Inquiry into incapacity benefit reform and Pathways to Work

The House of Commons Work and Pensions Committee has announced an inquiry ‘to examine the Government’s strategy to help more people who are not in work due to ill-health or disability move into employment through a reformed system of incapacity benefits and the lessons learned from the Pathways to Work pilot schemes.’

NB – The government had indicated earlier this year that a Green Paper would be published this summer to take forward its plans to replace incapacity benefit with ‘a system focused on helping people into work’. However, in July 2005, the Secretary of State for Work and Pensions, David Blunkett, announced that the government will not now set out its plans for reform until the autumn.

Among key areas to be examined by the Committee will be incapacity benefit reform; the future roll-out of Pathways to Work; the experience of sick and disabled people; support for sick and disabled people to move back into work; involvement of healthcare professionals; Jobcentre Plus resources; and the role of the private and voluntary sectors.

The Committee hopes to hold oral evidence sessions in the autumn and welcomes written submissions from interested organisations and individuals by 3 October 2005.

* * * * *

NB – In July 2005, Terry Rooney MP replaced Sir Archy Kirkwood as the new chair of the Work and Pensions Select Committee.

Mr Rooney, Labour MP for Bradford North, was elected to Parliament in 1990 before which he had spent ten years working as a welfare rights worker. He has also been a member of the Parliamentary Labour Party Social Security Committee since 1992, and is a member of the Child Poverty Action Group.

Landmark Court of Appeal judgment on overpayment recovery

Over twenty years of caselaw overturned

In a new landmark judgment, the Court of Appeal has upheld a tribunal of commissioners’ decision that, last year, overturned overpayment caselaw dating back over twenty years.

The appeal involved a claimant who had a learning disability and was in receipt of income support. Although in October 2000 the claimant’s children had been taken into care, she did not notify the DWP of this until December 2001, even though she had been sent an information leaflet by the DWP advising her that all changes of circumstances should be so notified. A tribunal had allowed her appeal, against the subsequent decision that the income support she had been overpaid was recoverable, on the grounds that she did not have the mental capacity to appreciate the significance of the material fact of her children being taken into care, and that although she could read, the simple requests on the information leaflet were not clear enough for her to understand.

However, upholding the Secretary of State’s appeal against the tribunal’s decision, a tribunal of commissioners, in CIS/4348/2003, decided that the previously held view, that a disclosure of a material fact must be ‘reasonably expected’ for any overpaid benefit to be recoverable (under Section 71 of the Social Security Administration Act 1992), was no longer valid.

With the tribunal of commissioners decision having effectively overturned caselaw dating back to 1982, the Child Poverty Action Group, on behalf of the claimant, appealed further. However, in July 2005, the Court of Appeal – in B v Secretary of State for Work and Pensions – dismissed the appeal.

In consequence, all that is required is for the DWP to have placed the claimant under an obligation to report information to it and if they do not do so then s/he will have failed to disclose. So, for example, if the instruction in an award decision letter says ‘tell us X’, and the claimant does not tell the DWP when X occurs, then s/he will have failed to disclose, regardless of any reason for failing to do so.

Leave to appeal is however being sought to the House of Lords.

New Deal for Disabled People extended to 2007

The government has announced that the New Deal for Disabled People (NDDP) is to be extended beyond 31 March 2006, the date it had been scheduled to end.

Announcing that the programme will now be extended to 31 March 2007, Work and Pensions Minister, Margaret Hodge, said she was ‘delighted to be able to give reassurance to people on incapacity-related benefits that the help provided by this successful programme will continue to be available.’

The Minister added that extending the scheme will also give the government time to take ‘considered decisions’ about the help it needs to provide to disabled people to support them to stay in their jobs or return to work elsewhere.
Government refuses to write off tax credit overpayments

The government has said that it will not accept the recommendation in the recent Parliamentary Ombudsman’s report that all official error tax credit overpayments that have arisen in the last two years should be written off.

In Tax Credits: Putting things right, published on 22 June 2005, the Ombudsman said that –

‘… the tax credits system is currently operated in a way that can have unintended harsh and unfair consequences for vulnerable groups of people who will often have particular needs.

I recommend that consideration be given to writing off all excess and overpayments caused by official error in the first two years of the system. This would be a sensible and proportionate response to the situation and would give much-needed relief to people who, in many cases, have been caused considerable distress and hardship.’

However, having met with her on 5 July 2005, the Paymaster General has since written to the Ombudsman to say that Her Majesty’s Revenue and Customs (HMRC) –

‘… has to balance their duty of care to all its customers with regard to the public purse. Current policy is for overpayments to be written off where there was a mistake by HMRC and it was not reasonable for the claimant to have spotted the error. The government believes that this ‘reasonableness’ test, which mirrors long established HMRC practice, strikes the right balance between being fair to those claimants who have been paid the incorrect amount and being fair to the taxpayer in general.’

NB – The Child Poverty Action Group (CPAG) is looking for feedback from advisers to help it lobby for change, in regulations and HMRC practice, in relation to tax credit overpayments.

Feedback will also be used to identify possible areas for research and test cases, and to help CPAG raise areas of concern through liaison with relevant decision makers, and in its policy responses.

For more information, and for a series of on-line forms that can be used to provide instant feedback, see the Tax Credits Monitoring Network pages @ www.cpag.org.uk

A ‘radical new approach’ to the way advice services are funded and delivered

LSC consults on ‘making legal rights a reality’

The Legal Services Commission (LSC) has published a consultation paper that proposes that civil legal and advice services should be more focused on people in greatest need, more coordinated and cost-effective, and better geared to tackle the common causes of legal problems.

In Making Legal Rights a Reality, the LSC advocates a radical new approach to the way civil legal and advice services are funded, purchased and delivered. It is intended that the proposals will –

‘… produce a service that is designed around the needs of clients, gives the CLS a new role in solving the causes of problems and greater flexibility for tackling local issues, promote a better awareness of legal rights, introduce better quality assurances, and create a more cost-efficient and coordinated legal aid system.’

Launching the consultation, CLS Director, Crispin Passmore, said that whilst it is unrealistic to expect every town to have a wide range of legal aid practitioners in every area of law, it is nevertheless reasonable for the LSC to commission services ‘in locations where clients need them, rather than where suppliers might otherwise choose to provide them.’

Making Legal Rights a Reality therefore proposes –

● piloting jointly-funded Community Legal and Advice Centres in the most deprived communities to deliver a seamless service, from basic advice to specialist representation in the highest courts;

● piloting Community Legal and Advice Networks where, rather than law firms or agencies being funded to operate independently, they would be commissioned to form a network that can deliver an integrated service, tailored to the needs of the region;

● an expansion of the CLS Direct telephone and advice service, to improve access to legal and advice services and achieve greater value for money;

● that the CLS, with its ‘unique view’ of the pattern of problems that people face, will tackle the source of common problems rather than dealing with the symptoms by repeated individual legal actions; and

● that, since the complexity of the advice sector and the number of different sources of information can make it difficult for consumers to find what they need, the CLS will work with others, particularly the Department for Constitutional Affairs, to promote trusted sources and help people to navigate through the advice available.

Responses to the consultation should be submitted by 14 October 2005.

Making Legal Rights a Reality is available @ www.legalservices.gov.uk

Migration of families from income support/income-based JSA to child tax credit

The government has provided an update on the timetable for the migration, to child tax credit, of the remaining families still in receipt of income support/income-based JSA for their children.

The migration having already being delayed once – the Paymaster General in October 2004 announcing that the transfer, originally planned for autumn 2004, would begin instead in 2005 – the government has now said it will be further delayed.

In a July 12 parliamentary debate on the ongoing problems with the tax credit system, Chief Secretary to the Treasury, Des Browne, said that, after consultation with the Secretary of State for Work and Pensions, the Paymaster General has decided that the migration of the remaining families will not now begin until 2006. Mr Browne said that this ‘will safeguard continuity of payment, and provide reassurance to that particular vulnerable group’.

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Migration of families from income support/income-based JSA to child tax credit
Magistrates to have access to DWP computer records

Magistrates’ courts across England and Wales are to gain access to the DWP’s electronic Customer Information System to help track down missing offenders who ignore fines and other court penalties, the government has confirmed.

The initiative means that court staff will be able to instantly check the latest whereabouts of missing offenders who have changed address without notifying the courts by accessing the Customer Information System that, in addition to DWP records, is also linked to Revenue databases and personal data records for those in employment and in receipt of tax credits.

However, whilst the database contains extensive records on approximately 85 million people, including defaulters who have moved abroad or died, magistrates’ courts will only be able to access basic personal details such as name, address, date of birth and national insurance number.

The national rollout of access to the DWP database began at the end of July 2005 and should be complete by mid-September 2005.

Age-Related Payments

New regulations have been issued that will provide for payments to specified pensioner households, in addition to the winter fuel payment.

The new payments include the ‘council tax refund’ announced in Budget 2005, and a smaller payment for those aged 70 or over that was announced in the 2004 pre-Budget report.

In force from 1 September 2005, the Age-Related Payments Regulations 2005 (SI.No.1983/2005) make provision for the payment of a one-off lump sum of –

- £200 or £100 to households with occupants who have attained the age of 65; and
- £50 to households with occupants who have attained the age of 70 (if they are also in receipt of state pension credit guarantee credit).

The person has to have reached the age of 65 or 70, as appropriate, no later than the end of the week commencing Monday 19 September 2005, and be ordinarily resident in Great Britain on any day in that week.

Pension Service role in HB/CTB take-up

The DWP has announced a new initiative to enable The Pension Service to play a greater role in the take-up of housing benefit and council tax benefit.

The new project will involve The Pension Service phoning current pension credit claimants who do not receive HB/CTB but have an underlying entitlement, and completing HB/CTB claim forms for new pension credit claimants.

The project will also involve the current twenty-six page HB/CTB claim form being replaced with a new, three page claim form which The Pension Service will complete, and the use of income and savings information provided in connection with the pension credit application.

The DWP advise that the first phase of the project – focusing on current pension credit claimants – will run from September 2005 to March 2006, and will be based at Nottingham Pension Centre.

Phase 2 – involving new pension credit claimants – will commence in December 2005.

DWP failings result in too many appeal tribunals overturning or amending decisions

Failings by DWP decision makers are resulting in too many appeal tribunals overturning or amending decisions because new evidence is produced at the hearing or the tribunal took a different view of the same evidence, according to the President of Appeal Tribunals, Judge Michael Harris.

In his report on the standards of decision-making by the Secretary of State for 2004/2005, Judge Harris highlights that the significance of the evidence of the appellant is often understated, with tribunals taking a different view of the same evidence because they considered that the DWP agency had been wrong not to accept evidence before it or had not given evidence enough weight.

Pre-empting the need for additional evidence, the weighing and manner in which evidence (particularly medical evidence) is used, and the quality and content of medical reports, all need to be addressed by DWP agencies if standards are to improve.

NB – Judge Harris expresses his frustration that, despite this being his fifth annual report, areas requiring attention remain the same year after year, and suggests that there is ‘little point’ in providing more feedback when there is no discernable improvement in decision-making as a result.

Judge Harris highlights that one of the main reasons why matters do not seem to be improving is that too much emphasis is being placed by DWP agencies on processes and targets, ‘as if they are saying that if they could only get the process right then the outcome decision must be right too’.

Instead, Judge Harris argues that the approach taken to decision-making needs to be more flexible and claimants must be confident, when they supply additional information or write in with their grounds of appeal, that the issues they raise will be addressed appropriately before the appeal comes to a hearing. (Although a process is in place to ‘review’ decisions once an appeal is lodged, there is evidence to suggest that the process is not having a substantial impact on preventing cases coming to tribunals).

Judge Harris also recommends that, in providing guidance to decision makers, the DWP should be even handed in quoting caselaw, for example commissioners’ decisions, which balance out their own preferred caselaw, and which might provide a different view of similar situations.

Looking to the future, and what systems are in place to provide ongoing feedback to DWP agencies on the standard of decision-making, Judge Harris reiterates that tribunals themselves are uniquely placed to tell the DWP what they think about the standard of their decisions, and do so many times a day simply by making their judgments. However, whilst feedback would be on a much larger scale if Presenting Officer attendance were the rule rather than the exception. Judge Harris observes that, over the last five years, there has been a marked decline in the attendance of Presenting Officers – from 41% of oral hearings in 2000/2001, to 27% in 2004/2005.

The Report by the President of Appeal Tribunals on the standards of decision-making by the Secretary of State is available @ www.appeals-service.gov.uk
Phasing out payment of working tax credit via employers

New rules from November 2005

New DLA form pilots to be introduced later this year

Reform of the housing benefit and tax credit ombudsmen

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