescribe what can be disregarded but it would be a significant change in legislation to allow the Secretary of State to decide the capital to be disregarded.

- (b) There is a difference between putting in place a free-for-all for the Secretary of State versus the Secretary of State putting in place a regime whereby he can, through legislation, deem a particular set of circumstances to fall within a capital disregard. There would be adequate scrutiny of that legislation to ensure the mechanics are**

¹ Now the Department for Business and Trade.

appropriately standardised.

Noted.

- (c) The Committee is keen to understand why the Vaccine Damage Scheme seems to be treated slightly differently. Are vaccine damage payments already disregarded?**

Vaccine Damage Payments to those who have been vaccinated take the form of a lump sum payment of £120,000 and are treated as capital but disregarded for 12 months under provisions relating to personal injury. If the payment is then placed in a trust, the disregard is extended indefinitely. The rules in Pension Credit and pension age Housing Benefit are different, as an indefinite disregard applies to personal injury payments, irrespective of whether they are in a trust.

Other payments would not necessarily be treated in the same way and could include an income element.

- (d) In the future infectious diseases, and related vaccine damage, may increase, why not allow the income element? Why not be more flexible?**

The Vaccine Damage Payment Scheme has always consisted of a lump sum payment. This remains the case following COVID-19 and the regulations reflect that.²

- (e) What would be the correct set of precedents? The world has shifted, it seems plausible that ministers might reconsider whether the current approach is the best one. The question is, would there be a negative impact in embedding the income aspect now, thereby ensuring that the regulations are set for change?**

This scheme is for partners. The discussion was about the current mechanism for people who are not covered by personal injury payments.³

- (f) The capital disregard is expressed in a generic way which seems to include vaccine damage for individuals affected, not just partners. The interpretation is consistent throughout. Is the intention that the disregard should just be for partners?**

At present individuals affected would be covered by the personal injury disregard provisions. In extending the disregard to partners the Department has taken the approach of specifying in the regulations that payments to vaccinated individuals and payments deriving from the Vaccine Damage Scheme, which are made from the estate of a vaccinated individual to their partners, will have an immediate disregard. There will no longer be a need to place the payment in a trust for it to be disregarded beyond 12 months.

- (g) So more than just partners are being affected?**

² A further response has been received from the Department and can be found at Annex B.

³ A further response has been received from the Department and can be found at Annex B.

Yes, the regulations cover the vaccinated individual affected as well as their partner.

- (h) The scheme is for partners but there is also a secondary change as the timing for the primary beneficiary has changed.**

The intention behind the amendment is to provide a new disregard for the partner as well as the vaccinated individual. Existing regulations provide a 12-month disregard (indefinite if placed into a trust) for the vaccinated individual only, under personal injury-related provisions. The rules in Pension Credit and pension age Housing Benefit are different, as an indefinite disregard applies to personal injury payments, irrespective of whether they are in a trust.

- (i) This has not been communicated to the Committee; the good intention is obscure. If someone received a payment under the personal injury scheme, there would be a 12-month disregard?**

There is a grace period of 12 months. If a claimant then put that money into a trust, the disregard would be indefinite, and would cover any income derived from that sum of money. The rules in Pension Credit and pension age Housing Benefit are different, as an indefinite disregard applies to personal injury payments, irrespective of whether they are in a trust.

- (j) There is no requirement to use a specific type of financial vehicle?**

No, as long as that sum of money is separated. There is no difference in policy intent, the only difference now is that it is disregarded from day one. If the Department had taken a different course of action, the clock would start ticking at 12 months for the person affected by the vaccine but not for partners.

- (k) If the money is put in trust, the income from that is disregarded. Is that the same for vaccine damage too?**

Yes, it is the same for all of the schemes. The Department does not treat the income from disregarded capital as income.

- (l) Capital accumulation is not the same as income from capital. It is the growth of that capital.**

The Department will need to check that point and come back to the Committee outside of the meeting.

- (m) Vaccine Damage has not been added to recovery regulations. Is that because the parent scheme is already included in those regulations?**

Vaccine damage payments are not classified as compensation payments and so would not fall to be recovered under the compensation recovery arrangements.

- (n) For the Grenfell Tower element of the regulations, it appears that they have been introduced for the first time. Can you confirm that the scheme has just been modified?**

Yes, a previous definition was removed and replaced with a single broader definition to disregard the additional payments to be made.

- (o) **In a scenario where someone died two days after payment was made for vaccine damage, how would that payment be treated? Presumably it becomes part of the estate and is regarded as capital? If the surviving partner or next of kin is in receipt of benefit, what would happen? Is it disregarded for benefit purposes, and is there a time limit in place for such treatment?**

The amendments will ensure that payments deriving from the Vaccine Damage Payment Scheme, which are made from the estate of a vaccinated individual to their partner, are disregarded indefinitely for the purposes of calculating entitlement to means-tested benefits.

- (p) **Where was the decision on policy intent made, is this in legislation by the Department of Health and Social Care (DHSC)? What is the policy intent behind the payments to a partner?**

This is set out in DHSC's vaccine damage legislation, therefore DHSC would be able to provide clarity around the policy intent. The Department will provide further information on this outside of the meeting.

For historic institutional child abuse cases, some payments are being made to partners and are permanently disregarded and so there is precedent. That is potentially true for Grenfell payments too, but the Department will confirm this outside of the meeting.

- (q) **The Committee would like to better understand the logic behind this treatment. Could the Department please provide, as a matter of priority, a more detailed explanation which maps out the conditions for the various schemes and the treatment of payments for each (both for the claimant and, in the event of their death, others who benefit from the payment).**

The Department will engage with DHSC colleagues to provide a more detailed explanation outside of the meeting.

2.6 Summing up, the Chair thanked officials for attending and for engaging with the Committee's questions in a constructive and productive manner. Following a period of private discussion, the Committee decided that it would not take the regulations on formal reference and that they may proceed accordingly.⁴ However,

⁴ 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.

the Committee would like the further information requested during the session to be provided at the earliest opportunity.

Date of next meeting

The next meeting was scheduled to take place on 14 June.

Attendees

Guests and Officials

Item 2: Graeme Connor (*Deputy Director, Universal Credit Policy*)
Dave Higlett (*G6, Universal Credit Policy*)
Sam Mitchell (*SEO, Universal Credit Policy*)
Oliver Tanner (*HEO, Universal Credit Policy*)
Jack Davison (*G6, Analyst*).

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

The Social Security (Income and Capital Disregards) Amendment Regulations 2023

Further information provided to the Social Security Advisory Committee by the Department after the meeting

- (a) In the future infectious diseases, and related vaccine damage, may increase, why not allow the income element? Why not be more flexible?**

The Vaccine Damage Payment Scheme (VDPS) has always consisted of a lump sum payment. This remains the case following COVID-19 and the regulations reflect that. It should be noted, however, that regulation 76(2) of the Universal Credit Regulations 2013⁵ provides that special compensation and support payments (the category under which the VDPS disregard will fall) are disregarded when made in the form of income, as well as capital.

- (b) What would be the correct set of precedents? The world has shifted, it seems plausible that ministers might reconsider whether the current approach is the best one. The question is, would there be a negative impact in embedding the income aspect now, thereby ensuring that the regulations are set for change?**

As above, the Department does consider that by making the new provision a 'special compensation or support payment'⁶ the legislation would provide for an income disregard were payments to be made other than as a lump sum.

⁵ The Universal Credit Regulations 2013 (legislation.gov.uk)

⁶ Note Vaccine Damage Payment Scheme payments are support payments, not compensation payments.