

**Minutes
27 July 2016**

Social Security Advisory Committee

**Minutes of the meeting held in room 5.21/5.22
Caxton House, Tothill Street, London, SW1H 9NA**

Members: Paul Gray (Chair)
John Andrews
Rachael Badger
Adele Baumgardt
John Ditch
Colin Godbold
Chris Goulden
Jim McCormick
Gráinne McKeever
Matthew Oakley
Judith Paterson

Apologies: Seyi Obakin

Guests and Officials: See Annex A

1. Private Session

[Reserved item]

2. The Employment and Support Allowance (Claimant Commitment) Regulations 2016

2.1 The Chair welcomed Emma Puccioni (HEO) and Harsha Parmar (G7) from the ESA Early Intervention team, and Karen Elsmore (SEO) from Labour Market Strategy. He also thanked them for the supporting written material they had provided ahead of the meeting.

2.2 The Chair noted that the information before the Committee was being shared in confidence for the time being as the changes had yet to be formally announced by the Department. By way of clarification, officials noted that the Government would be publishing a Green Paper on the direction of future provision for working age people incapable of work through illness or disability. The Department's current view was that the introduction of the claimant commitment in Employment Support Allowance could be included in that document and an announcement could therefore

be made then. However, following the recent change in the DWP Ministerial team, there was uncertainty as to whether some of the decisions would be revisited. The Department wanted to bring the amending regulations into force for 1 November 2016.¹ Although the aim was to align the publication of the Green Paper with an announcement on the proposals, DWP had a strategy for publicising the regulatory changes earlier in the event of any delay to its publication. It was stressed that although various stakeholders and think-tank representatives had been consulted in connection with developing the 'Health and Work Conversation' and there was therefore a widespread awareness of it and its purpose in general, stakeholders had not been made aware of roll-out plans and the connection between the Health and Work Conversation and the claimant commitment.

2.3 The Government had taken powers in the Welfare Reform Act 2012 to introduce the claimant commitment as a condition of entitlement to ESA. The power in question was contained in section 54 which, in turn, was designed to make the necessary changes to the Welfare Reform Act 2007 which had originally made provision for ESA. However section 54 had never been commenced. The Government had decided that the time was right for triggering this dormant power and therefore brought forward a separate Commencement Order to commence section 54 from 1 November 2016. This would allow the regulatory changes to be made from the same date. The effect of that was that any regulations made under section 54 within six months of 1 November 2016 would be exempt from formal reference to the Committee.² As a result, the Committee was presented with a draft set of regulatory proposals in which its substantive provisions were exempt from formal reference, whilst other minor and more technical amendments³ contained within the same package were not exempt.

2.4 The claimant commitment was a major component of the process whereby a person would make a claim for Universal Credit (UC). The draft proposals being presented sought to take this a step forward by extending the same obligation to ESA claimants. As before, the rationale put forward by DWP was that it was in preparation for the full roll-out of UC.

2.5 The proposal was that the initial claimant commitment made at the stage at which the claim for ESA was made would be little more than a requirement to affirm that the information given on the claim form (or in such other form as the relevant legislation allowed the Secretary of State to accept) was true and complete and that claimant would notify the Department of any relevant changes of circumstances straight away. To that extent the undertaking would be no different from the declaration all claimants have made historically when signing a claim form or

¹ The Department has subsequently advised us that the coming into force date has been deferred and remains under review.

² section 173(5) of the Social Security Administration Act 1992

³ proposed for the Employment and Support Allowance (Work-Related Activity) Regulations 2011

agreeing the customer declaration when making a claim by telephone. The difference would come after four weeks in receipt of ESA when a Health and Work Conversation would be arranged with the claimant by the work coach. Failure to attend without good cause would attract a benefit sanction. Following that step in the process, the claimant would be required to accept a revised claimant commitment which would be personally tailored to address the claimant's individual condition and circumstances. It would also look to specify certain voluntary actions that the claimant could undertake in preparation for moving into work.

2.6 The Department advised that the Health and Work Conversation had been devised following open consultation with a number of key external stakeholders including charities, think-tanks, academics and practitioners. The intention was that any activity specified in a revised claimant commitment following the Health and Work Conversation would be voluntary up to the point at which the work capability assessment (WCA) took place. For claimants placed in the Work-Related Activity Group following their WCA the claimant commitment would then be updated during the customary work-focused interviews with actions which could then be mandatory for claimants. A failure to engage in a Health and Work Conversation itself without good cause could potentially be subject to a sanction.

2.7 The main questions and comments raised by Committee members in discussion were as follows:

- (a) **In the draft legislation an exemption from having to accept a claimant commitment in ESA would only exist if there were “exceptional circumstances in which it would be unreasonable to expect the person to accept a claimant commitment.” This approach might be mirroring the general approach in UC where less material was prescribed in regulations and more was assigned to guidance, but it did not align with the list of circumstances where a person was subject to no work-related activity in regulation 89 of the Universal Credit Regulations 2013,⁴ nor with the list of exemptions from the requirement to participate in a work-focused interview in regulation 47 of the Employment and Support Allowance Regulations 2013 (SI 2013 No 379). Would the exemptions set out in regulation 89 of the UC Regulations 2013 and regulation 47 of the ESA Regulations 2013 be set out in guidance for the purposes of the claimant commitment in ESA?**

The Department would check the legislation in relation to the different approaches to exemptions and any differences in the lists of exemptions and come back to the Committee in due course.

⁴ SI 2013 No 376

- (b) **Although the Department's reasons for engaging early with new claimants was acknowledged, was there not a danger that four weeks was insufficient time in which to find out the claimant's precise medical condition and whether an exemption should apply, thereby increasing the risk that the claimant commitment the individual would be required to accept would not be based upon a proper understanding of their medical condition? Would it not be better to wait until the evidence-gathering was complete and the work-flow sufficiently in control to enable the Health and Work Conversation to take place when all the relevant information was to hand? The Department could miss the fact that the claimant had a terminal illness, for instance.**

After four weeks the required medical evidence would normally be to hand, including any information on whether the claimant had a terminal illness. The Health and Work Conversation would not take place until the benefit was in payment (and therefore, medical evidence would have been collected by then). Some claimants would be nervous about the prospect of what might be expected of them during the course of their award and engaging in a Health and Work Conversation early would provide appropriate support and reassurance for them. The consensus of the consultation the Department undertook was that four weeks was about the optimal time for a conversation of this nature – it was as soon as reasonably practicable and the individual would be in receipt of on-going benefit, so that any anxieties about securing some financial help should have been resolved, but would also provide appropriate early support at a time known to be of great uncertainty for many claimants.

- (c) **The explanatory memorandum referred to the Department's intention to operate safeguards for disabled claimants with particular needs and ensuring that their potential vulnerabilities were taken into account. Given that the provisions on the claimant commitment would extend to many claimants who would subsequently be assigned to the support group and be exempt from any work-related requirements, how could the Department guarantee that those in this group would be picked up in the first place and exempted from the Health and Work Conversation?**

Certain claimants would be exempted from the Health and Work Conversation. The full list would be set out in guidance but would include, for example, claimants with a terminal illness. Such claimants would be screened out of the invitation process for a Health and Work Conversation using data on their illness/disability. This approach had been used in the process test and had been successful.

- (d) Could you share the results of the trials the Department conducted? The Committee would be interested to see any information that could be provided on the consultation exercise undertaken. Were any changes made to the policy in the light of the findings and, if so, what were they?**

The analysis was on-going. The Department would share its conclusions when that work had been completed. Although DWP had a good understanding of what had emerged after six weeks of trialling, it was likely that minor changes in the operation of the policy would result.

- (e) Which academics had the Department consulted?**

The Department would share its notes from the consultation exercise, which had included a range of stakeholders.⁵ Feedback from the exercise included the following points: the importance of the work coach having as much information on the claimant in advance as possible; the value of using a flexible approach which was less structured than a standard work focused interview to avoid claimants feeling ‘processed’; the importance of understanding health and wider barriers; and the Health and Work Conversation being ‘claimant-led’ rather than ‘process-led’. These points had been fed into the design of the Health and Work Conversation as well as the process. The About Me form, for example, which a claimant would complete when arriving at their appointment gathered a holistic picture of the claimant, for example their strengths and beliefs. This was in recognition of the fact that there might be other barriers to moving into work apart from a claimant’s health condition.

- (f) Would the Health and Work Conversation feature in Universal Credit?**

That had yet to be decided. The Department was conducting a proof of concept test, looking at the Health and Work Conversation in UC full service with a view to a full roll-out, but the findings of that test would inform a decision as to whether it should be extended to other Jobcentres.

- (g) Paragraph 20 of the explanatory memorandum estimated that 90 per cent of new ESA claimants would be required to attend a mandatory Health and Work Conversation. In the light of the numbers involved (around 240,000 claimants in total, and including around 15,000 new claims each month from people with mental and behavioural problems) and the short time-scale in which that would occur (four to five months), how would the Department be able to adopt a ‘test and learn’ approach?**

⁵ The Department subsequently undertook to come back on the specific question about academics.

The pace of the roll out had not yet been agreed by the Department. Initial impacting work has suggested that roll-out may be on a smaller scale than initially envisaged and take place at a slower pace. Further impacting work was to take place in the forthcoming months, during which a roll-out schedule and time-scale would be agreed. The progressive roll-out of Universal Credit (UC) was also a factor the Department must take into account. The later the Health and Work Conversation and claimant commitment was rolled out, the more claimants would have migrated to UC and would not benefit from the change.

- (h) **The explanatory memorandum referred to a scientific and evidence-based approach which had been adopted in designing the Health and Work Conversation. Given the focus of the press on the WCA and on the operation of the sanctions regime, would it not be to the Department's advantage to make this process more transparent and publicise the scientific nature of the Health and Work Conversation? If the Health and Work Conversation was the robust tool that the documentation advised that it was, it should be able to stand up to public scrutiny?**

The communications approach was yet to be finalised but the intention was to publicise the Health and Work Conversation and its behavioural insight underpinning widely, for example, the intention was to develop a video for claimants to view in advance of the appointment.

- (i) **The idea of a Health and Work Conversation and having it as early as planned was welcome. The evidence suggested that it was the right approach to take. However it did not follow that the findings which emerged from testing undertaken by the Department and involving volunteers could be applied in a context where claimants were required to participate in an activity and sanctioned for failing to do so. When work-focused interviews were trialled with volunteer lone parents it was widely held to be a good idea, but when the policy was implemented and made mandatory, many claimants encountered difficulties and the Department was subject to a lot of negative criticism.**

In the trialling that the Department had conducted, individuals were told that participation in the Health and Work Conversation was mandatory. Given that an exercise with voluntary attendance had already been carried out, the intention was to explore the behavioural response to mandated attendance. Jobcentre Staff attempted to contact those who had failed to attend, asking for reasons and giving an opportunity to demonstrate good cause. However a sanction was not ultimately issued. The policy team did not investigate 'Fail to Attends' nor contact claimants directly, due to legal constraints. Given the expectation of very low fail-to-attend rates and the small size of the process

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test, the imposition of a financial sanction was not expected to be carried through unless there was a high fail-to-attend rate, particularly as the exercise might have ended before claimants could take corrective action by attending a Health and Work Conversation. As a result failures to participate did not result in a sanction.

- (j) **Were those who failed to participate, having understood that a sanction would be applied, subsequently followed up in order to get an indication of their circumstances and reasons for not engaging?**

Given the small scale of the test, the policy team did not contact claimants directly to investigate their circumstances and reasons for not attending.

- (k) **The experience of the sanctions review was that with a number of people seeking to claim ESA the Department was dealing with those least able to navigate the system. For those with mental health difficulties in particular, a letter telling a claimant what to do and warning them of a sanction should they fail to participate without a good reason often stood little chance of being opened. There were therefore structural deficiencies in the system itself and the sanctions regime could not be relied upon to screen out people who people for whom a sanction would be both pointless and detrimental.**

The Health and Work Conversation would have a number of safeguards in place to avoid vulnerable claimants from being sanctioned if inappropriate. A comprehensive list of exemptions would be set out of in guidance to exempt particularly vulnerable individual from having to attend a Health and Work Conversation. When a claimant failed to participate in a Health and Work Conversation, the Department would enforce its usual safeguards that have been tried and tested in the current system to avoid claimants being sanctioned inappropriately.

- (l) **Paragraph 25 of the explanatory memorandum referred to the two day training package which was designed to equip work coaches with the necessary skills to tailor the claimant commitment to the needs of the individual. Whilst agreeing that this was the position that needed to be reached, how would work coaches deal with someone who, for example, was bi-polar and unaware of their own condition?**

Work coaches already faced scenarios like that. The Health and Work Conversation would be simply another tool to be included within their existing job framework.

- (m) **The proposition being put forward was that the Department would be bringing a different set of people into the environment of work-related**

activities and that something more bespoke was required as a result. So far the Department had tended to adopt a more generic framework for all.

It was correct that a balance needed to be struck between a generic approach and a more individualised approach which was the emphasis behind the policy. The primary aim was not to move people towards work straight away, but to build a strong foundation that would enable them to journey to or towards work at a later stage, providing early support at a time that was of great uncertainty for most claimants.

- (n) The assumption behind the policy would appear to be that this category of claimant would be some distance away from work, and that the task was to move them towards it. In fact someone newly disabled or suddenly taken ill would probably have been in work recently. The approach being suggested would not be appropriate for them.**

Flexibility was built into the system in a way which enabled work coaches to deal with claimants appropriately. Again, that kind of scenario would be familiar territory for work coaches.

- (o) Paragraph 30 of the explanatory memorandum stated that claimants would be able to challenge the contents of their claimant commitment which would then be reviewed by a second work coach. However it did not say what recourse a claimant would have in the event of disagreeing with a decision made by the second work coach. Given that accepting a claimant commitment was a condition of entitlement, what would an aggrieved claimant be able to do?**

The Department would not expect disputes to arise at the stage of reviewing the initial claimant commitment after the Health and Work Conversation, because at that point any activities included would not be sanctionable. It would only be after the WCA, when the contents of the claimant commitment became mandatory, that disputes were likely to arise. However the Department would look into that question and respond to the Committee outside of the meeting.

2.8 The Chair thanked officials for attending the meeting and addressing the questions raised. After a short period of private deliberation he advised them that the Committee was content for the draft regulations to proceed without the need for formal reference to the Committee. He nonetheless stated that, although the Committee was fully seized of the point that the substantive issue of the claimant commitment's introduction into ESA was exempt from formal reference to the Committee, Members had a number of continuing concerns. The Committee would

therefore write to the Minister for Disabled People, Health and Work setting out those concerns.

3. Private Session

[Reserved item]

4. Current issues/AOB

Date of next meeting

4.1 The next meeting was scheduled to take place on 14 September.

SSAC membership

4.2 The Chair noted that John Andrews, Adele Baumgardt, John Ditch and Matthew Oakley were attending their final meeting as SSAC members. The Chair, on behalf of the entire Committee, thanked each of them for their invaluable contributions to the work of the Committee over the past few years and wished them well in their future endeavours.

4.3 It was also the last meeting for Henry Parkes, who had been the researcher within the secretariat for the past eleven months. The Chair also wanted to place on record the Committee's thanks to Henry for his work, particularly in preparing the Committee's report on Decision-Making in DWP and HMRC.

Attendees

Guests and Officials

Item 2: Emma Puccioni (HEO, ESA Early Intervention team)
Harsha Parmar (G7, ESA Early Intervention team)
Karen Elsmore (SEO Labour Market Strategy)

Observers Jayne Faulkner (HEO, Work and Health Unit) [*Item 2*]

Secretariat: Denise Whitehead (Committee Secretary)
Paul Mackrell (Assistant Secretary)