

Welfare Reform Mitigations Working Group Report: Next Steps

Recommendations for Implementation



Law Centre (NI)

At a glance

Significant work has taken place over recent years to secure mitigations for Northern Ireland to alleviate some of the difficulties with welfare reform. The Fresh Start Agreement allocates £585 million for mitigating welfare reform and tax credits. **This is very welcome.**

The Welfare Reform Mitigations Working Group Report (the “Evason report”) proposes mitigations that will make a significant difference to the lives of those in receipt of social security benefits in Northern Ireland. Specifically, the proposed mitigations will act as a buffer against some of the harsher effects of welfare reform.

As the Committee scrutinises the regulations implementing the mitigation measures, this paper sets out a number of recommendations for the Committee to consider: some are targeted specifically at the operation of the migration measures whereas others relate more broadly to the implementation of welfare reform in Northern Ireland.

Given that the proposed mitigation measures come in £80 million under budget, we have also suggested additional areas of spend that the Committee may wish to consider which could further soften the impact of changes to the social security system.

Law Centre (NI)

- promotes social justice and provides specialist legal services to advice organisations and disadvantaged individuals
- in five areas of law: community care, employment, trafficking, mental health and social security
- through advice, casework, training, information and policy services including convening the voluntary and community sector NI Welfare Reform Group
- member of the NI Advice Services Consortium

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EXECUTIVE SUMMARY

This paper provides Law Centre's thoughts on each of the mitigations proposed in the three strands of the Evason report. Specifically, we make recommendations that we hope would make each mitigation more effective.

Law Centre's key recommendations are that the Committee considers:

- Whether the regulations implementing supplementary discretionary payments incorporate support equivalent to other passported benefits and premiums which will be lost
- Whether the regulations implementing supplementary payments make provision for these to be paid at the rate of 100% of the original benefit
- Whether the regulations implementing supplementary PIP payments make provision to exempt the claimant from the Benefit Cap
- Whether the regulations implementing mandatory reconsideration make provision for ESA payments during the Mandatory Reconsideration process.
- Whether the regulations implementing Universal Credit ensure that EEA migrants in NI are not automatically subject to the full conditionality regime
- Whether the regulations implementing the discretionary support scheme make provision for the Scheme to be accessible to all the groups of claimants outlined in this paper
- Whether the regulations implementing sanctions under Universal Credit make provision for approval / scrutiny by an independent body

Monitoring and Scrutiny:

- We recommend that an Ad Hoc Welfare Reform Committee is established drawn from the membership of a range of committees who scrutinise other departments whose activities are likely to be affected by welfare reform.
- That an inquiry into the extent and impact of low wages and labour market insecurity is established under the joint direction of the Committee for Communities and Enterprise, Trade & Investment.

Suggested additional areas of spend:

- Funding for medical evidence is available for all benefits.
- Consider investing in childcare infrastructure though delivering the childcare strategy.
- Restore support equivalent to the Sure Start Maternity Grant
- Consider ways of supporting young people given that ESA in Youth has been abolished.

This paper now looks at each strand of the Mitigations Report.

STRAND ONE

Carers

1. Law Centre (NI) welcomes the focus on carers and the proposal to give carers a supplementary payment for up to one year to cover the financial loss if the person they care for does not qualify for Personal Independent Payment (PIP). This should cover the loss of carers premium as well as carers allowance. We also welcome the commitment to protect carers from the benefit cap.

ESA

2. The mitigations for Employment Support Allowance (ESA) claimants are welcome: the three months' notice of entitlement to contributory ESA ceasing; an automatic check to determine entitlement to income-related ESA when contributory ESA ceases; and a supplementary payment for twelve months providing there is continuing medical evidence relating to fitness to work.
3. Evidence from Great Britain (GB) shows that the process of Mandatory Reconsideration can be extremely difficult for claimants. Since October 2013, claimants cannot be paid ESA during the Mandatory Reconsideration process if they have failed a work capability assessment. No time limit has been set for how long this takes. Claimants can only be paid ESA if, after an unsuccessful Mandatory Reconsideration, they go on to lodge an appeal. This leads to a gap with no ESA payments. Evidence points to a high rate of error in initial decision making.¹ A claimant cannot avoid the gap in ESA payments, but may be able to claim Jobseekers Allowance instead, which requires signing a jobseekers agreement. Claimants who are seeking to assert their eligibility to ESA are therefore subject to the JSA regime and work-seeking requirements. This is administratively cumbersome as a claimant may be required to move from ESA to JSA and then back to ESA.
4. Our casework experience tells us that access to medical evidence can be determinative. In 2014, Minister Storey committed the Executive to providing additional funding for medical reports as part of the PIP decision-making process.² This is welcome but this commitment should not be limited to PIP claimants alone.

¹ 54% of initial Fit for Work decisions were overturned at appeal. DWP (Dec 2015) *ESA: outcomes of Work Capability Assessment*, para. 1.1.4

² Minister Storey's letter to Church Leaders of 20 October 2014 about the mitigation package

Recommendations:

- ESA claimants should:
 - Remain on ESA during the period of Mandatory Reconsideration.
 - Alternatively, not be subject to any sanctions whilst in receipt of JSA during the Mandatory Reconsideration process.
 - (If sanctions *are* applied), these should be compensated in full through the discretionary support scheme.
- Funding is provided for access to medical evidence to progress a claim. This is not currently reflected in the costing (appendix 8). Medical evidence should be available for all types of benefit claims

People with disabilities

5. Provision of a supplementary payment to DLA claimants who have been refused PIP on reassessment and who lodge appeals to challenge the outcome of their assessment for PIP is welcome. Also welcome is the proposal to provide supplementary payments to those who qualify for PIP but at a reduced rate where the weekly loss exceeds £10 as a means to protect moderately and severely disabled persons. However, we note that the second mitigation payment is only equal to 75% of the loss in benefit and we query the justification for this.
6. It is unclear as to whether a person receiving a supplementary payment is eligible for the same passporting arrangements and any premiums that apply to the original benefit.³ It is also important that a person appealing a PIP refusal retains entitlement to such passporting and premiums.
7. With regards to the Motability scheme, we agree that the transitional package of support developed for GB should be extended to Northern Ireland. This provides persons who are deemed no longer eligible for their Motability car to receive up to £2,000 for returning it.⁴

³ There are many additional benefits obtained through premiums. The current DLA premiums include: Disability Premiums: Blue Badge scheme for parking, shop mobility, access to community transport, access to NI Sustainable Energy Programme, grants for heating, Disabled Students Allowances; Enhanced Disability Premium: car lease through Mobility Scheme, road tax, insurance cover and specified maintenance, VAT exemption for adapted vehicle; Severe Disability Premium: access to Affordable Warmth Scheme, Half Fare Smart pass, Winter Fuel Allowance and Cold Weather payments, etc.

⁴ We anticipate that many claimants who had received DLA High Rate Mobility will lose their entitlement to a Mobility car when assessed for PIP. This is because there has been a significant change in the descriptor for walking: from 50m (DLA) to 20m (PIP).

8. There is no benefit advance scheme attached to PIP as there is to other benefits. The processing times for PIP have decreased in Britain, but the median is still 11 weeks and the appeal process can considerably lengthen the waiting period.⁵ Delays in access to PIP has a knock-on effect to passported benefits such as Carer's Allowance.
9. We understand that the proposal that awards points for a conflict-related injury is a result of political negotiations. How this is defined will be a factor in determining whether those e.g. refugees who have experienced conflict in other regions of the world are covered by this mitigation.
10. We recognise that not all conditions / disabilities are readily identified through the usual benefit process. In particular, we have concerns that the assessment process may not adequately recognise the experiences of people affected by mental illness.⁶ We would suggest that the underlying problem here is the narrowness of the PIP activities and descriptors.

Recommendations:

- Both groups of claimants receiving supplementary PIP payments should receive 100% compensation for their loss.
- Receipt of a supplementary PIP payment should incorporate support equivalent to passported benefits and premiums including Mobility which will be lost.
- The PIP mitigations should apply to those on DLA who are reassessed for PIP but lose it on some other ground such as residency.
- PIP claimants should have access to the discretionary support scheme, if necessary, while their claims are being processed.
- The Executive should continue to press for a revision of the PIP activities and descriptors so as to ensure that mental ill health is effectively identified.

Additions to benefits for those with disability

11. Law Centre welcomes the proposal to make supplementary payments for up to one year for those who lose premiums when moving from DLA to PIP.

⁵ Work & Pensions Committee *Benefit Delivery: Fourth Report of Session (2015-2016 HC 372)* p 23

⁶ For example, see oral evidence and discussion at the Work & Pensions Committee that included input from Professor Harrington and Dr Litchfield. Work & Pensions Committee *ESA & WCA (HC 1212)* 14 May 2014, vol 4

Recommendation:

- This time period should be extended to cover the duration of the appeal process where an appeal is lodged.

Benefit cap

12. Exempting claimants in receipt of DLA or PIP as well as families with children from the benefit cap is very welcome.

Recommendation:

- Claimants in receipt of a PIP supplementary benefit should also be exempt from the benefit cap whilst they remain in receipt of this payment

Discretionary Support Scheme

13. The Discretionary Support Scheme will replace the community care grants and crisis loans previously available under the fund. Minister Storey said that this scheme would be accessible to low income and vulnerable individuals and/or households.⁷

Recommendations:

- The following groups should have access to the scheme:
 - claimants – including PIP claimants – who are waiting for a decision on their claim;
 - those who have been sanctioned;
 - those who have experienced a drop/termination of tax credits;
 - returning residents;
 - and others who can demonstrate hardship.
- There should be a public consultation on the discretionary support scheme.
- There should be no restriction on the number of awards available to an individual during any one time period where the cause of the hardship is an ongoing delay in processing the benefit application.

⁷ NIA Welfare Reform Deb 11 Feb 2015

STRAND TWO

Advice

14. Law Centre welcomes the commitment to provide funding to the advice sector in recognition of the increased demand for assistance. In total this is costed at £8million over four years. Quality advice early on the benefit process can help ensure claimants are awarded the benefit they are entitled to, and by doing so, may remove the need for any appeal. Thus, advice can be cost effective. However, there will always be cases that require the scrutiny of an independent appeals service: this is essential in terms of justice for the individual claimant but also in terms of setting legal precedents. In general, an increase in the number of appeals can be expected. While there was a significant drop in ESA appeals with the introduction of Mandatory Consideration in 2013, the numbers are on the rise again.⁸ A report by Scottish Council for Voluntary Organisations reported an increase in appeals, with one independent advice centre experiencing a 200-300% increase of representation over the previous 2 years, attributable primarily to ESA and PIP appeals.⁹

Recommendations

- Clarification is required as to how advice will be funded as this is not currently reflected in the costings (Appendix 8).
- The commitment to advice should extend to supporting representation at appeals (tribunal, commissioner and beyond).

Sanctions

15. We welcome that there will be an independent helpline for those who are sanctioned. However, of itself, a helpline may not be enough to mitigate the hardship caused by sanctions especially as many people with long-term health conditions and disabilities and single parents with caring responsibilities for young children face sanctions (Evason report p 12).¹⁰

Recommendations

- Claimants facing a sanction should be given one month notice of the sanction so as to give them time to access the helpline.

⁸ Ministry of Justice, (Sep 2015) *Tribunals and Gender Recognition Certificate Statistics Quarterly April to June 2015*

⁹ SCVO (2013) *Welfare reform mapping report*, p 11

¹⁰ HC814, 2015, p.7

- Decision makers should be required to notify claimants of the process of applying for a hardship fund.
- The timeframe for a claimant to respond to a notice of sanction should be extended from five days to ten days.
- Sanctions should not apply unless approved by/reviewed by an independent body.
- The discretionary support scheme should be accessible to those who have been sanctioned.

STRAND THREE

Universal credit

16. The concessions secured to date on Universal Credit (UC) are good ones i.e. fortnightly payments, split payments and direct payments to landlords.
17. Evidence from GB shows that the minimum five week period prior to first payment of UC is causing difficulties. There is a mechanism in place to enable UC claimants to apply for an advance payment known as Payments on Account. Claimants need to be actively informed about the scheme; it should not be assumed that they will volunteer information about any financial hardship they are experiencing.

Recommendations:

- Information about the Payments on Account scheme should be provided to all UC claimants by amending the mandatory text in Jobcentre scripts.¹¹
- Claimants waiting for their first UC payment should have access to the emergency payments scheme and/or discretionary support scheme.¹²

Tax credits

18. From April 2015, HMRC changed its policy on recovering in year overpayments in tax credits. The Agency now reduces payments or stops them altogether to avoid an overpayment building up in situations where there has been an in-year change in circumstances. Because Working Tax Credits and Child Tax Credits are dealt with together, this can mean a substantial reduction (or complete termination) in tax

¹¹ This echoes a recent recommendation made by the Committee on Work and Pensions calling for all claimants to be informed of the Short-term Benefit Advance process. Work & Pensions Committee *Benefit Delivery: Fourth Report of Session (2015-2016 HC 372)* para 77

¹² This scheme is described to in the Evason report at page 15. The report recommends that £2million is set aside from 2017 when the roll out of universal credit is due to commence to make emergency payments where hardship occurs as a result of difficulties which are not due to any fault on the part of the claimant.

credits, despite the fact that the claimant still has children to care for. The effect of this policy can be severe and children are particularly affected.

Recommendation

- Such claimants should have access to the discretionary support scheme.

Cost of Working Allowance

19. The report suggests introducing a new payment known as a cost of working allowance as a means to help address the hardship of those in working poverty. This is a good and practical proposal as it recognises that employment incurs expenses. The cost of childcare is specifically mentioned (p 14). When it comes to encouraging parents (and lone parents in particular) into the workplace, childcare is the elephant in the room. Decisive action is needed.

Recommendation

- OFMDFM should expedite its work on delivering its childcare strategy.¹³ If additional money is required to develop the childcare infrastructure, the mitigations underspend should be considered.

Additional comments

20. This report makes reference to the volume of poverty caused by low paid, insecure employment (p 4).

Recommendation

- There is need for a cross departmental inquiry into low paid employment, which will develop robust measures to tackle this problem.

EEA nationals

21. Some groups will fall outside the mitigations net entirely including EEA nationals who fail the Genuine Prospects of Work (GPOW) test. Our casework experience indicates that benefit payments cease abruptly,¹⁴ often without full consideration as to whether the person has a right to reside on another basis such as Permanent Residence or as the family member of a qualified person. Access to independent

¹³ The OFMDFM consultation on its draft childcare strategy closed in November 2015.

¹⁴ These benefits include Jobseekers Allowance, Housing Benefit, Child Tax Credit and Child Benefit.

advice at this point can be crucial as it can help claimants to demonstrate their continued entitlement where applicable.

22. During discussion of the Welfare Reform Bill, the Law Centre and others raised concerns about the provision that would place all EEA migrants in the all work-related activity group regardless of whether the claimant was actually available for work.¹⁵ We argued that this was discriminatory. The provision mirrored a similar measure in the GB legislation. Since then the GB provision has been revoked, meaning that any EEA national who is entitled to Universal Credit is now allocated to the appropriate work-related activity group on the same basis as all other Universal Credit claimants.¹⁶ This is a welcome change and should also apply to EEA nationals living in Northern Ireland.

Recommendations:

- EEA nationals should be given one month's notice about the application of the GPOW test and should be signposted to independent advice;
- DSD should clarify its position in respect of EEA nationals and Universal Credit and Paragraph 1 Schedule 7 of the Northern Ireland Welfare Reform Order should be removed.

Returning residents

23. The introduction of the three month residency requirement for income based JSA on 1st January 2014 has caused much hardship for returning residents.

Recommendation:

- Such residents should have access to the discretionary support scheme during this three month period.

Sure Start Maternity Grant

24. Throughout the discussions on welfare reform in Northern Ireland, the need to protect vulnerable children has been a dominant theme. There is an opportunity here to use some of the additional money to support those who are impacted by the

¹⁵ E.g. NI Welfare Reform Group (2012) *Response to the Ad Hoc Committee Call for Evidence on Welfare Reform Bill and Compliance with Equality Requirements*

¹⁶ Regulation of 92 of the Universal Credit Regulations 2013 was revoked by reg.3 of S.I. 2015/16 as from 10 June 2015. The geographical scope of the Statutory Instrument is GB only (see the accompanying Explanatory Memorandum para 5).

withdrawal of the Sure Start Maternity Grant,¹⁷ to enable second and subsequent children to benefit from the grant.

Recommendation:

- Restore access to the Sure Start Maternity Grant

ESA in Youth

This has now been abolished for new claims since February 2016. In its review of the Welfare Reform Bill, the Committee acknowledged that this was a relatively low cost scheme yet very beneficial to the young people.¹⁸

Recommendation:

The Committee should review the impact of this loss and consider options for providing support to this group of claimants.

Monitoring and evaluation

25. We would welcome a commitment from the new Committee of the Communities once it is appointed, that it will establish an Ad Hoc or Joint Committee to monitor the implementation of welfare reform including the effectiveness of the various mitigations scheme. In Scotland, the Scottish Welfare Reform Committee Was established in January 2012 to monitor the implementation of the GB Welfare Reform Act 2012 and to consider any relevant Scottish legislation and other consequential arrangements. The Committee has initiated a number of consultations and reports, including the first ever report assessing the cumulative impact of the various welfare reform measures in Scotland.¹⁹

26. There are two potential options. There is precedent within the Assembly for the creation of both ad hoc and joint committees e.g. the Ad Hoc Committee on Welfare Reform and the Joint Committee on the Mental Capacity Bill. The anticipated role of the committee would be to examine the effect of welfare reform as it impacts across

¹⁷ The Sure Start Maternity Grant was restricted in April 2011. See HC Briefing note *Restriction of the Sure Start Maternity Grant* (SN/SP/5860) 10 Feb 2011

¹⁸ The Committee estimated that this would cost approximately £390,000 per year, which equates to £1.56million over 4 years. Committee for Social Development *Report on the Welfare Reform Bill* NIA Bill 13/11-15 2013. We note that the material consulted in the Evason report did not include the Committee's recommendations following its scrutiny of the legislation.

¹⁹ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/87136.aspx>

the work of a range of departments so as to capture important learning that may inform future Executive approaches. The committee could also identify any underspends with the mitigation money and where there may in the future be opportunity to allocate resources in line with emerging need.

Recommendation:

- We recommend that the new Committee responsible for scrutinising the work of the new Department of Communities establish an Ad Hoc Welfare Reform Committee drawn from the membership of a range of committees who scrutinise other departments whose activities are likely to be affected by welfare reform.

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