



Department
for Work &
Pensions

THE RT HON MEL STRIDE MP
Secretary of State for Work & Pensions

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Tothill Street
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Rt Hon Sir Stephen Timms MP,
Chair of the Work and Pensions
Select Committee

23/01/23

Dear Sir Stephen

It was a pleasure to appear before the committee. I am writing to follow up on the points agreed during the session on 30 November 2022 and in response to your letter from 14 December 2022.

EHRC and Section 23 Agreement

Q1. The Department has been corresponding with EHRC about our duty to make reasonable adjustments for disabled benefit claimants in accordance with the Equality Act 2010.

The April 2022 announcement by the EHRC of ongoing s23 negotiations was unprecedented. Usually, the process is to discuss matters under confidentiality and privilege and the EHRC publishes a summary once the agreement is made. The EHRC usually bind the other party not to discuss the contents of the agreement further without their agreement. There are legislative provisions which also bind the EHRC in relation to confidentiality under the 2006 Act.

An action plan was offered in September by DWP, but this has not been accepted so far as EHRC appear to wish to include broader matters as a condition of reaching agreement.

There is live litigation (which will not be discussed further as it is sub judice) with a hearing in March 2023 relating to a claim made by a visually impaired person in relation to recording of reasonable adjustments and what is and isn't automated in processes for PIP, ESA, debt recovery and complaints.

DWP have been working closely with the EHRC and have recently entered a phase of advanced discussions, meeting before Christmas, working through details of the section 23 agreement that is being considered, and activities therein. We have built working relationships between both teams and will be meeting this month to progress further at pace and are working collaboratively to reach agreement in the coming weeks.

As this is still the subject to these on-going discussion between the two organisations, we are unable to provide any further updates. The Department is committed to continuously improving

services and delivering in a way that is compassionate and responsive to claimant needs and will continue to work collaboratively with the Commission to fulfil our shared goals and outcomes and address any of their concerns.

Q2. In previous s23 matters, DWP & the EHRC have agreed an approved press release / publicity about the fact that an agreement has been entered into. We may take a similar approach in this matter, but these details need to be finalised and agreed with the Commission.

Internally, we will be providing a governance structure that will track the progress of activities and outcomes to ensure any agreement is implemented.

Benefits uprating

Q3. I completed my review of the benefit cap levels in November 2022, which was the first review since the levels were lowered and tiered in November 2016. When undertaking this review I have considered a wide range of evidence and statistics held in the department, and the implications of, and for, other policies and decisions. I also considered the challenging economic climate with the associated pressures on public funds, and the circumstances of capped households. At these levels, it is my view that the cap will continue to incentivise work, particularly at a time of high vacancies.

Due to the early general election, in December 2019, a planned review, to tie in with the end of the benefit freeze, could not take place in 2019.

Q4. Section 96A of the Welfare Reform Act 2012 obliges the Secretary of State to review the benefit cap levels at least once every five years to determine whether it is appropriate to change them. As you say, following the amendment by the Dissolution and Calling of Parliament Act 2022, which came into force on 24 March 2022, I was obliged to review the benefit cap levels at least once by 24 March 2027. The duty is to review the sums set out in the legislation to decide whether it is appropriate to change them.

I considered it appropriate to fulfil my statutory obligation to review the levels (that were set in 2016) this year in light of the social and economic context and recognising that, although the legal duty had been amended, the original intention of Parliament would have anticipated a review long before 2027. A wide range of evidence and statistics held in the department, and the implications of, and for, other policies and decisions were considered along with the challenging economic climate, the associated pressures on public funds, and the circumstances of capped households. My decision was set out in both the Chancellor's Autumn Statement on 17 November 2022 and my Written Ministerial Statement which followed on the same day. The statutory obligation to review the levels at least once every five years means that a further review must now be conducted by November 2027.

Benefits sanctions

Q5. I have reviewed the sanctions evaluation report and have taken the decision to maintain the current position not to publish it.

The application of an exemption on the sanction's evaluation report is subject to ICO investigation. At the conclusion of these investigations, I will take a decision again as to whether to release this information (subject to outcome of the investigation) or appeal to the First Tier Tribunal.

Economic Inactivity

Q6. The Prime Minister has tasked me as the Work and Pensions Secretary to look in detail at the issue of workforce participation. Addressing the causes of economic inactivity requires work across government, and I am responsible for galvanising this across Cabinet. Ministers and officials are regularly meeting with counterparts in other departments as the work progresses. This work has involved and will continue to involve engaging with external stakeholders, including through official and ministerial roundtables, to gather insight and develop new ideas to tackle the issue.

Q7. This work should be completed in early 2023 and we will aim to say more as part of the Spring Budget.

Migration to UC

Q8. On the move to Universal Credit (UC), we discussed the breakdown of who will have moved to UC by 2024/25 and by 2028 and how this will take place (natural or managed). Following the Chancellor's Autumn Statement, it was agreed there would be a £1 billion cost saving in delaying the movement of ESA claimants to UC until 2028. The figure of 400,000 fewer by 2028 is not broken down by reason. However, this calculation is based on actual data from previous customers leaving ESA and is used in forecasting predicted reduction in ESA customers by 2028.

Pension Credit take-up

Q9. Officials are currently looking into options for using data sources held across central and local government in order to help reveal households who appear to be eligible for, but not getting Pension Credit. Although not all aspects of a person's individual circumstances will be determinable, this work could potentially allow individual households to be identified at a local level.

This work is at an early stage and will require considerable complex and detailed analysis and scrutiny. Using data across government is challenging, notwithstanding the rules that govern how data can be accessed, shared and used as well safeguarding individuals' data and privacy.

A person's eligibility for Pension Credit and the amount they may get depends on their particular financial and personal circumstances. It is not currently possible to accurately identify people who may be entitled to Pension Credit just from data which DWP holds.

Q10. Data on the number of people eligible for Pension Credit in the period since 2019-20 is not available. This means that the Income-related benefits: estimates of take-up Official Statistics series is suspended. Estimates will not be published for the financial year 2020 to 2021 due to data issues following the coronavirus (COVID-19) pandemic which affected the methodology used to produce these statistics.

We will start to assess if it is possible to publish these statistics in April 2023 after the publication of FRS 2021/22. We will provide an update in line with the UK Statistics Authority Code of Practice for Statistics. Any statistics for 2021/22 will refer to a period before the recent take-up campaign in June 2022.

Comprehensive Sickness Insurance

Q11. A. Following the European Court of Justice judgment in the VI case, HMG acknowledges that once an EU citizen with Pre-Settled Status under the EU Settlement Scheme is affiliated to a public sickness insurance system such as the NHS, he or she has comprehensive sickness insurance when determining self-sufficiency. DWP are now implementing the ruling in relevant decisions and in the process of updating external guidance. Self-sufficiency also is determined by having access to financial sufficient resources.

Retained EU Law

Q12. The Social Security Co-ordination (Revocation of Retained Direct EU Legislation and Related Amendments) (EU Exit) Regulations 2020 repealed the directly effective EU Social Security Co-ordination Regulations (Regulations 883/2004, 987/2009, 1408/71, 574/72 and 859/2003), but partly retained them for the purposes of upholding certain social security coordination arrangements with EEA and EFTA countries, Switzerland and Gibraltar. This instrument used powers conferred by section 6 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, rather than the European Union (Withdrawal) Act 2018.

The Cessation of EU Law Relating to Prohibitions on Grounds of Nationality and Free Movement of Persons Regulations 2022 disapplied or amended certain directly effective retained EU equal treatment provisions so that they no longer apply in relation to access to social security, statutory payments, social assistance, housing, education training and apprenticeships, and childcare related matters. These EU provisions became redundant when the freedom of movement of EEA citizens ended on 31 December 2020. This SI used the section 8 power in the European Union (Withdrawal) Act 2018.

Other legislation has been passed using European Union (Withdrawal) Act powers that amends retained EU law, such as the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional And Transitory Provisions) (Eu Exit) Regulations 2020.

These amended a range of domestic primary and secondary legislation as a consequence of, or in connection with, measures in Part 1 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 that repealed free movement law at the end of the transition period on 31 December 2020 and made provision for the protection of Irish citizens. The legislation being amended related to immigration, nationality and benefits and services. The effect was broadly to align EEA citizens with non-EEA citizens in the UK's immigration system while making protections for Irish citizens and for EEA citizens and their family members granted status under the EU Settlement Scheme.

Q13. DWP retained EU law that has already been identified is listed on the publicly accessible dashboard. DWP officials continue to work to uncover any additional pieces of retained EU law. Officials are in the process of planning which powers in the Bill to use to preserve or reform any REUL that is necessary to continue to meet policy objectives. We will allow any retained EU law that is no longer needed to deliver our policy objectives to sunset. Existing policy on DWP benefits will therefore be maintained.

Bereavement Remedial Order

Q14. The rate of Bereavement Support Payment is reviewed on a discretionary basis as part of the annual uprating process. Following this year's review, Bereavement Support Payment will stay at the current rate. This means that claimants on the standard rate will continue to receive a first payment of £2,500 and 18 monthly payments of £100, and those on the higher rate will receive £3,500 followed by 18 monthly payments of £350.

Bereavement Support Payment is intended to provide working people with short-term financial support following the death of a spouse or civil partner, to help towards the additional costs associated with a death. It is not means-tested unlike income replacement benefits such as Universal Credit, which we are increasing in line with inflation to protect the least well-off. Families needing extra financial support are protected by this welfare safety net.

We propose that the Remedial Order to extend Widowed Parents Allowance and Bereavement Support Payment to cohabitants would take effect from 30th August 2018.

It is our intention that families should receive the same amount of Bereavement Support Payment or Widowed Parents Allowance as their married counterparts, but only in respect of entitlement after that date.

It is not routine for Social Security changes to be made retrospectively and we consider that the 30 August 2018 to be a logical and fair start date. This was the date that the incompatibility for Widowed Parents Allowance was accepted as final in the Supreme Court.

Introducing retrospective social security legislation is complex, and especially so when it involves a legacy benefit such as Widowed Parent's Allowance. To use an earlier start date than 30th August 2018 would increase that complexity, and the costs of administration.

Q15. The rate of Bereavement Support Payment is reviewed on a discretionary basis as part of the annual uprating process. Following this year's review, Bereavement Support Payment will stay at the current rate. This means that claimants on the standard rate will continue to receive a first payment of £2,500 and 18 monthly payments of £100, and those on the higher rate will receive £3,500 followed by 18 monthly payments of £350.

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Local authority underspend on the Household Support Fund

In addition to the points above, I was asked about the percentage of local authority underspend on the Household Support Fund. On 14 December, we answered a Parliamentary Question on this topic (PQ 104099). I would like to draw your attention to the response we provided, as it may clarify the response I provided during our meeting.

Our Parliamentary Question response detailed recent local authorities underspending: "For the grant period 6 October 2021 to 31 March 2022, 43% of local authorities underspent. However, this was only by a small amount for most local authorities and only 17% underspent by more than 0.5% of their allocation. The management information data for HSF spending, published on Gov.uk, may also be of interest. It can be found at the link here."

I hope this additional information provides clarity on your queries raised during our meeting. I look forward to continuing our discussions in the near future.

Yours sincerely,



RT HON MEL STRIDE MP



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From Sir Stephen Timms, Chair of the Work and Pensions Committee

Rt Hon Mel Stride MP
Secretary of State for Work and Pensions

14 December 2022

Dear Mel,

I am grateful to you and Peter Schofield, your Permanent Secretary, for appearing before the Committee on 30 November. There were some points on which you undertook to provide us with further information and some on which we would appreciate more or updated detail. We would therefore be grateful if you could answer the questions set out below. Question numbers refer to the transcript of the [evidence you gave to the Committee on 30 November](#).

EHRC and Section 23 Agreement

1. We noted that you characterised discussions between EHRC and DWP on reaching a Section 23 Agreement to assist in achieving equal treatment for claimants with a disability as constructive and on-going. But we wish to re-iterate that this is a matter of the utmost urgency. Please set out the reasons for the length of time it is taking to reach agreement with EHRC on this? When do you expect agreement will be reached? (Questions 70-72)
2. We understand that Section 23 agreements are confidential. What will you do to ensure that that the agreement, when reached, is implemented and that DWP is open to scrutiny of its performance in this area?

Benefits uprating

3. What is the outcome of your consideration of publication of the outcomes of the 2019 and 2022 review of benefits uprating? Please can you explain your reasoning for your decision (Question 14).
4. Until March 2022, under the terms of the Welfare Reform Act 2012, the statutory requirement for the frequency of a review of the benefits cap was once every Parliament. Commencement of the Dissolution and Calling of Parliament Act 2022 changed this requirement to once every five years. Are you content that your Department has fulfilled its statutory requirements on the frequency of reviews of the benefits cap since commencement of the Welfare Reform Act 2012? What advice have you receive on this point? When do you expect the next review of the benefits cap to take place?

Benefits sanctions

5. At Question 2, you suggested a reconsideration the decision not to publish the outcomes of DWP's 2020 evaluation of the impact of changes to the benefits sanctions regime. What decision, and for what reasons, have you made on this? (Question 2)

Economic inactivity

6. You said that the review of economic inactivity is an inclusive process and that you intended to hold roundtables with businesses and panels of individuals. Can you tell us more about the approach are you taking to your review of economic inactivity?
7. You indicated that the review would conclude 'early in the New Year' and 'in good time for the Spring Statement. (Questions 1, 7). Can you now give more certainty on when you expect that to be? Will you publish the outcomes of the review?

Migration to Universal Credit

8. You estimated that there would be around 400,000 fewer people on ESA by 2027-28 and offered to provide a breakdown of estimates of the proportions of that reduction is likely to be attributable to a range of causes (Question 21). We would be grateful to receive that breakdown.

Pensions credit take-up

9. What further consideration have you given to the suggestion that the exchange of information with local authorities would enable the identification of a significant group of people in receipt of housing benefit who may be entitled to Pension Credit (Question 39).
10. When do you expect the next set of Pension Credit take-up statistics to be published (Question 45).

Comprehensive Sickness Insurance

11. What changes to policy and practice has the Department made following the March 2022 *VI* judgement by the European Court of Justice on Comprehensive Sickness Insurance (CSI)? What steps is the Department taking to identify cases where an incorrect decision has been on CSI in the past? What corrective measures do you propose to take? (Question 57).

Retained EU Law

12. What legislation with DWP remit has been removed from the statute book under powers granted by the European Union (Withdrawal) Act 2018, and with what effect? (Question 57)
13. Please set out DWP's plans to remove or retain further measures captured by the provisions of affected by the Retained EU Law (Revocation and Reform) Bill? What is your level of confidence that DWP will identify, assess and take any necessary action on all affected measures before the 'sunset' date of 31 December 2023? (Question 59)

Bereavement Remedial Order

14. Please confirm the date from bereavement payments will be backdated following commencement of the Bereavement Benefits Remedial Order 2022? Please explain in more detail the 'administrative complications' that made backdating payments beyond this date more complicated? Why was re-introduction of the Remedial so heavily delayed? (Questions 61-65)
15. Why have bereavement payments not been uprated in line with other benefits? (Question 66)

I would be grateful to receive your response to these questions, and any other relevant information you may wish to share with the Committee by Monday 23 January.

Yours sincerely,

A handwritten signature in black ink, reading "Stephen Timms". The signature is written in a cursive style with a horizontal line above the name.

Rt. Hon. Sir Stephen Timms
Chair
Work and Pensions Committee