



OFFICIAL REPORT
AITHISG OIFIGEIL

Social Security Committee

Thursday 7 September 2017

Session 5



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SOCIAL SECURITY COMMITTEE

15th Meeting 2017, Session 5

CONVENER

*Sandra White (Glasgow Kelvin) (SNP)

DEPUTY CONVENER

*Pauline McNeill (Glasgow) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)

*Jeremy Balfour (Lothian) (Con)

*Mark Griffin (Central Scotland) (Lab)

*Alison Johnstone (Lothian) (Green)

*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

*Ruth Maguire (Cunninghame South) (SNP)

*Adam Tomkins (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

John Dickie (Child Poverty Action Group in Scotland)

Norman Gray

Jeremy Hewer (Scottish Federation of Housing Associations)

Brian Hurton

Michael McClements (Convention of Scottish Local Authorities)

Emma Shields (Renfrewshire Council)

Moira Sinclair

CLERK TO THE COMMITTEE

Simon Watkins

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Social Security Committee

Thursday 7 September 2017

[The Convener opened the meeting at 09:30]

Interests

The Convener (Sandra White): Good morning, everyone, and welcome to the 15th meeting in 2017 of the Social Security Committee. I remind everyone to turn off their mobile phones and other devices, please, as they interfere with the recording equipment.

Agenda item 1 is a declaration of interests. I welcome Jeremy Balfour to the committee and put on record our thanks to his predecessor, Gordon Lindhurst, for his work on the committee. I ask Jeremy Balfour to declare any relevant interests.

Jeremy Balfour (Lothian) (Con): Thank you, convener. Good morning. I have two interests to declare. I receive the personal independence payment and, until May last year, I served for 25 years as a member of the disability living allowance tribunal and then the PIP tribunal appeals service.

The Convener: Thank you very much, Mr Balfour.

I also welcome back Mark Griffin and congratulate him on the birth of his baby. I put on record the committee's thanks to Richard Leonard, who deputised for Mark Griffin during his absence.

Decision on Taking Business in Private

09:31

The Convener: Agenda item 2 is a decision on whether to take business in private. Does the committee agree to take agenda items 7 and 8 in private?

Members *indicated agreement.*

Social Security (Scotland) Bill: Stage 1

09:31

The Convener: Agenda item 3 is an evidence session on the Social Security (Scotland) Bill with people who attended the your say workshop in the Parliament the week before last. I attended that workshop and thoroughly enjoyed it, and I thank them for the evidence session.

I welcome Norman Gray, Brian Hurton and Moira Sinclair. Thank you very much for agreeing to appear before the committee to report back from the your say event. I know that you found it a bit daunting, but please do not find this meeting daunting. I am sure that the committee will be interested in everything that you have to say. I invite you to say a little bit about yourselves and your experiences and to report back on the event. We will then move to questions.

Norman Gray: Good morning, ladies and gentlemen. I do not receive social security benefits, but this is the third time that I have appeared before the committee to give evidence. The first time was as my son's representative as we faced up to our fears when he prepared to move from the disability living allowance to PIP, despite the lifetime award of his DLA. The second time was in support of my daughter, who went through the harrowing experience of a PIP assessment following a traumatic head injury. Their experiences further raised my interest in the work of the Social Security Committee and the your say initiative. I am therefore delighted to be here to give my views.

Moira Sinclair: Good morning. I have significant issues with my hips and back. I had the first of many surgeries at the age of 11, and I have been riddled with osteoarthritis. I am currently in receipt of DLA as a lifetime award and I use it to fund a Motability car. That gives me the passport to a blue badge. With both of those in place, I am able to work full time, and I pay more in tax than I receive in DLA. I fully expect the award to be completely removed when I am reassessed for PIP, which will leave me with neither the car nor the badge and with significant difficulties in getting to work.

I became involved with the committee when I responded to a consultation on disability benefits. I, too, am delighted to be here to speak on behalf of those who were at the your say meeting and in general.

Brian Hurton: Good morning. I have attended your say events for the past two years. I have keratoconus, which is a degenerative condition.

My experience of going through the system started when I was put into the work-related activity group because I was classed as fit for work. I appealed the decision and the case took around 12 months to go to tribunal. Under regulation 35, I was put into the support group in less than five minutes, as I would be at risk in a working environment. I decided that I would tell people about my experience and I got involved in the Parliament. I have been going backward and forward ever since.

The Convener: Thank you very much. I ask Norman Gray to read out the report of the your say workshop.

Norman Gray: The submission provides the group's answer to the various questions that we were asked about the Social Security (Scotland) Bill. I will read out each question and then give our group's views.

The first question was:

"What are your views on these principles and this approach?"

As a group, we fully support the idea of including the principles in the bill. They should underpin how the new system runs. We particularly support the objective that states that

"respect for the dignity of individuals is ... at the heart of the Scottish social security system"

and that

"social security is ... a human right".

The next question was:

"Are there other principles you would like to see included?"

There should be an additional commitment to providing information to people and making the application process as clear, understandable and transparent as possible. Meeting people's individual needs should not be an afterthought, and a range of access methods should be available to reach people in the way that works best for them, as the Government has proposed. Meeting people's needs should be put ahead of improvements to the system, and the system should have the flexibility to change according to individual needs. There should be an additional objective that gives individuals the right to advocacy and support. The Scottish Government's commitment not to use private contractors should also be enshrined in the bill.

The next question was:

"Do you agree with the idea of a charter? Is there anything specific you would like to see in this charter?"

We are all positive about the idea of the charter and agree that a yearly report is important for accountability. The charter should state the rights

and responsibilities of both sides, not just of those claiming benefits. Specifically, the charter should contain the following: a commitment to clear explanations of decisions and the reasons behind them, transparency about the assessment system and who the decision makers are, and a commitment to putting in place timescales for processes and meeting them. We are particularly supportive of the Government's commitment to there being a range of different communication channels, and we would like that to be included in the charter. Phone contact should possibly be by local or freephone numbers, not as it is at present.

The next question was:

"Do you have any views on the rules that should apply to all benefits?"

Lifetime awards should be reinstated for those with conditions that will not improve. Reviews of on-going claims should happen only when individual circumstances change, and the criteria that are used in decision making should be made clearer. There can always be a responsibility on whoever receives the benefit to report any improvement. There should be more respect for medical professionals and the value of medical evidence in the benefit assessment process. There should be straightforward, consistent appeals procedures. Information should be saved and shared and should not need to be supplied multiple times to the agency. If an appeal is made, the claimant should remain on the benefit until a decision has been taken on the appeal. That would be preferable to using the new short-term assistance for that purpose. If an agency error leads to overpayment and the benefit claimant supplied the correct information, the payment should not be recoverable. Each individual should have a named person who deals with their case to allow for consistency and improved communication.

The Convener: Thank you. I will open with a general question. I was at the workshop, and the evidence that was given there is exactly what you have said here. One of the striking points concerned lifetime awards for debilitating illnesses that mean that people can appear to be all right one week and not all right another week. The evidence that was given at the your say event was that that was not looked upon favourably.

We also heard about condescending remarks being made. Because people took the time to dress properly and have a shower and so appeared well, it was remarked that they must be well. What are your thoughts on that issue, which was raised at the your say workshop? Moira Sinclair mentioned that people should get a lifetime award. How difficult is it to put that idea to the DWP?

Moira Sinclair: It has become more difficult with the move to PIP. There are an endless number of medical conditions that medical professionals tell us will not improve. I am not going to grow a new skeleton any time soon, as far as I am aware. There are also conditions, such as multiple sclerosis and motor neurone disease, that are not only degenerative but mean that people will have good days and bad days. One day, it might take somebody a couple of hours to get up and they can do a few things but, another day, they might be in absolute agony, so nothing is going to happen.

The point that was discussed at the your say workshop was that, when people go to assessments, they make an effort. The feeling was that it is wrong to penalise people for making an effort. We all want to go out in public in a presentable fashion. We all have our mother standing over us saying, "You're not going out like that! Have you washed behind your ears?" Everyone who goes to the reassessments faces the same issues. Somebody might get up six hours earlier than normal to ensure that they are ready and presentable, but that does not mean that they are coping and that, therefore, their disability is not a problem.

The Convener: Forgive me, but I will interject there. I understand that more questions were asked at the workshop and that Norman Gray has told us about the responses to only some of them. Did the witnesses decide to give the answers to the questions between them? If so, does one of the other witnesses want to pick up where Norman left off? Was that what you had decided to do?

Norman Gray: Yes.

Moira Sinclair: Yes.

The Convener: Sorry about that. Whoever is next can continue.

Moira Sinclair: That will be me.

The next question that we considered was:

"What changes, if any, do you think should be made to the individual benefits in the Bill?"

We started by looking at carers allowance. We think that there should be different arrangements in place to allow those who are claiming carers allowance to combine that better with employment. We also feel that the criteria for carers allowance should be looked at. For example, the fact that it is not available beyond pension age should be looked at, and there should be the option of claiming part of the allowance rather than the current all-or-nothing situation. For many people, the allowance is their only source of income.

We agreed on the importance of an allowance for young carers, although we did not think that it

should necessarily be financial. We feel that carers allowance should be a passport to other assistance such as vouchers towards glasses and that kind of thing. More should be done to ensure that we look after the health of carers. We believe that, given the alternatives, carers allowance represents very good value for money for the state.

On DLA and PIP, as we have mentioned, if a lifetime award is in place, that should transfer without the need for reassessment. A transitional process should be in place for those who lose the benefit. Links with other agencies, such as Motability, need to remain, and there should be a greater allowance for mobility issues. There should be more recognition of the fact that many disabled people work and contribute or have done so previously. Also, claimants should not be penalised for pushing themselves to do as much as they can. For instance, making an effort on physical appearance should not be a negative factor when people are assessed.

We thought that it would be worth considering a different system for winter fuel payments whereby vouchers are issued or fuel bills are met directly to ensure that the money is spent on fuel. Those who do not want the vouchers could donate them to charity or to those who need them more.

We were asked:

“What are your thoughts on the proposal to increase the Carers Allowance?”

We are supportive of the increase, but we agreed that it is only a step in the right direction and does not go far enough. Carers allowance should be a living wage. Adding extra entitlements such as glasses vouchers, along with improved arrangements for respite, would help. We believe that it is about not just the money but support and assistance in other areas as well.

09:45

We were asked:

“What are your views on the proposal of short-term assistance?”

We think that it is a good idea but that it needs to be automatic and to click into place smoothly instead of being a complicated application process. As we mentioned previously, we believe that it may be better to allow people to continue to be on a benefit when they are appealing a decision than to make them switch to a new short-term assistance benefit.

Other ways in which the assistance could be used include during transitional periods such as the loss of PIP or a change in circumstances and when people are forced out of their homes or accommodation—for example, due to flooding.

There should also be clarification in the bill about whether money has to be paid back should the appeal be lost.

We were asked:

“Do you agree that discretionary housing payments should continue largely as they are? Do you have any other views?”

We feel that the current system seems to operate as a postcode lottery and that the scheme should be statutory for all local authorities. There should be better information and awareness about the assistance that is available to people, and the application process should be easier.

Brian Hurton: We were asked:

“Do you have any views on the approach to put most of the rules about new benefits in secondary legislation?”

We thought that there were pros and cons to that approach, but we trust that the Government will do the right thing. One of the strengths of the approach that we discussed is that it will make it easier for criteria to be changed once it is better understood how things are working in practice. We are generally supportive. However, there needs to be more clarity around which external bodies the Government is developing the regulations with. They should not be just the usual suspects and should include those who have first-hand experience of the benefits system.

We were asked:

“Is there anything else you want to tell us about the bill?”

We are in agreement that the whole benefit application process needs to be simplified. The use of language is important—for example, in the reference to assistance rather than benefits, which we very much support. The change in name reinforces the principles that the system is supposed to be based on and reinforces that we are to be treated with dignity and respect throughout.

Ruth Maguire (Cunninghame South) (SNP):

The panel said that, for the carers allowance, there should be an option for claiming part of the allowance. Could you expand on that?

Norman Gray: That refers mainly to young carers. Young carers are not looking for financial reward for caring; they need things such as respite care associations, because they miss out so much on life as they go through the caring system. They want a reward or payment in kind rather than a financial payment. That is very important.

Mark Griffin (Central Scotland) (Lab): Brian Hurton spoke about the group’s views on whether the rules about new benefits should be in primary or secondary legislation. Your submission says:

“We thought that there were pros and cons to this but that we trust that the Government will do the right thing.”

You might trust this Government to do the right thing, but that might not necessarily apply to every Government that comes afterwards. Although you trust this Government, do you feel that some of the good work that is going into the bill should be in primary legislation so that it is safeguarded against a later Government that you might not trust?

Brian Hurton: One of the issues that I brought up was the use of private contractors. One suggestion was that the ban on private contractors should be enshrined so that future Governments can never reverse it and use private contractors when they are in office. We need a guarantee that that ban will never be reversed, as I am concerned about future Governments coming in and taking bits out of the legislation.

Moira Sinclair: Another aspect was that we agree that parts should be in regulation rather than in the bill to make it easier to make changes that will no doubt be required as time goes on. That is partly about the law of unforeseen circumstances. I have no doubt that there will be something that leads us down a path where we want to make a change, and it would be easier to do that if parts were in regulation. That is where we were coming from.

Norman Gray: Another factor is accountability. The Government will have to report to the committee each year on what has happened, so there will be some check on what future Governments are doing. Various checks are built into the bill.

Jeremy Balfour: Thank you very much for coming along. I have a couple of quick questions and I am happy for anyone to answer them. You mentioned transferring from DLA to PIP without any reassessment. Given that the regulations and criteria are different for DLA and for PIP, how would someone be transferred in that way? To give an example from my experience, I went up an award level. If I had been transferred across, I would have been on a lower award than the one that I got under PIP. How do we avoid people not getting the right award? How might that work in practice?

The next question is directed at Moira Sinclair. I am interested in your comment that, if you do not get PIP, you will not get a blue badge. I understand that the test for a blue badge and the test for PIP are different and are assessed differently, so why are you concerned about that? You may or may not lose your DLA or PIP, but why would that affect your blue badge?

Moira Sinclair: Our feeling was that, if people have a lifetime award, it should be transferred from DLA to PIP. We thought that when the criteria were clear—for example, if someone was in the top rates for everything and had gone through

various processes—that would transfer, but we were not of the view that absolutely everything should merge into PIP; we were talking about just the top level.

You are right that there is a different assessment for a blue badge. The issue is having to go through that process. At the moment, I can qualify for a blue badge by ticking a box to say that I receive DLA at the higher mobility rate, rather than having to go through the blue badge assessment as a separate process.

Norman Gray: The point about the DLA to PIP transfer is that the two systems can merge together in moving across, but there is a need for an assessment as people move from DLA to PIP. The PIP criteria are sometimes very negative for certain conditions—especially mental conditions. My son has a developmental problem that will never change—it has been the same from birth. He was under great stress because of the transfer. We had about two weeks of very bad behaviour and about two weeks afterwards of unaccountable behaviour from him simply because he thought that he would lose his award. In such cases, it is important to explain that someone's DLA award will continue into PIP but that they will be reassessed so that we are sure of their level of PIP—that is the main thing.

Jeremy Balfour: As a new member of the committee, I have a supplementary question. On lifetime awards, I fully agree with the comments of all three witnesses. I do not know whether, through the people you have been talking to and meeting, you have evidence to show that people are not getting lifetime awards. My experience as a member of a tribunal was that quite a lot of lifetime awards were given, and I am surprised that people are not getting them. Can you give the committee any evidence to show where people are not getting lifetime awards?

Brian Hurton: I am in receipt of DLA and I am on lifetime awards, but I am still waiting to be put on to PIP, and what will happen is the sort of question that is going through my mind. I get an amount that is based on a low care component and a high mobility component, so if I was going over to PIP without an assessment, I would probably be put into standard care and high mobility. However, what would happen if my care needs changed? I could be given enhanced care. I really do not know about that.

Jeremy Balfour: Thank you.

The Convener: Thank you, Jeremy. Evidence has been given to the committee and the papers are there, but Brian Hurton has answered the question.

Pauline McNeill (Glasgow) (Lab): Thank you for coming to talk to the committee. I have two

quick questions. The first is to Moira Sinclair and is in the same area as Jeremy Balfour asked you about. I want to be clear about why you said that you fully expect your award to be completely removed. Why is that?

Moira Sinclair: I receive DLA at the higher rate for mobility, but I receive nothing for care. With the change of criteria under PIP, mobility components are different. Because I can drag myself 50 yards or whatever, I will lose everything.

Pauline McNeill: What impact will that have on you? You said that you work full time.

Moira Sinclair: Yes—I work full time. The first obvious thing is that the Motability car will go, and then I will have to go through the process of trying to get a blue badge. There are all the transport issues. I can be on a train or a bus, but the issue is standing at the train station or the bus stop and being able to move again afterwards—I can seize up a bit. They are all little things, but I would have to work out how all that would fit together.

Pauline McNeill: In Parliament later today, I will ask the Minister for Social Security a general question about why the ban on using private contractors is not in the bill. Brian Hurton talked about that in his opening remarks and I am interested to know why he is against using such contractors.

Brian Hurton: That is about what disabled people are going through now. We really do not want to go back down that road, to be honest. I would rather have the assessments in public hands, because private contractors are out for profit. I do not want to go into a lot of detail, but a lot of people have had bad experiences of private contracting being used for medical assessments, which should always be in public hands.

Norman Gray: The important thing is that, when the system is out of private hands, we get a consistent approach that is all dealing from the same area and the same source.

My daughter had a bad assessment by one agency. The assessment was inhuman and what she was asked was unfair, especially as she had had a severe head injury. When she appealed the decision and was interviewed by somebody from a different contractor, the assessment was different and was sympathetic. That assessor did not just sit at the computer and ask questions to the computer while the person sat behind them; they interacted with the other person. There is no consistency in how private contractors operate.

Moira Sinclair: We were concerned to make sure that those who are involved in making the decisions base them on medical knowledge and expertise. We felt that that was not always

necessarily the case when the assessment was done through a private contractor.

Alison Johnstone (Lothian) (Green): I thank those on the panel for their evidence and for all the work that they have put in so far. What discussions have you had about the complexity of the current system and how easy it is to get help with applying for benefits? You say that

“there should be an additional objective that gives individuals the right to advocacy and support.”

How easy has it been for people to access support when they need it? How complex do you feel the system is?

10:00

Brian Hurton: I tried to get an advocacy worker but, unfortunately, I was told that to do so I would have to have learning difficulties. Somebody with extreme learning difficulties can get an advocacy worker to help them to fill out the forms, but that should be widespread, and everyone should be given an advocacy worker to help them to navigate the system. That would be supportive.

Norman Gray: When my daughter applied for PIP, she went to the citizens advice bureau because, as a result of her condition, she could not understand the form. The staff took her through the whole system of applying but then, when she was told that she had an interview with an assessor, they said that they were not allowed to go with her and represent her. She was left on her own, having had all that support to get to that stage. I had to go with her as her advocate. Continuing advocacy is important.

Moira Sinclair: We talked about simplification of the process in general, which led us on to short-term assistance. We really wanted to avoid people having to fill in more and more applications for slightly different benefits, because that is an arduous process that can be complex. The simpler we can make it, the better. That is where our comments came from about making the forms clear and transparent and using language that the normal person can understand.

That led us to discuss the fact that, if someone has provided the information once, that should be it. They should not need to think, “What did I write on that form two years ago? If I write something slightly different, will I get picked up because I’ve contradicted myself in some strange way?” We wanted to make the system as straightforward as possible.

Alison Johnstone: You are all painting a picture of a stressful system that takes a lot of getting to grips with. When people are at their most vulnerable or unwell, that is even more difficult.

Is there a role for the Government in automatically assessing people for support without making them fill in an application form? I am thinking about the medical professionals you liaise with constantly and the information that they hold on you. Could that be used to ensure that you are receiving everything that you are entitled to, without the need to be assessed by non-medical professionals?

Moira Sinclair: I guess that, if that could be done, we would not object to it. If my general practitioner or surgeon or whoever could say, "Yes—tick that box," to avoid me filling in a form, I would be all in favour of that.

Brian Hurton: Is Alison Johnstone talking about constant reassessment?

Alison Johnstone: I am asking about the fact that people are being asked to fill in numerous forms.

Brian Hurton: When a consultant or GP writes up someone's medical condition, that should be it. If it is a degenerative condition, it will never improve. Anyone who looks at that information should accept that, so that we do not have to fill out forms all the time.

Constantly being given forms to fill out is really stressful. We have to go through the same rigmarole of explaining our disability; it should be once and that is it. Later, there could be a smaller form to ask whether someone's condition has changed. Obviously, we would say no—it has not changed. Somebody with a degenerative condition, who has had a lifetime award, should not be constantly reassessed.

Norman Gray: One problem with PIP assessments is that not enough cognisance is taken of doctors' reports. In some cases, the assessment is done with no reference whatever to the medical reports. One way of saving people from having to undergo a face-to-face assessment would be having the medical report there on the first application. The assessor could determine from the medical report whether a face-to-face interview was required, which would simplify the process and in some way demystify the situation.

Alison Johnstone: When you were asked whether you wanted to tell us anything else about the bill, you said that the whole

"process needs to be simplified".

You also spoke about the use of language, which I was struck by. You gave the example of

"referring to assistance rather than benefits".

There is a benefit cap. We can imagine that, if the language was changed and that was called an assistance cap, there would be an awareness that, although someone needed assistance, they would

not get it. That is really important. Do you hope that your input on that subject will be picked up on?

Brian Hurton: I am really pleased that the language is starting to change. I do not like the language that the DWP uses. Disabled people—or whoever—are always classed as a "customer". To be a customer, someone has to buy a product, but I view myself as a patient of the state. That is what I am: a patient, not a customer.

The language that the DWP uses is demeaning, so I am really pleased that the Scottish Government is getting to grips with changing the language.

Moira Sinclair: Part of the reason why we liked the move to the use of "assistance" harks back to what I understood DLA's purpose to be originally. It was supposed to level the playing field. It was supposed to account for increased expenditure and difficulties that I might have because of my disability and to get me on a par with everybody else. It is not a benefit, a gain or somebody giving me a gift. It was supposed to be assistance just to get me to the point where I am level with everybody else.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Good morning and thank you for everything that you have contributed so far. It has been illuminating, and it is important for us to hear it all.

I want to ask about the points that you made in response to the question about your views on the rules that should apply to all benefits. You said:

"If an appeal is made, the claimant should remain on the benefit until a decision has been taken on the appeal. This would be preferable to using the new short-term assistance for this purpose."

Will you elaborate on why you think that that is important?

Norman Gray: The main reason is the problem of stress. When a person has their allowance taken off them while they wait for their appeal, the allowance might or might not be reinstated later, but what happens in between? How does the person cope? It means that there is no continuity; there is only upset. It is not humane. We are talking about dignity being one of the basic principles. When someone's allowance is stopped, and they are then told, "Oh, no. Sorry—you were right. We'll continue it", it is heartbreaking for them.

Ben Macpherson: One of the major injustices in the system for universal credit, which is a reserved benefit, is that advance payments of universal credit have to be paid back in the process thereafter. Did that inform your decision making on how the system could be better?

Norman Gray: It was more about stress levels for people whose allowance is stopped. It puts an awful lot more pressure on the appeal and its outcome. If payment of the allowance was continued throughout the process, that would save an awful lot of problems.

Ben Macpherson: You also said:

“If an agency error leads to overpayment and the correct information was supplied by the person claiming benefits then this shouldn't be recoverable.”

That speaks for itself, but do you want to elaborate on it?

Moira Sinclair: I say in response to the previous question, that we want the appeals process to be slightly quicker than it is at the moment, and that people continuing to receive their benefits during that period might encourage it to be quicker. When a benefit, assistance payment or whatever we call it is withdrawn, that will have implications in respect of a person's car, their rent payment and so on. Life can move far down the road before the appeal decision comes through: it is not necessarily possible for someone to go back to where they were on the day on which the wrong decision was taken.

On repayments, we completely understand and accept that anyone who has filled in a form for fraudulent purposes or has deliberately misled the agency should pay back every penny, but if the claimant has filled in the form in good faith, has provided all the correct information and then gets a letter that says, “Here is your award,” they should be able to accept in good faith that that is the correct award, and to proceed on that basis. It seems to be very unfair that the agency can try to reclaim the money when it is discovered that a mistake was made on the agency side, through no fault of the claimant and when the claimant has done nothing wrong. The claimant might already have used the money for other purposes, so they will lose during the time that it takes them to pay that back.

Mark Griffin: My supplementary is about payments that are made in error. On top of the issue of claimants being asked to repay whatever was paid in error, concern has been raised by a legal body about the fact that the system that is proposed in Scotland is harsher than the one in the United Kingdom when it comes to claimants being prosecuted and criminalised if they have made a fraudulent claim and been overpaid. Under the UK system, someone who makes a fraudulent claim and receives an overpayment can be prosecuted and given a jail sentence, but there is a burden on the prosecutor to prove that the applicant knew that they were making a fraudulent application.

However, in Scotland, that burden of proof will not apply: the prosecutor would not have to prove that the applicant knew that they were making a fraudulent claim, so the applicant might have made an honest mistake, for which they would be criminalised. I have received representations about that, and I think that other members of the committee have heard evidence that the Scottish system will be overly harsh and could criminalise people for honest mistakes. Do you have any views on that? Should the Government look at the system again to make sure that anyone who makes an honest mistake will not be criminalised for doing so?

Norman Gray: The problem is how we define an “honest mistake”. There might well be an appeal situation in which someone who claims that they made an honest mistake would have to prove that.

Mark Griffin: Under the present UK system, if the state wants to prosecute a person for a fraudulent claim, it must prove that the claim was made dishonestly, whereas under the proposed Scottish system, the state would not have to prove that the claim was made dishonestly, but would have to prove only that an incorrect claim had been made, regardless of whether the motive for doing so was dishonest or honest.

Norman Gray: I still think that there are responsibilities on both sides—the people who apply for benefits and the people who award them. It is quite rational to say that the bill should remain as it is and that repayment would be required, even though that might sound harsh.

Moira Sinclair: That is not an issue that we picked up at the your say workshop: as no one raised it, we cannot comment on it, as a group. However, if that is the case, my view is that it sounds as though the Scottish system might be overly harsh in that respect. Therefore, I would advise that the issue be looked at.

The Convener: The issue is not one that I have come across, and other members do not seem to have come across it, either. However, I am sure that we will look at it, now that Mark Griffin has raised it.

10:15

Adam Tomkins (Glasgow) (Con): I have a question about young carers, but before that I would like to pick up on an aspect of the earlier discussion about PIP assessments that arose from the questions that were asked by Pauline McNeill, Alison Johnstone and Jeremy Balfour.

I am trying to understand what you want out of a reformed Scottish equivalent to PIP assessments. I do not want to put words in your mouths, but it

sounds almost as if you want the assessment to be based on a medical diagnosis of a condition, which is the job of general practitioner or a surgeon. However, as I understand it, the whole point of PIP is to ensure that assessments are based not on medical diagnosis but on need, because two people with the same medical condition might have quite different needs. It might be that we need to revisit all of that, but the point of the assessment process is not to go over the medical diagnosis, which is the job of the doctor, but to understand the need that is generated by the individual's condition. Is my understanding right, so far?

Norman Gray: Yes.

Adam Tomkins: I am just wondering how radical your suggestions are. Are you suggesting that we do not need to have that assessment of need and that we should base our disability social security simply on medical conditions, so that assessment essentially becomes the doctor's job? Is that the force of your position, or am I misunderstanding it?

Moira Sinclair: We are saying that much more emphasis must be placed on medical diagnosis. I accept that there should also be a needs element of the assessment. However, our feeling is that, at the moment, the medical evidence is being forgotten. That thinking led us to state that we believe that people should not be penalised. As you say, two people with the same condition will have different needs. However, the fact that person A is forcing themselves, by whatever means, to do various things that person B is not doing should not mean that person A is punished for that and loses out as a result. At the moment, the system offers a perverse incentive to act like person B. If I were to lie in my bed every morning saying, "It's too sore—I can't get out of bed", I would be better off. That seems to be bizarre.

Adam Tomkins: Yes, it does—to put it mildly.

Norman Gray: I think that you are overstating our position with regard to the role of medical evidence. My point is that the medical evidence should be taken as evidence that an award is required, but there needs also to be a secondary stage involving an assessment of need. We are dealing with individuals, so there needs to be more than simply a statement that the person has something wrong with them. We are all different and, as Mary Sinclair said, two people with the same condition can do different things.

Adam Tomkins: I see that Brian Hurton is nodding. Do you agree with that, Brian?

Brian Hurton: Yes.

Adam Tomkins: So, you all accept that there needs to be a needs assessment that is different

from and supplementary to the medical diagnosis, but your argument is that the two need to be viewed together rather than there being a big wall erected between them. Is that correct?

Norman Gray: Yes.

Adam Tomkins: That is helpful, thank you.

When listening to the First Minister announcing her programme for government in Parliament on Tuesday, I noticed that she is no longer talking about a young carers allowance, which I think was a Green Party manifesto commitment that she talked about last year, but is instead talking about a package of support for carers. That is interesting, because it ties in with what you say in your submission about there being

"an allowance for Young Carers"

that is "not necessarily ... financial." What sort of package of support for young carers do you have in mind?

Norman Gray: Young carers need respite every so often, and people do not always recognise the need for mental respite. My granddaughters care for their mother, and two of them have been away in different weeks on a yacht on the west coast, which has given them a chance to get away from the home environment and enjoy other people's company, which is a regeneration process for them. It was funded from outwith their home situation. That kind of thing is important—it recognises the needs of the carer and can be adapted to their needs.

It is difficult to state that there is one particular thing that would deal with all young carers; it is more about recognising need and there being something that might provide benefit.

George Adam (Paisley) (SNP): Good morning. The session has been really good. I was struck by one thing when Brian Hurton was talking about language, although this is not part of my question. If a person was a customer, they could say that they will take their custom elsewhere, but people on benefit will not get that option. What Brian Hurton said was bang on.

As a point to balance what Jeremy Balfour said, while I have been a constituency MSP, nobody has ever come through my door who has been upgraded during the process. I might be extremely unlucky or everybody in Paisley is being targeted, but I have never experienced that.

Moira Sinclair, I think, brought up an issue in respect of the appeals process. People end up going through that process and many get what they appeal for; however, there is turmoil when a person's car is taken off them if they have a Motability car. In Moira Sinclair's case, it will affect her working life. If a person's appeal is successful,

they will get their car back. That is very good for my former colleagues in the automotive industry, but it is not so good if we are trying to create a system in which we are trying to help people. Obviously, we need to ensure that we have a system that treats people with dignity and respect, as the Government says, but currently the system does not do that. In effect, it puts people's lives in complete turmoil.

Brian Hurton: On cars and the Motability scheme, I hope that once the new disability benefit is devolved to the Scottish Parliament, people will, when they have to appeal, be able to retain the car that they need. Everybody is losing their car right now.

Moira Sinclair: In general, the feeling has been that something other than "You've lost the claim, so you need to go through the appeal process, apply for short-term assistance"—if it is brought in—"and deal with the consequences", could be said. All that is unnecessary. We could say, when a person starts their appeal, that their benefit can continue until the appeal ends. That would make the approach much more sensible.

George Adam: I think that Norman Gray mentioned long-term conditions that will not change, and Moira Sinclair mentioned MS and MND in particular. I declare an interest in that my wife has MS. MS is a classic example: the person can walk one day and be fine, but then be in bed for the rest of the week after it. The pressure and stress of the system are triggers for relapses. Adam Tomkins went on about need, but with a lifetime award, a person has proved that the condition will not go away, so it is common sense to use the medical assessment as opposed to talking just about need—although I think that consideration of the two would be combined.

Inclusion Scotland told us that there was a scare about fraudulent use of the old system. However, it said that only under 1 per cent of claims in the old DLA system were found to be fraudulent. We need to strike a balance in the system.

I do not know why the Westminster Government has had a massive experiment with PIP. It is just putting the most vulnerable people in our society under pressure and making them feel undervalued. What do you think of the whole process in general?

Norman Gray: I can understand the problem of moving to the PIP system. The PIP has a broader base than the DLA and it uses different criteria. The problem with PIP is not so much PIP itself, but how assessments and awards have been done, and how, in many respects, outcomes have not been fair. If you look at the number of appeals in the system, that shows that awards are often wrong because so many people end up appealing.

In many ways, PIP has a fairer basis than the DLA when it comes to recognising a person's needs and requirements—certainly in terms of the mobility award, for example. My son got a low mobility award in his DLA, but was recognised in his PIP assessment as needing a high award—it recognised his problems with moving around much better than the DLA assessment did. The problem is more how the system is being managed than the system itself.

Moira Sinclair: As with everything, there are winners and losers with the move from DLA to PIP. Although the PIP assessment has correctly recognised some of Norman Gray's son's needs, it will put me out on the other side. It is about finding a balance.

It is important to recognise that there are good days and bad days. I know what my limits are, so I will do a lot one day if there is something that I really want to achieve, but I might have a difficult week after that. It has to be recognised that illnesses are a bit of a rollercoaster.

Brian Hurton: I agree with Moira Sinclair that there will be winners and losers with PIP, through the UK Government. There are questions that have been missed out—for example, about bathing and washing in the bathroom. Because of my visual impairment, I can easily—and have—cut myself when shaving, but the assessments do not recognise that, so I do not get points for it.

I am not scared at the moment, but I am anxious that it is coming and that I will have to go through the whole carry-on with being re-assessed to get put on to PIP. There are certain things about daily living with visual impairments that do not get recognised in PIP, and I am really annoyed about that.

Norman Gray: Like Brian Hurton, we were concerned about our son's move from DLA to PIP, but it transpired that some of our fears were not realised. The example that Brian mentioned—about washing himself—was covered very well in the PIP assessment. We were able to put in a long list with riders about what actually happens. For example, they asked our son whether he can wash, and he was able to say, "Yes, but—", and all the buts were important.

If there is advocacy, that problem will be taken away as people will realise what they are meant to talk about in the terms of the PIP assessment. Again, it is not a matter of the award itself, but how it is applied.

The Convener: The issues of advocacy, transparency and simple language were raised on a number of occasions at the committee's away day.

Thank you very much for your excellent presentation. There were lots of good answers to our questions.

Norman Gray: Thank you for having us and for listening to our presentations. It is very reassuring to see that the committee has an open view about what it is looking at and what it might determine in the future. We look forward to seeing what emerges, and what our input has been.

The Convener: Thank you very much. We look forward to meeting you again.

10:29

Meeting suspended.

10:32

On resuming—

Social Security (Scotland) Bill (Inclusion Scotland Event)

The Convener: We move on to agenda item 4. We agreed in June to attend a number of events on the Social Security (Scotland) Bill over the summer. One of those was Inclusion Scotland's poverty and social security policy panel meeting in Glasgow on 16 August to consider the bill. Pauline McNeill and Ruth Maguire attended that on behalf of the committee and have produced a paper on it. Does anyone have any questions on the paper or do Pauline and Ruth have anything to add to it?

Ruth Maguire: The paper lays out accurately the feedback that we got, which was mixed. I put on record our thanks to everybody who took part. There was a good range of people there with a range of views, so it was interesting and worth while.

The Convener: Thank you very much. Alison Johnstone was at another event and we will have feedback from that later on. I thank the committee members for giving their time during the recess.

Pauline McNeill: I echo what Ruth Maguire said. It was really valuable to sit and have a chat to people in a round-table discussion. There were two dominant issues. One concerned whether the Government position on overpayment due to an error is that the recipient would not have to pay it back or that they would. There was also quite a big discussion about the balance between the primary legislation and the regulations. We got into a few knots trying to get people to understand why we would not put everything in primary legislation. I thought that it was important to get that across in discussion before people took a view on what should be in the primary legislation and what should be in the regulations.

Ruth Maguire: One of the challenges in getting folk's views on that is ensuring that there is a clear understanding of the reasoning behind it. We did not quite get there on the table that I was at because we did not have the full information.

When we are speaking to people who will be in receipt of assistance and who have experience of the benefits system, we need to make sure that we have clearly laid out the question, "What difference does it make?" and that we are not just posing what is quite a complex question and then leaving it with them.

The Convener: Thank you. I thank the committee members for going to the away days during recess. I look forward to following up on those.

Subordinate Legislation

Universal Credit (Claims and Payments) (Scotland) Regulations 2017 (SSI 2017/227)

10:35

The Convener: Agenda item 5 is on subordinate legislation. Members have a briefing note. Members will wish to note that although it had been expected that the Scottish statutory instrument would be considered by the Delegated Powers and Law Reform Committee at its meeting this week, it will not be considered by that committee until next week's meeting, which means that we will look at it first. After the evidence session, we will decide where we will go with it once the DPLR committee has looked at it.

I welcome the witnesses. John Dickie is director of the Child Poverty Action Group in Scotland, Jeremy Hewer is policy adviser for the Scottish Federation of Housing Associations, Michael McClements is policy manager for the Convention of Scottish Local Authorities, and Emma Shields is business services manager for customer and business services at Renfrewshire Council.

The SSI is quite big and covers a number of areas—two of which in particular pertain to the social security bill. Having read the previous and current submissions, I think that it is pretty fair to say that when the draft regulations were first published, you all had concerns about whether they did what they were meant to do. To what extent have your concerns been overcome in the revised set of regulations? Who wants to start? Do not all fight among yourselves. We will start with Jeremy Hewer, then work along the row from him.

Jeremy Hewer (Scottish Federation of Housing Associations): Our primary concern with the regulations was that there seemed to be more of a restriction than was originally set out in the consultation document. The original consultation document talked about all claimants in universal credit full service areas having access to these flexibilities. When the statutory instrument was laid, we noticed that that had been restricted to new claimants only. That is a concern. Obviously at some point there will need to be further regulations to enable those who are not able to take up those flexibilities at the moment to do so. We would appreciate having a specific date for when that might happen.

There is also the parallel concern that housing associations will need to know which tenants are able to take up the flexibilities and which tenants are not. The challenge will be getting that information from the Department for Work and

Pensions. Information sharing has always been a stumbling block in relation to universal credit.

Because of how the payments are made, there is a concern that associations cannot distinguish between what might be termed a technical arrear and what is a genuine arrear. The payment schedules are four weekly: you get the month's payment but it has to have been paid whenever the DWP is issuing its four-weekly statement. There will be times when somebody will appear to be about three months in arrears rather than just a month or two months in arrears. It is important to be able to distinguish when that has happened.

The additional challenge of universal credit is that individuals might have assessment dates on any day of the month, and there is a need to track that and support people through the process. I have been involved in universal credit policy since 2013—I was employed on a year's contract in 2013 and I am still here—but for somebody who is coming in and who needs support from universal credit, it can be challenging to navigate the maze.

John Dickie (Child Poverty Action Group in Scotland): As you said, convener, we had quite serious concerns about the draft regulations, particularly in that the policy intent was to give universal credit claimants in Scotland the right to choose twice-monthly or direct payments of universal credit, whereas the draft regulations provided only a right to request those. The regulations that we have now still frame it as a right to request, but there is clarity in that the regulations set out that the secretary of state "must agree" to such a request unless it would be unreasonable to agree. The key challenge now is to get clarification and transparency on the circumstances in which it would be seen as unreasonable to grant a request for twice monthly or direct payments of universal credit.

Another concern in our response on the draft regulations was about the lack of any process for reviewing decisions or to appeal a decision if a request is turned down. As far as I am aware, we still do not have any information on that. There is a commitment from the Scottish Government to work with the DWP to come up with a process for reviewing decisions, but we have not seen that yet, so that is an outstanding concern.

The wider outstanding issues of concern about the regulations are about how they will be operationalised. Again, we do not yet have information on how they will work in practice—I am sure that we will discuss that in more detail later. For example, there are questions about how people will know that they have the right to request twice-weekly or direct payments, when claimants will be informed, what information and support they will be provided with to be able to make an

informed choice, and who will actually provide that support and information.

Emma Shields (Renfrewshire Council): We welcome the amendments that have been made to the draft regulations and we welcome the flexibilities overall. Similarly to John Dickie, our main concern was about whether people will have the right to appeal, and it has absolutely been clarified that they will not, because it is not possible. However, we would like a bit more clarity on what the reasons for refusal could be. In relation to how the system will operate, although I appreciate that that is not laid out in regulations, we are keen to see operational guidance or operational procedures for administering the system. That is critical.

Michael McClements (Convention of Scottish Local Authorities): COSLA welcomes the amendments that have been made to the draft regulations. We recognise that there are difficulties in going as far as a right to appeal, because universal credit is a reserved benefit. However, as has been said, it would be helpful to have more information on what would happen in those circumstances and whether people would have any right to redress. We also welcome some of the updated language on rent and service charges.

Our concerns are more about how the system will operate in practice, particularly bearing in mind the current complexity for local authorities and landlords in dealing with universal credit. There are a lot of additional burdens, and changes to business processes are having to be made. We also recognise that the process is quite complex for claimants. Because they will be able to make choices, it is important that they are given good-quality information that they can understand on the implications of those choices. The information that people get needs to be consistent.

Our main concerns are about the operation and how the flexibilities will bed down in practice. We want local authorities to be able to input into some of the discussions on that.

10:45

The Convener: Thank you. You mentioned the flexibilities. We have a note that mentions how they will work in practice. The letter to me and the committee from the Minister for Social Security says that the matter will be discussed on 14 September, which is next Thursday, at the joint ministerial working group on welfare. We will follow that up, but I wanted to let you know that it will be discussed next week, so we hope that we will get a wee bit more clarity or have some light shed on it.

Adam Tomkins: I am very much in favour of the flexibilities. Universal credit is rightly a

reserved benefit, but it is also right that there be flexibilities in Scotland to tailor its delivery more specifically to Scottish needs. However, that flexibility comes at a price. All the time, committee members hear pleas from all kinds of people to make the system simpler. Building devolution and flexibilities into an already complicated system cannot but make it even more complicated.

What sense do the witnesses have of how many further flexibilities are likely to be built into universal credit in Scotland over the coming months? There has been a lot of talk about split payments, for example. Are the organisations that the witnesses represent in favour of split payments, which would enable universal credit payments to go to individuals within households rather than just to households? Do they have any sense of when the Scottish Government might introduce such proposals?

John Dickie: The Child Poverty Action Group has deep concerns about the way that universal credit is paid to a single person within a household. It can reinforce some of the power imbalances that exist within households, particularly along gender lines, in which control of money can be a major factor in undermining people's wellbeing, particularly children's wellbeing, so the idea of splitting payments as a default or of having the choice to split payments is welcome.

There is a challenge about how we would do that in a way that reflects the different make-up of universal credit and the way that it reflects individuals' caring responsibilities, health circumstances and earnings. Last Friday, for example, along with Scottish Government officials, we hosted a gathering to try to consider how to split payments in a way that would address some of the concerns about single payments but would also make sense and not create unintended consequences. A 50:50 split might mean that one partner controls 50 per cent of the claim although more than 50 per cent of the claim is meant to be for the other partner's needs and the children's needs.

There are complexities in the matter and we are still feeding in our perspective on that and understanding how the system might work. One suggestion that we have come up with to address some of the concerns about single payments is that, in households with children, the default payment could be to the main carer—the person in receipt of child benefit. That would ensure that money goes primarily to women who have care of children. Although that is not a split payment, it is a way of trying to address the same issue.

There are complications with the proposal and we are feeding into discussions on it. As I understand it, it will be towards the end of the year

before we expect to see what the Scottish Government's approach to split payments might be.

Adam Tomkins: So we expect a Scottish Government consultation on split payments later on this year, do we?

John Dickie: From recent conversations, I think that we expect something towards the end of the year, but I am not sure exactly what. I would need to clarify that.

Adam Tomkins: That is helpful. Thank you.

Jeremy Hewer: A concern that we have is that, although there is a facility in the existing universal credit regulations for split payments to be made, we understand that there have not been any in the 500,000-odd universal credit claims. There is an added complication. Although we tend to look at the most extreme example—of someone having a full universal credit entitlement—that is obviously not always the case. There are some people who have only a small award because they are in work. How do you split it in those circumstances? It will be challenging. Given that it is a household payment, it surprises me that the DWP does not stipulate that the bank account into which the money goes should be easily accessed by both parties. There is no stipulation that it has to be a joint bank account.

Michael McClements: COSLA would support the opportunity of having a split payment. We support the principle because there are circumstances in which a split payment would be completely appropriate and be a choice that people would want to exercise. As Jeremy Hewer mentioned, in the present operation of universal credit there is no experience of anyone getting a split payment, so we want it to be thought through quite carefully.

I, too, was at the session last week. Something that emerged quite strongly from a number of the groups was the idea that the housing element should be secured and that perhaps it should be a managed payment to the landlord in the event of a split payment. Otherwise, there is a danger that there will be unintended consequences and that the rent will not be paid because of whatever is going on in a household.

Split payments certainly need to be thought through and perhaps there should be some piloting before they are introduced, given that there has been no experience of them. We have had experience of alternative payments, in relation to payments to landlords and more frequent payments, but there is no experience of split payments. Although we support the principle, in practice it needs to be worked through quite carefully.

Emma Shields: I agree with that. We recognise that there are circumstances where split payments may well be appropriate, but you would want to ensure that the policy intention brought about the right outcome and did not add additional difficulties for claimants as a result of the process being too complex, particularly in what could be quite sensitive situations.

Alison Johnstone: I was a little surprised to see that existing universal credit claimants would not be able to claim the flexibilities. Were you surprised by that?

Jeremy Hewer: I was not surprised because, from a practical point of view, the flexibilities are reliant on the full service coming in—the fully digitised service with all the bells and whistles and the online journal. The live service that was rolled out across the country has a digital face, in that applicants have to make an online claim, which initially was quite a long and arduous process—you could not save your application and come back to it, so you had to make the claim in one session. However, that is the only digital aspect of the existing service. Somebody in the DWP described the rest of the process as “old school”. It is still very clerical. It would not have been a practical proposition to extend the flexibilities to those in the live service. We accepted that they would be available only in the full service. If the Government insists on the accelerated roll-out—about which we have grave concerns—the plan is that it will be completed in Glasgow in September 2018.

There are a lot of concerns. One is that the full service is still under constant development and has yet to be proven. As I said, the stumbling block for us is the lack of information and feedback that landlords get. In essence, they are flying blind on rent income management. There is the worry that, with Brexit and the requirement of Government to develop IT systems to cope with it, the people who are developing universal credit will be pulled off it and the things that we want to see will be delayed.

An example is the landlord portal, which is being heralded as an extremely useful tool. If the full functionality is provided, it will be a very useful tool but, in its present pilot state, it is just doing what the DWP needs it to do, which is all to do with rent verification. If the DWP cannot develop it further to give us the feedback that we need in order to identify that somebody has a flexible or alternative payment arrangement, that the DWP has taken the money from their latest payment and that it will in due course arrive in the housing association's bank account, we will be in an enormously difficult situation. At present with alternative payment arrangements, it can take up to four or five weeks from the money being taken from the tenant to that

money arriving in the housing association's bank account, and that is only the start of the story. The housing association gets a lump payment, but it needs to get the schedule that says which tenants it covers, how much is for tenant A, how much is for tenant B, and so forth. At the moment, housing associations are having to rely on a paper schedule for that information, which arrives a further week after the payment has gone in. That makes the reconciling of accounts arduous.

With the full service, the number of cases is going up because there are no gateway criteria, and that is putting enormous stress on housing association staff. In addition—I am sorry to go into such detail—there seems to have been a glitch with the electronic transfer of schedules that we were hoping for, because housing associations need to have a secure email system and the only secure email system that is available to housing associations seems to be incompatible with the electronic transfer of data. Therefore, it is a bit of a nightmare.

Alison Johnstone: Thank you for that frank response.

John Dickie: It is not clear to us why existing claimants in existing full-service areas would not have the ability to request such flexibilities. I understand that the Scottish Government is in discussions with the DWP about that. It is not clear to us why, under the regulations that will come in from 4 October, existing UC claimants in existing full-service areas cannot access those flexibilities. We could get further information from the Government on where those discussions with the DWP are at and at what point it expects to be able to provide the same flexibilities to existing claimants that it will provide to new claimants from 4 October.

Alison Johnstone: I have a specific question for Emma Shields. In its submission, Renfrewshire Council raises a concern about claimants requesting fortnightly payments but only getting half the amount after waiting for six weeks. Do you have concerns about claimants being properly supported when it comes to making decisions about the flexibilities that are appropriate for them so that they do not find themselves in financial difficulty?

Emma Shields: As I said, we welcome the flexibilities. The point that we were trying to make in our submission is that we want claimants to be able to make informed choices. It might well be the case that it is right for individuals to receive more frequent payments, but we want them to be able to make an informed choice about that and to understand what it will mean in practical terms for their first payment. It could well be the case that a longer wait will be okay for them and that, by budgeting accordingly, they will be able to

manage, but they might need additional budgeting support to get them through the initial period, in which they will get 50 per cent of their monthly award, in order to achieve the end result of more frequent payments. We were concerned that that might have unintended consequences and might put unintended pressures on resources such as the Scottish welfare fund. Someone who has chosen to receive more frequent payments in the belief that, in the medium term, that will be suitable for them might well face a shortfall in their income in the short term and might have to seek additional support elsewhere. We would strongly urge that they get support to make that decision and to understand the pros and cons of the more frequent payment option.

11:00

The Convener: There are a couple of supplementary questions.

Mark Griffin: I come back to Jeremy Hewer's point about direct payments to landlords and the concern that landlords might not be notified if a tenant decides to stop direct payments. There could be an issue there. Will you expand on that? If I was a tenant who was not in receipt of any benefits and simply paid a direct debit straight to a landlord, I could easily choose to cancel that direct debit and build up arrears. I do not see any difference between that and a tenant who is in receipt of universal credit deciding to stop direct payments, for whatever reason.

Jeremy Hewer: We have got no issues about choice. If a tenant says that they want all the universal credit to come to them and that they will be responsible for paying the landlord, that is their choice—that is fine. The tenant may opt for the flexibilities and say that they want the money to go direct to the landlord, but our argument is that, unless the DWP says that it has taken the money from the tenant's universal credit award that it will be paying to the landlord, the landlord will be in the dark. Has the tenant decided not to pay the rent or is the rent somewhere in the pipeline of the DWP bureaucracy?

The concern is compounded by the fact that the DWP's four-weekly payment schedule is out of sync with the payments to the tenant. The tenant gets their universal credit award and the money is deducted from their award for their rent, but the money goes into what the DWP calls the bucket of funds that is paid out every four weeks. It is about reconciling the account. I can show the committee what happens in an ideal circumstance and you would see that, because there are 13 four-weekly payments, it means that there will not be a corresponding monthly payment for one of those payments. It is about knowing when that is going to take place.

That is when the system is working well, but there are often delays to the award that the landlord may not know about. There may be changes of circumstances. That is the worry. We support the idea of the universal credit flexibilities—the principle is great—but it is the application that we are quite concerned about.

Ben Macpherson: I want to clarify something that Jeremy Hewer said. You talked about the application of the flexibilities to those who claimed UC before 4 October 2017. Is it your understanding that that is not being taken forward at the moment purely for practical, technical and administrative reasons to do with DWP data and processes and so on?

Jeremy Hewer: Yes. It is about plugging the necessary routines into the system. There are concerns, though. I think that South Lanarkshire is due to go live on 4 October, which means that anyone who makes a claim on 1, 2 or 3 October—or before then, in September or whenever—will not have access to those flexibilities. As the number of cases builds up, the issue is whether landlords can distinguish between those who can get the flexibilities and those who cannot. Hopefully, they will be able to do so because they will get a notification in terms of the rent verification that somebody has made a universal credit claim and they should know that, if someone has made a universal credit claim, that person will have had access to the flexibilities.

However, this is happening in the hurly-burly of administering hundreds of claims. It should be remembered that 60 per cent of housing association tenants rely on housing benefit or the housing costs element of universal credit at the moment and of those 60 per cent, about two thirds will be of working age. Overall, about 40 per cent of housing association tenants will be on universal credit.

Tenants will have the flexibilities, but how universal credit is paid means that they are likely to be at least a month in arrears. If you are an association with about 3,500 properties and the average rent is something like £350 a month, potentially between £500,000 and £1 million extra in arrears could be showing, some of which would be false but some of which would be genuine.

The Convener: Pauline McNeill has a supplementary.

Pauline McNeill: Yes. There are still quite a lot of problems to resolve, and 4 October is not that far away. However, presumably landlords would welcome the fact that tenants will get the choice—

Jeremy Hewer: Yes.

Pauline McNeill: —because tenants would make the choice to make sure that their rent is

paid, first and foremost. I presume that that would be key for them. Given all the difficulties, I just wanted to check whether it would be welcomed by landlords.

Jeremy Hewer: Absolutely. The principle is fine. Our concern is around the practicalities—the process behind it. What is a very well-intentioned measure may be undermined by what we would consider to be poor processes. The DWP would probably defend them and say that it is all about data protection and so on, but I think that, ultimately, it is against the interests of the individual for the information not to be shared.

The Convener: I know that John Dickie wants to come in, but we have about three minutes left and I know that Michael McClements wants to comment on the COSLA issue as well. Also, Jeremy Balfour has a question. Jeremy, do you want to come in with your question?

Jeremy Balfour: Yes. It is on Jeremy Hewer's response to Alison Johnstone's question about people who already get universal credit and who will not have the choice. How do you envisage their being able to get that choice in the longer term? Will they have to reapply? We talked about the move from DLA to PIP, and it could be very time consuming to fill out all the forms again. Have you given any thought to how, in the longer term—sometime next year—we can transfer people who already get universal credit to give them that flexibility?

Jeremy Hewer: The ball will be in the DWP's court because it does managed migrations. For example, folk in the East Lothian area—folk in areas that were live service—have been invited to go over to the full service. That it involves a reapplication—they had to fill in the form and get the online journal. We would consider doing that.

What we are looking for and what we would appreciate is a date for when regulations will be laid in Parliament to gather up those who do not have access to the flexibilities.

The Convener: I know that George Adam has a supplementary. I will let him in once other members of the panel have answered Jeremy Balfour's question—succinctly, I hope.

John Dickie: There is a wider issue around how little information we have at the moment on how this will work in practice for those who are covered by the regulations, never mind those who are not yet covered.

With less than a month to go, we need clarity on the circumstances in which it would be reasonable not to grant a request for the flexibilities; on who will inform claimants of the flexibilities that are available to them; on how that information will be communicated; on the point in the claims process

at which it would be communicated; and on the respective roles of the DWP, the Scottish Government and local authorities in ensuring that people have the information that they need in order to make an informed choice. We are close to the system going live but we do not have transparency and clarity about how it will work. As an organisation that provides second-tier advice and support to front-line advisers, we do not have that and claimants do not have it, but we need it. We also need a clear assurance from Government that the operational systems are in place to deliver the flexibilities at the point when the regulations come into force.

Emma Shields: I do not have much to add to what John Dickie has said.

Michael McClements: On the point about other people having access to the flexibilities, it is COSLA's understanding, based on information from the Scottish Government, that the intention is that the system will spread out to existing claimants. We can understand why it has started with new claimants, because there is an added complexity in relation to people who are already on universal credit. For example, they might already have alternative payment arrangements in place—there might be a managed payment to a landlord or whatever. It is not clear to us how the process would operate if someone were to opt to have some of the flexibilities. For example, would the managed payment to a landlord remain in place?

The other thing to consider is that the DWP has a hierarchy with regard to which of the alternative payment arrangements is put in place, starting with the housing element being paid to the landlord. It is not quite clear how that hierarchy interplays with choice. That needs to be thought through a lot more, and the guidance needs to be worked out. We hope to engage in discussions with the Scottish Government around some of those more detailed issues.

The Convener: George Adam would like to ask a supplementary question. Please be brief, George, as we are over time.

George Adam: I will speak very quickly then.

John Dickie articulated well the complexity of the situation, and I think that Jeremy Hewer said it best when he said that the systems are created to do what the DWP needs them to do. That compounds the problems. The system is set up for a four-weekly period, as has been said. However, is it not the case that, at the moment, the Scottish Government is paying for the right to have the flexibility and to get the process sorted, even though it has already been agreed by just about everyone that the DWP should have ensured that universal credit offered that degree of flexibility

initially anyway? The Scottish Government and the rest of us are all trying to fix an issue that is probably the result of the approach that has been taken by the DWP and central Government. Is that not a part of the complexity behind the issues that are arising? John Dickie talks about how little we know about what the process will be, even though we have only a month before the system goes live. Are the issues that I have set out causing us the difficulties?

The Convener: I ask for quick answers—the witnesses could just say yes or no, or say that they do not know.

Jeremy Hewer: Again, it is a technical issue. The only way that you can make things work practically is through the full service, and the Scottish Government is being asked to pay. If the Westminster Government scratches its head and says, "You know, having flexible payments is probably a pretty good idea, so we will introduce them throughout the UK and, hey, a system for that has already been developed so we don't have to worry about paying for it," the Scottish Government might feel justifiably aggrieved.

The Convener: Does John Dickie want to comment? You could just say yes or no.

John Dickie: We need to continue to focus on fixing some of the fundamental problems with universal credit at a UK level. Another point is that having devolved elements introduces an additional level of complexity, which makes it more important than ever that the UK Government and the Scottish Government work together to get the systems in place well in advance of changes being made, so that there is no doubt around what is happening and clear information is in place for claimants at the point when changes come into play. At a previous meeting, we discussed those joint working relationships between the Governments, but this seems to be another example of a situation in which, although it is late in the day, we who are out in the world do not really know what the system will look like, which means that it is difficult for us to advise those who will be advising claimants, or for claimants, to know directly what the actual position will be come 4 October.

Emma Shields: As I said, I absolutely welcome the flexibilities, but I accept that the process adds complexity. We are eager to see operational guidance around how the system will work. Where possible, we would like to input to the process, via COSLA, to ensure that the outcome that is intended—which is a good one—is achieved, particularly for claimants, and that those claimants are not made to go through a more cumbersome and complex process.

The Convener: Michael McClements has the last word.

Michael McClements: We support the flexibilities, although we recognise that they perhaps might not go as far in what they are able to achieve as people thought that they might when the suggestion was first made.

One of the issues is that we have a reserved benefit that is designed in a certain way. There is a particular issue around the way in which the assessment period has to work because of the way in which universal credit has been set up. Verifying the rent and getting information about people's earnings requires time. The system is not very flexible in the way in which it has been built up.

There is a particular difficulty around the choice that people have to make because they will have to wait at least six weeks for their first payment—or possibly more, because payments are not always made on time—and then they might receive only half a monthly payment. It is important that the information that is given to people makes clear what the choices are and what the implications of some of those choices are.

The Convener: This has been an interesting session and I thank our witnesses for attending. Once the report from the Delegated Powers and Law Reform Committee is available, the SSI will be brought back to this committee and we can either note it or agree to take further action at that point.

We now move into private session.

11:17

Meeting continued in private until 11:32.

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