



OFFICIAL REPORT
AITHISG OIFIGEIL

Social Security Committee

Thursday 20 June 2019

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Thursday 20 June 2019

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
UNIVERSAL CREDIT CONSENT PROVISIONS	2
SUBORDINATE LEGISLATION.....	31
Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (SSI 2019/193).....	31

SOCIAL SECURITY COMMITTEE

18th Meeting 2019, Session 5

CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

DEPUTY CONVENER

Pauline McNeill (Glasgow) (Lab)

COMMITTEE MEMBERS

- *Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP)
- *Jeremy Balfour (Lothian) (Con)
- *Michelle Ballantyne (South Scotland) (Con)
- *Keith Brown (Clackmannanshire and Dunblane) (SNP)
- *Mark Griffin (Central Scotland) (Lab)
- *Alison Johnstone (Lothian) (Green)
- *Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- Richard Baillie (National Association of Welfare Rights Advisers)
- Richard Gass (Glasgow City Council)
- Sheila McKandie (Highland Council)
- Sandra Stewart (Family Advice and Information Resource)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Social Security Committee

Thursday 20 June 2019

[The Convener opened the meeting at 09:41]

Decision on Taking Business in Private

The Convener (Bob Doris): Good morning. I welcome everyone to the Social Security Committee's 18th meeting in 2019. I remind everyone present to turn mobile phones or other devices to silent mode, as we do not want them to stop the meeting. We have apologies from our deputy convener, Pauline McNeill, and, for understandable reasons, Michelle Ballantyne will be delayed, unfortunately. It will be good to see her later if she can make it.

Agenda item 1 is a decision on whether to take business in private. Does the committee agree to take in private item 4, which is consideration of evidence heard during the meeting?

Members indicated agreement.

Universal Credit Consent Provisions

09:42

The Convener: Item 2 is evidence on universal credit consent provisions. I welcome Richard Gass, welfare rights and money advice manager at Glasgow City Council; Sheila McKandie, acting head of revenues and customer services at Highland Council; and Richard Baillie, who represents the National Association of Welfare Rights Advisers—NAWRA. Have I pronounced that right?

Richard Baillie (National Association of Welfare Rights Advisers): That is correct.

The Convener: Acronyms, acronyms and more acronyms. We hope to be joined a bit later by Sandra Stewart, advice worker at Family Advice and Information Resource, whose acronym is FAIR—that is a nice straightforward one.

Thank you for coming along—we very much appreciate that. We will go straight to questions. To give some context to our evidence session, we note that the Information Commissioner's Office has given an opinion on how the Department for Work and Pensions is applying implicit or explicit consent, how that is secured and the length of time for which consent can endure before it must be refreshed. It might be helpful to put on the record two snippets of that advice.

In April, the information commissioner issued an opinion that

"The DWP appears to be taking an unduly restrictive view of the definition of consent under data protection."

The ICO also wrote to ask the DWP

"to revise its consent policies and internal guidance ... and ... to take active steps to ensure that its policy works on a practical level".

They are abstract things to people who are listening to the evidence session, but we are told that examples of the impact of the DWP's position are significant and varied. I have a briefing paper that outlines those issues, but there is no point in me outlining them when we have witnesses to tell us a bit about that.

I will ask a more general opening question. We are aware of the change in the DWP's approach to empowering advocates, welfare rights officers, MPs, MSPs or whoever to help particularly vulnerable people to access the benefits and advice that they need. What has our witnesses' experience been?

Richard Gass (Glasgow City Council): We are fairly early into universal credit in Glasgow and we have not had too many such instances. We

work hands on with individual service users, so we are generally able to input into the journal that we have a mandate for. However, we have come across problems at the stage of making a claim. When there is an existing appointee, that appointee is not recognised as the person to act for universal credit purposes—they need to reapply to be the appointee.

09:45

At the other end, when a claim has been rejected and the person seeks our support, we cannot register online as the representative, because the journal has—unfortunately—been closed down. Fortunately, we are in direct contact with the people, so we can make phone calls and have them present to establish an identity with the DWP.

The Convener: What has been the other witnesses' experience?

Sheila McKandie (Highland Council): We have similar experiences. We were the first in Scotland to implement universal credit under the live service, so we have a lot of experience of it. It is fair to say that the processes have matured, although there is quite a bit to go yet.

There are problems with explicit consent. The key word in the information commissioner's recommendations is "practical". Explicit consent might seem reasonable in theory to the DWP, but it is not practical on the ground. In practical support for appointees on the ground, we experience similar situations to those that Richard Gass described. We also have the rural challenges to overcome, which we might cover later. There are challenges on the ground with explicit consent.

Richard Baillie: The DWP is pursuing explicit consent because it believes that the risks of data breach mean that it is not safe to use the traditional implicit consent. That applies for all the legacy benefits that universal credit replaced and, although we are seeing the thin end of the wedge, the explicit consent approach is being rolled out to other benefits, such as personal independence payments.

We all agree that keeping people's data safe is a good thing. However, when any virtue is taken to the extreme, it becomes a vice—that aphorism is often mistakenly attributed to Aristotle, but it is from an 18th century philosopher. That is more than true here because, although the DWP claims that it is trying to keep people's data safe, there is a lot of anecdotal evidence that advisers and family members are—with good intentions—keeping people's user names and passwords to access their journal.

As for practicalities, like Richard Gass in Glasgow, we have been on full-service universal credit in Edinburgh only since November 2018, so we are at the beginning of it. We are talking about vulnerability. Universal credit has brought in people who would have formerly claimed employment support allowance. We are dealing with people who have physical health problems and mental, cognitive and intellectual impairment, and all of them will have problems in accessing their journal or coming to see somebody face to face. A feature of many modern advice services is that they offer help over the telephone, but that will prove problematic in assisting people there and then to get the vital advice and representation that they need.

The Convener: Does the DWP apply data protection policies and guidelines consistently across Scotland or the United Kingdom? Is there clarity from the DWP on exactly what is required? I hate to be slightly tangential, but my office had a situation with an energy company that was using the new general data protection regulation provisions to say that not just me but every individual whom I employ in my office had to have an individual mandate every time they sought to contact that company on a constituent's behalf. We resolved that pretty quickly by going to senior management, but it showed how the application of consent rules can be inconsistent or misunderstood by the agency that is trying to do the right thing or—to be frank—can be used by an agency to game the system and not necessarily give the help, support and assistance that are needed.

Individuals can play games with consent so that they do not have to do what welfare rights officers or whoever ask them to do. Is there experience of good practice from the DWP, when it has sought to look beyond the rules? Is it inconsistent across the country? Is there experience of a bit of game playing—to be frank—in how DWP officers interpret data protection rules?

Richard Gass: We raised that question at a Rights Advice Scotland meeting last week, when a number of local authorities were round the table. It was surprising that experiences were different and did not seem to be geographically specific—they seemed to be down to who people got on the phone. Some staff who work on universal credit are adopting a commonsense approach and allowing what would be implicit consent—perhaps not with their management's permission. We heard that some folk got through on the phone without too much difficulty; others reported that they phoned up but there seemed to be no way to act—unless the journal had consent written in it, the person they spoke to would not entertain their inquiry.

Sheila McKandie: We detect a nervousness on the part of universal credit staff—it is as if they are unclear about where the boundaries are. Some are cautious, which makes the situation difficult, whereas others are more confident in the guidance that they have been given. That comes across in the inconsistencies that we see, but the approach is a lot more consistent than it was.

Another point that is worth making is that, when local authorities delivered positive behaviour support and assisted digital support, a lot more data sharing was possible. Our local jobcentre staff were tremendous—their approach was pragmatic, although it respected people's data, and it worked well. Since help to claim was introduced in April, local authorities have lost that local data share. A set of challenges has been reintroduced that predated PBS and ADS.

Richard Baillie: Inconsistency is part of the nature of the beast of the DWP—it is nothing new. That is no more true of universal credit than it was of any other benefit. For many years, we operated under implicit consent, which we will talk about a bit more towards the end of the meeting, but even getting that applied consistently was deeply frustrating and problematic. There were spells when it seemed as if a message had gone out that meant that the call handler was not comfortable with implicit consent, and there were other periods when it flowed quite well.

When experienced people phoned up the DWP locally to represent their clients, they recognised accents. Anecdotally, it appears that some local service centres were—to put it politely—overenthusiastically applying the rules, to the disadvantage of the representative and the person they were representing.

The Convener: My experience of individual DWP employees is that the vast majority are trying to do a high-quality job in hugely difficult circumstances. During an inquiry that the committee did on social security and in-work poverty, we heard some pretty powerful and compelling evidence from the Public and Commercial Services Union about the numbers of employees working with the DWP, their workload, the stress that they were under and the lack of resources. Mr Baillie, I know that you cannot comment in any particular detail, but my concern is that where an under-resourced, overstretched member of the DWP—working with Jobcentre Plus, or in a service centre or wherever—has 10 different demands on their time and can do only one thing, if five of them are queries in relation to explicit or implicit consent, those queries will be bagged and sidelined.

Richard Baillie: I agree.

The Convener: It might not be about deliberately gaming the system; rather, it is cherry picking the things that can be done quickly and perhaps more vulnerable people are losing out as a consequence. Could staff resourcing at the DWP lead to a more stringent interpretation of some of the rules?

Richard Baillie: Yes, I concur with that. I too would say that, of all the benefits that I have dealt with, the call handlers for universal credit are the most pleasant and appear to be the most helpful, in terms of their attitude and front-line customer service, that I have ever experienced. I do not know whether my colleagues concur.

Sheila McKandie: I agree.

Richard Baillie: There has been lots of effort to try to treat people in the same way as the Scottish social security system is trying to, with dignity and respect. A lot of good work has been done on that. I agree, however, that from a bureaucratic point of view, if you are under pressure there are certain things that are easier to sideline than others. There is that stock response, "How can I kick this can down the road?" That is a common expression that we are hearing in politics at the moment. People wonder how they can get the person to call them back some other time because they have 15 calls waiting on them and a manager breathing down their neck.

The Convener: Are there any other comments in relation to that?

Richard Gass: We have certainly not had a problem with the individuals in the DWP, neither at call handling nor at local management level. I was going to make a point there, but I have just distracted myself.

The Convener: We will come back to you after I have brought in Sheila McKandie.

Sheila McKandie: I am glad that it is not just me that that happens to.

Richard Baillie: It is catching.

Sheila McKandie: We are certainly detecting a couple of things and I have just forgotten the first one; it will come back to me.

On 4 June, the DWP introduced their improved automated voice recognition system. The system was originally designed so that, when somebody phoned the 0800 number, they had to wait until the end of the message to select which option they were choosing. Customers and advisers were not doing that and were instead trying to intervene during the message. That routed calls incorrectly to call centre advisers and, of course, added to their stress and workload and increased demands on them. I echo my colleagues. Individual DWP staff are highly professional and are trying to do

what we are trying to do, which is the right thing for the client and the claimant.

The first point that I wanted to make is that, quite often with the DWP, it is the case that whoever shouts the loudest gets dealt with. As a result, more vulnerable clients do tend to fall to the bottom because they are unable to articulate the issues themselves. That is when they come to advisers and when they need support, and that is when implicit consent is so important. That is why we are having so many explicit consent challenges and why there needs to be some change.

The Convener: I have one final question but, before I ask it, does Mr Gass want to come back in?

Richard Gass: Yes, I have remembered my point. Sometimes, when the claimant is present to give explicit consent over the telephone, we cannot get through. Obviously, if we cannot get through, that indicates that the DWP has a large volume of calls. When we finally do get through, we no longer have our person present and it is at that point that we run into the barrier of not being able to establish implicit consent because that is not a feature of universal credit.

The Convener: It is very helpful to put day-to-day issues on the table for committee members, rather than talking in the abstract.

There is one final question. I was going to raise it later, but Sheila McKandie referred to it. It is about the new help to claim system in universal credit. We also mentioned protected date of claim issues. For anyone following the evidence session who might not be clear on what that is, as of 1 April anyone seeking to submit a new universal credit claim but who cannot submit it on that day is protected only from the final date on which their claim is submitted. Before 1 April, depending on what agency the person worked with, their benefit was backdated to when they opened the universal credit claim, irrespective of when the final form was submitted.

10:00

Glasgow City Council, using data from its universal credit hubs in the city's library network, told us that because of that change of the rules under help to claim, it estimated that 200 vulnerable claimants each month were going to lose out on money that they would otherwise have got. We are approaching the end of June, so that is 600 people, many of them my constituents in Glasgow, who will have lost out because of that change.

To come back to what we are here for today, I wonder whether GDPR issues have made the situation even worse. One reason why there may

be a delay between opening a universal credit claim and submitting the final form is that some more vulnerable claimants do not have all the information at hand. You may have to contact the DWP to clarify a number of things about the claimant or constituent, but the DWP will turn around and say, "Sorry, we cannot talk to you about this because we do not have implicit consent any more. It needs to be explicit and you cannot prove who you are." If you open a claim on the Monday and try to get information from the DWP and they refuse to talk to you, or you cannot get through to someone on the phone, it could be another 10, 11 or 12 days before you see that client again to get that information.

Have those consent issues exacerbated problems around the loss of the protected date of claim? More generally, I would be very interested to know—because I am very clear on the situation in Glasgow—what the situation with loss of the protected date of claim feels like in Edinburgh or elsewhere in Scotland. Do you have any thoughts and comments on that, Mr Gass?

Richard Gass: We had a conversation about this, because the change was the transfer of the resource to Citizens Advice Scotland. When there was a delivery partnership agreement with the specific local authorities, we who provided that support did so under some kind of agency agreement with the DWP and, therefore, for any delays that happened because we could not make the claim in a set period, the point of contact with ourselves was the date of claim. That did not apply across the board. Folk who found their own way to a welfare rights officer to make a universal credit claim were not so protected. It does seem to be the case that when the service was transferred to citizens advice, that facility was lost, for whatever reason. I cannot imagine that it was intentional; I imagine that it was an oversight. Certainly, I cannot imagine that citizens advice is particularly happy that, for folk who now go to see them, if there is a delay the client will lose out.

We discovered from our roundtable discussions that, so far, there has been no delay involving referrals in Scotland to the citizens advice bureaus. At this point in time there is capacity to see somebody promptly. Our worry is that that might not be sustainable as more and more folk look to claim universal credit. I hope that Citizens Advice Scotland and Citizens Advice UK can engage with the Government to overcome what I hope is only an administrative oversight.

The Convener: Before we let our other witnesses in, you say that your understanding is that citizens advice has not been flooded with claimants going through the help to claim scheme, so they absolutely have capacity. For anyone

watching, go and see your local citizens advice bureau and get the support that you need.

Do you have any feeling as to whether citizens advice bureaux are able to get that claim processed and submitted on the same day? If they are not, it does not matter how much capacity they have, people are still losing out on money.

Richard Gass: My team would not send somebody to the CAB. We would make the claim with the person, there and then. I imagine that it is perhaps other agencies that do not provide welfare rights support that will send folk to the CAB.

You perhaps need to speak to citizens advice to get that information directly. We keep our work in-house. We know that we are up against the clock and that we need to press that button, so we look to do that.

The Convener: I should put it on the record that the committee has written constructively to Amber Rudd, because we too very much hope that this is an oversight and can be fixed. I am conscious that we have had no reply from Amber Rudd. Perhaps the committee will have to follow that up pretty strenuously, so that if it is indeed an oversight we can fix it quickly.

I will bring the other witnesses in in a second. The underlying question is whether, in those advice hubs that you have in Glasgow, your advisers are having issues with getting through and getting consent over the phone to get the information that they need to file a successful claim under universal credit.

Richard Gass: I do not have information for you on that. I just know that, in the hub, they will be seeking to make the claim promptly. If there is missing information simply because the person does not have, say, their bank details, that is not information that you will get from the DWP. In those scenarios, we would put in default information just to take the application to the point at which you can press the claim button. If the person does not have a mobile phone number, we will enter a set of zeros so that we can press the claim button. Once we have the journal up and running, we will add the extra information.

The Convener: That is very helpful. Are there any additional comments from Sheila McKandie or Richard Baillie?

Sheila McKandie: The experience of Citizens Advice Scotland in Highland is exactly the same. It is receiving a low number of referrals from the jobcentre at the moment. People are able to submit their claims on the same day, where the evidence is available. However, as you have pointed out, convener, the very vulnerable clients do not always have that information to hand, for a

number of reasons, and that is where the delay comes in.

Highland Council's welfare support team has challenges in contacting the DWP when the claim is particularly complex. Quite often, people have physical and mental health disabilities and other complex needs. There might be drug addiction, there might be alcohol reliance, there might be other complexities going on in that household or the wider household. There are real difficulties in dealing with those more complex claims and there are delays. There is the potential that the date of claim not being protected will really hit. I think that, over time, capacity will be a real challenge for Citizens Advice Scotland and it will have to have those discussions with the DWP.

Richard Baillie: The experiences of both Glasgow and Highland councils are mirrored in Edinburgh. I was going to say this in connection with the previous point, but it is valid for this one too: let us not forget that of the two stated aims for universal credit, one of them is to save money to the public purse. One does wonder. No longer protecting the date of claim could be an oversight, but it could be yet another way of disorienting people for a period of time. When you add up the number of vulnerable people that that affects, delay could result in some form of saving.

That also applies to the issue of consent. We are there to give advice and to represent others and our job is to ensure that people get their full entitlement from the earliest possible date. That is a cost to the Government and I start to wonder and muse on whether explicit consent and the changes to the protected date of claim are there to reduce the amount paid in benefit.

The Convener: Thank you for putting that on the record. I should point out that when we made representations to Amber Rudd we did so as a committee, including our Conservative members, and our default position at the moment is that this is an oversight that we can address and that we can fix. If we cannot, the committee will have to think long and hard as to whether there are any other reasons. Right now, we have unanimity in the committee on tackling the issue.

Mark Griffin (Central Scotland) (Lab): How easy is it to get explicit consent? The DWP has said that the process is much simpler; it is as easy as putting a note on the journal. What are our witnesses' experiences of that?

Richard Gass: For folk who are digitally capable, then yes, it is a very quick way. In the past, to get a quick mandate in, you had to fax it. Now you can have it in the journal immediately. It is no problem for folk who can log in and use their account. It is no problem if there are folk in the office, if you can get through on the phone.

The problem is where you have someone who comes in to see you who cannot stay for pressing reasons, or someone who has phoned up because they have not had their money, they are not able to make it in, and they want someone to help them. The most vulnerable people are disadvantaged by the need for explicit consent. If consent was implicit and we were phoning up and saying, "We both know that Mrs Smith is having a problem with her benefits. I am here to try to help her", why can we not be believed to be acting in the person's best interest?

Sheila McKandie: The current process assumes that the claimant has access to their journal, but that is not always the case. There could be issues with connectivity, accessibility, or affordability. They might not have credit on their phone, for example. I keep coming back to the word "practical", and those are the practical issues that our clients face every day. It is not as simple as just logging in to your journal.

There are the same challenges with making a telephone call, especially affordability. There is a freephone number, but if someone does not have credit on their phone to begin with, it is very difficult to engage. Those individuals need the support of advice services through the sector.

Of course, in Highland we have rural challenges. People can be quite a distance away from a local agency, so again more delay is built into that. In Highland, we see the system working against people all the time—it is not working for people. The system is good for those who can do for themselves, but it has not been designed for and does not cater for vulnerable clients who have complex needs.

Richard Baillie: I would focus on putting explicit consent into the journal. If the process was easier, perhaps there would be some benefit to it.

The previous method was the client signing a mandate and sending it in. That mandate would go via Wolverhampton, get buried underground for a couple of weeks and maybe never appear where it needed to appear.

If a client is digitally literate—indeed other forms of literacy also come into it—and able to get over some of the other hurdles, that would be fine. However, I would say that approximately one third of the claimants who I deal with face to face cannot remember their log-in details. I suspect that it is true of every single one of us here that we have, at times, forgotten our log-in details for a piece of vital information. It is especially true for people who have literacy issues or for foreign nationals who have limited English.

Universal credit now brings in people who in the past would have claimed employment and support allowance, so again we are seeing a higher

proportion of people who have physical, mental, intellectual and cognitive disabilities. Extending that, what if someone is in hospital and not physically well enough? Even if they have connectivity and the technology, they might not physically be able to use a keyboard or a telephone, whereas possibly previously they might have just about been able to put an X on a mandate. That is also an issue.

Information technology literacy is a big thing. I tried to find some statistics on it but I struggled. What I did come across showed that we are looking at a level of about 15 per cent of functional literacy for adults in the United Kingdom. That is excluding IT, and I suspect it would be a lot higher with IT. Again, that would include a higher proportion of claimants on universal credit.

Mark Griffin: It is clear that the digital-by-default way of operating is not working for a high number of universal credit claimants. How simple is it for those who have the IT skills and good connectivity? We have heard previously about items in journals not being actioned and being missed because of the high workload of work coaches. Has it always gone smoothly even for those who do have good IT skills and easy access to their journal? Does that still always work?

Richard Gass: I do not handle advice any longer so I do not have first-hand experience. I know that when my staff go in to help folk to access their journals, it might be a bit strange the first two or three times but once they have done it regularly, they know how to get into their journal. Claimants are required to put information into their journal all the time.

I accept your point that there will be information going into the journal that the DWP might not act on. However, if we are phoning up to say, "If you look at the journal you will see that we are mandated to do this", that will draw a focus. I am not aware of any occasions where there was explicit consent in the journal that the DWP failed to see.

Sheila McKandie: In our experience, we do not see the people it works for. It is the people that it does not work for who come in to access local authority services and citizens advice services. It does not always work. Either the claimant does not understand the message that has been sent to them on their journal, or the messages they are sending to the DWP are not being acted upon or have been misunderstood. It gets into an email chain that both sides are not understanding and there is a bit of miscommunication between the two. It probably is working for many people, but it is not working for the people we see, and that is why they come to our services in the first place.

10:15

Richard Baillie: NAWRA made the point to the DWP that the consent should be easy for DWP staff to see straight away. We wanted to get it pinned close to the top of the journal. I hope that issue is now resolved and call centre staff can see the information rather than saying, "Where is it?"

Even in your hypothetical scenario in which everything is perfect, and every person has connectivity and is able to use it, I still think that there are remaining issues. What follows is from the Government's online guidance on universal credit consent and disclosure of information. If you are giving explicit consent on the journal for the record:

"You must:

- give consent for your personal information to be shared with the representative
- outline what information you want to be disclosed
- explain why the information is needed
- explain the representative's relationship to you where the representative is your family member or friend".

It gets worse. You must also

"give the name of the representative and the organisation, including the branch where applicable. If you cannot provide the name of the representative, you need to be as specific as possible, for example you should provide the representative's job role or team name within the organisation".

That will be challenging for a lot of people. Even if everything is perfect, there are still some significant hurdles to get over.

Mark Griffin: That does seem like a high burden.

I want to move on to a different area. Contact Scotland British Sign Language is a Government-funded video relay interpreting service for deaf BSL users. Until the start of this month, the funding for that was purely to access Scottish public services. It has now been given additional funding and rolled out to access all public services and any private services that a deaf BSL user would want to access. How easy would it be for a deaf BSL user using a video relay interpreting service to give consent for their interpreter to discuss their case?

Sheila McKandie: We have a BSL specialist at Highland Council and we have made use of our colleague for a universal credit claim. I was not present so I do not have insight into that, but the feedback I got was that it was very successful and it helped immensely. I do not know how they navigated through the system. I am sorry, I cannot share that with you, but the feedback I got was that it was very good.

Jeremy Balfour (Lothian) (Con): I have two or three questions to explore. First, once consent is granted, is it indefinite consent or does it have to be renewed and, if so, how often? Is that different from the previous situation?

Richard Gass: The system is different from the previous one. Consent is now for a limited period and must be renewed. Again, for folk who have easy access to their journal and are capable of using it, that is relatively easy. However, for someone who has problems and is relying on the advice service to fix it all for them and has provided consent, expiry of consent would be a major hurdle. I do not have evidence today of scenarios in which authorisation has expired. However, if authorisation were to expire, that would certainly be a problem.

Jeremy Balfour: How long does consent last?

Richard Gass: The suggestion is that consent lasts for a number of weeks; it would not last for more than two payments. For folk who are paid monthly, that would be between five and a maximum of eight weeks. Maybe my colleagues have experience of consent expiry.

Richard Baillie: Consent lasts for slightly under two assessment periods. When consent is given, it covers that assessment period, which is one calendar month, and it would cover the next assessment period. Like Richard Gass, I have no direct experience of that, but we have experience with the legacy benefits and we know that it can take many months to resolve just one issue. Often, benefits issues are interconnected, so solving one problem potentially leads to multiple issues with a person's claim. Resolving them could easily take longer than two months; therefore, the person would be required to renew consent.

Sheila McKandie: Added to that can be problems with universal credit that the claimant thinks have been solved, until a payment does not appear, an incorrect payment is made, or a deduction is made that the claimant was not aware of. Such issues will still be very live for the claimant: the case will have been closed down because, in the DWP's mind, the issue has been resolved, although it has not.

Jeremy Balfour: I think that I heard Richard Baillie say that what is being described is not just for universal credit, but for legacy benefits and, I presume, new applications for PIP, disability living allowance and attendance allowance. Can you clarify that? Does consent apply across the board for all benefits, or is it just for universal credit?

Richard Baillie: For the legacy benefits—the benefits that universal credit has replaced—and those that were always intended to be outside that system, there has been a bit of leakage. For other benefits, a lead is incorrectly being taken from

what happens for universal credit, and people are trying to enforce some form of explicit consent, whereas they should still be using implicit consent and working with a representative document that has been around for at least 15 years.

Jeremy Balfour: Can you clarify whether, if I were to apply for PIP now, the discussion would require explicit consent?

Richard Baillie: That should not require explicit consent.

Jeremy Balfour: In practice, however, is that happening?

Richard Baillie: I have not experienced that. We would get the person to sign a mandate and submit that with their form. We will come on to this. Although we advocate strongly for implicit consent, it is not a perfect system, but our service would take a mandate and send that in. I have not phoned up the DWP about PIP frequently recently, and I have not had particular problems with using implicit consent, but I understand that members of the NAWRA have, elsewhere in the United Kingdom.

Jeremy Balfour: I would like to broaden the discussion slightly so that we can have a fuller picture. It might be too new for you to answer this, but obviously we now have the new Social Security Scotland agency up and running. No doubt, some of you will be dealing with benefit claims made to it, in due course. Is the agency looking for explicit consent or implied consent? Has it been in touch with you about what will happen?

Sheila McKandie: There have certainly been no discussions with Highland Council regarding explicit and implicit consent. We are working very closely with the agency in relation to introducing the social security benefits. I am not aware that it is contemplating explicit consent.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): Sheila McKandie mentioned rurality—I am sure this is relevant to other witnesses—and difficulties existing where it is not practical for people to get to a local office. We have received written evidence about that and the difficulties of people in remote and rural areas. We have been told that people can make arrangements for

“a three way call between themselves, a representative and the DWP to verify their ID”.

On the face of it, that sounds like a very complicated thing for a person to arrange just to identify himself or herself. Is that what is happening? How does it work?

Sheila McKandie: I will speak from the rural perspective. That facility has been available for a long time—I think, since we introduced the live

service, way back. Highland Council's welfare support team has never made use of the facility, because our clients just cannot cope with the system. The very reason why they are clients of the local authority or a citizens advice service is that they cannot deal with such issues themselves. Three-way calling certainly does not work in Highland.

Dr Allan: That is very interesting to hear because—

The Convener: I just wonder whether other witnesses have experience of that.

Dr Allan: I am sorry; I beg your pardon.

Richard Baillie: No. I defer to Sheila McKandie's experience.

Dr Allan: Do others on the panel have any knowledge of that system being used?

Richard Gass: I am aware of its existence, but I am not aware of anyone having made use of it.

Dr Allan: That is very interesting to hear, because it was put to the committee that the facility is a useful means for people to identify themselves. It does not, to be frank, sound as though it is. What are people who live 50 or 100 miles from their nearest centre—which will be familiar to those of you from the Highlands—supposed to do to identify themselves? If people are unaware of that facility, is any effort being made by the DWP to make people aware of it?

Sheila McKandie: I am not aware that the DWP is making people aware of the facility. We certainly advise people that the facility exists, but very quickly they say that they could not cope with it, and that that is why they need us. In Highland, we facilitate the system through my team having mobile technology with which they go to people's homes. That means that Highland Council incurs a lot of costs in terms of travel and time, but without that service some people would not be able to access universal credit. As Alasdair Allan said, they are 50 to 100 miles away from a centre. They do not have money to travel, and there is no public transport available. Those people cannot access local services from where they are, so we have to take our services to them.

Dr Allan: From what you say, it seems that the DWP thinks that it is the role of others to pay for interventions of the kind that you are talking about in order to make the system accessible for people.

Sheila McKandie: A lot of people refer themselves to the Highland Council welfare support service and to citizens advice services. The DWP has a visiting service, which I think is available across the board, but I do not know how well it is used; I do not have statistics on how regularly that service is called upon. My team in

Highland Council are out every single day in people's homes to help with universal credit processing.

I should also say to the committee that it used to be the case, for the legacy benefits, that when a person came for support, we would help them through the claim process and help them through the appeal process, and then they would be on their way. That is not our experience with universal credit: it is not a one-time provision of service. People come to our service and get support with application, get support with appealing, then they come back because either a deduction is made that they do not understand or the level of deduction is putting them in hardship. They might also have been sanctioned. We in the advice sector have not seen complexities such as those around universal credit before.

Dr Allan: Finally, do any of the panel have a view on whether the change to universal credit has had a marked impact in terms of the problems that are associated with rurality?

Sheila McKandie: I can speak only from the Highland Council perspective, but that is certainly the case in Highland in terms of delivering the service, because universal credit is, of course, modelled on the digital by default approach. The DWP has lost that terminology, but the system is still digital by default. As I have said before, there are real connectivity issues. There are also skills issues and affordability issues. There are challenges to do with accessing local services in Highland—there are real rural challenges, on which the DWP has tried to work with us.

The committee will be aware of the Skype facilities that have been set up in Highland. We have them in one of Highland Council's local service points—it is a one-stop-shop—and in North and West Sutherland Citizens Advice Bureau in Kinlochbervie. I would love to see the facility being rolled out much further. We need to support that. We have a welfare adviser in our service point office with the Skype facility, through which we support clients through the whole process. It is a fantastic facility, and we have had very positive feedback from the local jobcentre that services the Skype facility.

The Convener: I am conscious that Sheila McKandie has expertise in relation to rural issues, but we have been joined by Sandra Stewart. Sandra, it is lovely to see you; I know that you had some challenges getting here this morning. I remind the committee that Sandra Stewart is an advice worker with the Family Advice and Information Resource.

Sandra has not had an opportunity to put anything on the record yet. What you say need not be specific to Alasdair Allan's line of questioning.

He was interrogating the barriers to accessing services, and we have talked about explicit and implicit consent, and rurality. I just want to afford you the opportunity to put some remarks to the committee.

Sandra Stewart (Family Advice and Information Resource): Thank you. FAIR works with people with learning disabilities, and with their carers and family members. Universal credit has been incredibly problematic for us because of the client group with which we work. We are fortunate that most of our clients are still on legacy benefits and will probably remain on them for some time and, we hope, have managed migrations.

10:30

The difficulties that we have include clients not being able to read or write. Normally, if they received a letter they would bring it to us and we would call and speak to someone from the DWP about it. The situation has been very difficult. Our clients might be unable to remember passwords, and even speaking to someone on the telephone can be difficult. Most of our claims so far have been phone claims: they have not been online claims because our clients cannot use technology. Most of them do not have mobile phones, and would tend to lose them even when they do.

We have probably about 10 clients so far on universal credit, and the time that it takes for us to deal with those clients has tripled. They are clients who need quite a lot of support anyway, but the time involved has now increased dramatically.

The Convener: I want to give you the opportunity to put evidence on the record, because we have only about 25 minutes or so left of this evidence session. Have you noticed that the time periods have become much more challenging in the past few months in relation to interpretation by the DWP of the general data protection rules? Could you say a little bit about that and what would be make the system easier and more accessible for the individuals whom you represent?

Sandra Stewart: The easiest thing would either be to go back to implicit consent so that we can actually speak to someone, or to have paper authorisation that we can get someone to sign. We have lots of clients who will have a dual diagnosis of a learning disability and autism, and who also suffer from severe anxiety and cannot speak on telephones. Even speaking to someone to give their consent for us to speak on their behalf is really difficult for them. They can, however, sign a bit of paper, so such mandates were really useful for us. With implicit consent we would not even need to have the client with us.

It has been a nightmare, to be honest. We have had clients who have said that they want us to speak on their behalf, which has been pinned to the system but has been ignored. The DWP has continued to send text messages to people who cannot read, so they are having to come in with their phones to get us to read messages and then make the calls on their behalf.

The Convener: I wanted to give you the opportunity to put that on the record. We will continue with the previous lines of questioning. I did not want you to miss out on your opportunity to make sure that that was caught in the *Official Report*.

Keith Brown (Clackmannanshire and Dunblane) (SNP): I see that the Information Commissioner has mentioned the

“unduly restrictive nature of the definition of explicit consent

and, in particular the situation regarding MSPs now not being able to access information. Mr Gass made the point earlier that, if the person is present with the adviser—in this case I am talking about an MSP or their staff—that is often sufficient. I was interested in that, because the experience of my office is that that does not work; we have had constituents who have been very distressed, perhaps because their claim has been refused, sitting with me or a member of staff, and the DWP has refused to accept that. The system does not seem to be working for them.

Given what has been said and given the attempts that have been made, both from within the department and by Linda Fabiani and others, to overcome this situation, what is your view on the restriction on MSPs being involved? The UK Government regularly states that the Governments and the departments should work together, so my question is whether this is serving the people who need these services well.

Richard Gass: My view is that elected members from either Scotland or the UK Parliament should have the right to implicit consent and our preference would be for that to be extended to advisers, too. I can see no reason why you would not allow an MSP to have implicit consent. In future, when we have more benefits devolved to the Scottish Parliament, MPs will presumably wish to have implicit consent. I cannot see how people are served by having only certain elected members able to make use of it.

Richard Baillie: I do not see the justification at all for excluding MSPs from implicit consent, but I would roll it out further and say that local authority councillors should also be included as elected representatives. Invariably, the work that we do with MPs gets delegated to their incredibly hard-working staff. I am sure that MSPs have the same hard-working staff who would put in a good deal of

effort. It proves incredibly fruitful, because MPs can get a detailed response from the DWP, whereas it just does not respond in the same depth to us. That allows us to get a full case overview of what is going on and then we can intervene with our advice, representation and expertise in social security law to take forward any potential challenges and, hopefully, get a successful outcome for the person who is making a claim for benefits.

I have a slight bias here, as I am a local authority welfare rights officer. If implicit consent were extended to local authority councillors, we could then say that we are staff to the councillors and that it would therefore also apply to us.

The position just makes no sense and is of no support to people who need the vital help there and then.

Sheila McKandie: We would point the DWP to paragraphs 22 and 23 of schedule 1 to the Data Protection Act 2018—the same provisions existed in the previous act—which clearly state that an elected representative, whether at UK, Scottish or local level, should be treated the same and should have the same access rights when it comes to processing data. We think that the provisions and the rights are there and that the DWP is misapplying the legislation.

Sandra Stewart: We tend to use MSPs as a last resort when we are really struggling with cases, and their involvement has always been fruitful. If that option is no longer there, it will just make our job much harder.

Keith Brown: I am interested in the point that was made about the existing provisions, which begs the question as to why this restrictive approach has now been adopted and what the purpose or the idea behind it is. Let us be charitable and say the idea is a genuine regard for the data of the individuals. It strikes me as odd, because I wrote to the UK Government recently on a reserved matter and it passed my letter on behalf of my constituent to the MP, which my constituent specifically did not want. Without wandering too far away, if we look at what MI5 and MI6 have been doing in the past week or so, we see that protection of data does not seem to be a strong point.

On the point that is made about councillors, I understand and I would support that. I suppose that the DWP and any Government agency has to have some ability to regulate where the data goes. Would the point of access from councillors be through people such as you? If the officers in the councils' money advice services were known to and, if you like, almost accredited by the DWP, the councillors could go through that acknowledged and trusted route.

Richard Baillie: This is how I envisage it working. When your constituents came to you with problems, as they also do to MPs and councillors, that case would then be referred to your staff. MPs would refer the case to their staff, and, as they have done since I began working in a local authority, councillors would pass the query on to the people who can get it resolved. That would be the channel, rather than the councillor, MSP or MP being bypassed; the constituent would be going to them in the first instance and then the staff would be doing the follow-up work.

The Convener: I do not know whether there was a bid for supplementaries on that specific point. The next theme of questioning will be by Alison Johnstone, but I will take Alasdair Allan and Shona Robison if their questions are on that point.

Dr Allan: I just wanted to observe that the Scottish Government has made representations about this issue. It does not sound from what has been said today as if the DWP is responding to those very actively.

I was interested in something that was said earlier about some of the vulnerable groups who are accessing services. There seems to be an assumption that people will be so interested and versed in the Scotland Act 2016 that they will know which benefits are devolved and which ones are reserved and will know who they should go to. Is it a reasonable idea that people should go to an elected representative on the basis that they know which parts of the Scotland Act 2016 devolve which benefits? That is a loaded question.

The Convener: From the witnesses' body movements and shaking of their heads, I am able to ascertain via the power of mime that all the witnesses agree with you.

Richard Baillie: The only point that I would make is that this may be one other issue that has been overlooked in respect of the points that you were making in connection with preserving the date of claims.

The Convener: I know that we are going to look more at vulnerable constituents and members of society shortly and how the system works or does not work for them.

Shona Robison (Dundee City East) (SNP): I note that, in his response in 2017 trying to justify the exception for MPs and not others, Damian Green stated:

"We can offer this because of our pre-existing relationships between MPs' offices, district managers and their teams. This is something which cannot pertain for inquiries from other sources."

My office in Dundee has had a very good relationship with the local DWP office and staff going back a number of years—I have been an

MSP for 20 years now, so it is a long-standing relationship. Apart from the fact that Damian's Green's statement is extremely challengeable, I want to put on record that the local staff still try to accommodate inquiries for the sake of the constituent. It appears to me that the thwarting of that is certainly not coming from local staff, who are trying to work with us, but is coming from higher up. It is important to make that distinction, as this is a political decision that appears to have been made against the wishes of local staff.

The Convener: I do not know whether there was a question there, but it is good to put that on the record.

It is also worth putting on the record that, in my experience in relation to all elected representatives in this place, this is not about a turf war between different elected representatives or about status and hierarchy; it is about the individuals who come to see us and about trust and relationship building. It really does not matter whether it is a councillor, an MP or an MSP. If you have the trust and you have the relationship, you should be able to have implicit consent and just get on with helping people as best you can. There is not a turf war among the elected representatives I see; we just want to help people. We feel that there are barriers to that just now that are not justifiable. Thank you for your support in the comments you have made about that.

Alison Johnstone (Lothian) (Green): There has rightly been a focus on the impact that the requirement for explicit consent may have on particularly vulnerable members of society. I have a strong impression from this morning's evidence that all your organisations are now finding it more difficult to help people, particularly vulnerable people, with their claims. You are probably aware that, in April, the Information Commissioner's Office gave its view on the DWP's approach. It said that

"the DWP appears to be taking an unduly restrictive view of the definition of consent under data protection"

and that not enough importance has been given to

"ensuring that vulnerable persons are not prejudiced as a result of the interpretation of the DWP's policy on this topic."

Could you give your views on the ICO's intervention and whether it might be helpful in turning things round, as well as on the negative impact that this is having on vulnerable people and whether there are sufficient safeguards in place to ensure that they are not any more negatively impacted than they already are?

Richard Gass: We support the Information Commissioner's comment that the DWP should not be so restrictive. By and large, folk come to advice services in the first place because of a

vulnerability, in that they cannot navigate the benefit system confidently on their own and they require another person. We should not have artificial barriers in the way of their engaging the service. The more vulnerable a person is, the less likely they are to relish and enjoy their time with their adviser. They might just want to be able to say, "I cannot deal with this. I have given you the information. Please sort it out," and not have to come back. We should all unite to overcome the lack of ability for advisers to do their job for such vulnerable people.

10:45

Sandra Stewart: I agree with that. We have clients who will completely disengage with the benefit system because it will be so difficult for them now and also because we cannot advocate on their behalf. We have clients who cannot speak on the telephone and cannot use technology. This system is not suitable at all for people with their type of needs.

Alison Johnstone: Are there any exceptions being applied to take account of that? Should there not be some sort of marker on an individual's record when this is clearly not going to work?

Sheila McKandie: There are safeguards in place that are similar to ones that local authorities have in place for discretionary housing payments. They look at things such as learning difficulties and drug addiction and dependencies. The difficulty is the application of the safeguards, as they are very generic, and service centre staff do not always have the confidence to apply them. We quite often get into long discussions with the DWP about when the safeguards should apply. At the very basic level, somebody in rent arrears is vulnerable because they are at risk of losing their home. The question is where the safeguards stop and start. How are they applied? What is the consistency of application?

The DWP has put in place provisions for safeguarding, but it is their application that throws up the difficulties.

Alison Johnstone: We do not have the Child Poverty Action Group with us this morning, but in its submission it has given a couple of quite concerning examples, including this one:

"A lone parent is suffering from stress and depression and her baby has been admitted to hospital for failure to thrive. The family are at serious risk of eviction and client would like payments to be made to her rent arrears by direct deduction from her UC but she is just not able to engage with DWP due to everything going on in her life and the solicitor trying to avert the eviction has been unable to converse with DWP on her behalf as they will not accept implicit consent."

What could we do as a committee to try to prevent that kind of unnecessary suffering?

Sheila McKandie: Somebody has to monitor whether the DWP has reviewed and applied the ICO's recommendation and listened to what it has said. As you will see from the ICO, it is monitoring it but it is not expecting a formal response to come back from the DWP. When we have an audit, we have to respond to that audit, but the DWP does not have to do that in this case. If the committee could somehow track and keep checking and liaising with the ICO, that would be very helpful.

Alison Johnstone: We need to be recording the instances where this is having an impact and acting on them.

Sheila McKandie: Yes.

The Convener: I do not see any other bids for questions, but we still have a little bit of time in hand.

Michelle Ballantyne has a question. I know that she was unavoidably late this morning, so it is good to see her here.

Michelle Ballantyne (South Scotland) (Con): Thank you, convener. I apologise for my lateness. I had an issue that I had to deal with.

Thank you for your evidence so far. I want to clarify a couple of things for my own understanding. Mr Baillie talked about the fact that, previously, you would just get somebody to sign a mandate, which was easy, and Ms Stewart referred to the same thing. My understanding is that consent can still be given in writing so, in effect, that process can still be used. I wonder whether you have used that process, or are using it. Fundamentally, what is the difference? Mr Baillie said that you would get somebody to sign it and would then send it off, and it could take a couple of weeks and get lost in Wolverhampton. However, I presume that you can still get somebody to sign it and you can still send it off. Have you been doing that? If so, has it worked?

Sandra Stewart: We can still get someone to type into an online journal that they give explicit consent for us to act on their behalf but, as I said, we have clients who cannot use technology so they do not have online journals. Their claims are telephone claims.

Michelle Ballantyne: My question was about whether you can write in, as opposed to doing it digitally.

Sandra Stewart: We have not been able to do that, I am afraid.

Richard Baillie: No?

Sandra Stewart: No.

Michelle Ballantyne: Why is that?

Sandra Stewart: It has not been accepted.

Michelle Ballantyne: Have you tried doing it?

Sandra Stewart: We have tried doing it, but we have not been successful with it. We do not have lots of cases. Often, mandates are not successful anyway. A client will say that they give us authority to act on their behalf, but at present the DWP often does not recognise that. However, they will give implicit consent, so that is fine.

Michelle Ballantyne: In roughly how many cases has the mandate been refused?

Sandra Stewart: As I said, we do not have a lot of UC cases at present because of the client group that we work with. I know of only one case that has been refused so far, but I am—

Michelle Ballantyne: So when you say “often”, you mean one case.

Sandra Stewart: Yes—we have had one case.

Richard Baillie: My understanding is that the DWP should accept it in writing—

Michelle Ballantyne: Yes. That is my understanding.

Richard Baillie: However, there are still structural issues to do with the length of time for mandates, and mandates will have to be adjusted to say that we are dealing with a particular issue and nothing else. As was explained earlier, issues can roll on for many months and they can involve not just the original query that the person came in with, but multiple problems. It can be a bit like peeling an onion: there can be many layers.

We can still do it in writing. We still seek mandates, which can be and are being submitted. I have not come across an example of a mandate being refused, but we are still bound by the limitations on explicit consent, whether it is done in a journal, in writing or over the telephone.

Michelle Ballantyne: So the real issue is around having to renew it in order to deal with an on-going complaint.

Richard Baillie: Yes.

Michelle Ballantyne: You also mentioned the time lag for it to arrive when you submit it in writing. Has that got worse? Is it worse than it was for the legacy benefits, or is it similar? What is the scenario there?

Richard Baillie: I cannot comment on a comparison of the legacy benefits and universal credit. As I said, as much as I would continually advocate implicit consent, as I think we all would, it was not a perfect system. Maybe something can be put together that is a combination of the two, which allows for ease of submitting consent and allows it to be given implicitly.

I have lost my train of thought—sorry. I will hand over to my colleagues.

Sandra Stewart: Our experience of explicit consent is also that it is time limited. Often, it is limited to just 24 hours. We have been told that it will last for only 24 hours. I do not know whether that is to do with the fact that the claims that we deal with are phone claims and are not typed in, but we have had that experience as well.

Michelle Ballantyne: Is that anybody else’s experience?

Sheila McKandie: It is not our experience. In Highland we have been working with universal credit for a number of years, so our teams are very practised in relation to consent. We advise our clients exactly what to say because we now know what to say to ensure that the consent is valid for the period. However, cases often take other directions and consent does not cover the new part. A deduction will be made, for example, that we were not aware of when we set the consent with the claimant. That is where the challenge comes in for us. We have not experienced a 24-hour expiry.

Michelle Ballantyne: Mr Gass, have you experienced that?

Richard Gass: No. I am not sure why Sandra Stewart has been given that.

Michelle Ballantyne: It does seem a bit weird.

Sandra Stewart: I think that it is down to the fact that it is a new system in Edinburgh and we are getting mixed messages about what we can and cannot do.

Michelle Ballantyne: I have forgotten my other question, convener. Can I come back in if I remember it?

The Convener: I will filibuster for 30 seconds and you can come back in, Michelle. We have a bit of time in hand.

Michelle’s line of questioning is interesting on two fronts. The first is that a lot of the data on what we have discussed has not been captured. Sandra Stewart said that, with a small but incredibly vulnerable cohort, she has one specific example. We have heard anecdotally from other agencies that that is happening elsewhere, but there is no number crunching on how much that is happening. I imagine that Sandra is busy helping vulnerable people rather than bean counting to determine how many times that is happening.

Secondly, we heard earlier that there are some examples of really good practice in the DWP but that there is inconsistency across the country. I think that that gives us some context.

I have been filibustering for you, Michelle, but what I have said will also fill you in a wee bit on that earlier exchange, as you missed it.

Michelle Ballantyne: I have an old brain, you see, and it gets fuzzy.

I want to go back to what Sheila McKandie said about implementing Skype as a support mechanism. I was fascinated by that, because it is a digital solution to a digital problem. Will you tell us a little more about that? You talked about issues of rurality and the fact that people cannot access face-to-face support but have also had real problems with digital support. How is that digital solution to that digital problem being implemented to overcome the lack of digital capability?

Sheila McKandie: We have worked closely with the national DWP team on the introduction of Skype. We have two sites in Highland and we chose the offices deliberately. The one in Kinlochbervie, which is extremely rural, is in the citizens advice bureau, and the other facility is in our local authority one-stop shop. It is what we call a service point. In both instances, there are welfare advisers to support claimants, who need support each and every time they access that service. The digital solution comes with specialist support. If you were to put the service into a booth somewhere, such as in the middle of Princes Street, without providing that support, I am not sure that it would be so successful. There is a cost to administering the service from the local authority and citizens advice perspective.

Michelle Ballantyne: What happened with those vulnerable clients previously? How did they get direct support? Is it just that they need multiple-contact support or was something different going on because of rurality?

Sheila McKandie: The one-stop shop is in Golspie. In Golspie, the closest jobcentre is 50 miles away, so it is a 100-mile return trip, and the public transport links mean that someone may not get there and back in a day. Previously, my team went out to people's homes and supported them there. That has reduced in Golspie. However, we service the rest of Sutherland, which is the largest geographical area in Highland, by going into people's homes. What we have provided is complementing existing services; it has not eradicated them.

Michelle Ballantyne: People in Golspie can now go to a point, rather than you going out to them.

Sheila McKandie: Yes.

Michelle Ballantyne: Okay. That is grand. Thank you.

The Convener: Are there any other questions from members?

Members: No.

The Convener: We have a little time in hand before we move on to our next agenda item. If there was a line of questioning that you expected but it was not taken so you have not had an opportunity to put on the record something that you wanted to convey, you have an opportunity to do that now. Do not feel that you have to do that, but the opportunity is there.

Sheila McKandie has come straight away with a bid to do that. If you make your comments, Sheila, it will give the other witnesses an opportunity to consider whether there is anything else that they want to put on the record before we close this session.

Sheila McKandie: Thank you, convener. When the DWP has been challenged on explicit consent, Neil Couling has been consistent in his response. He has said that the DWP collected a set of personal data under the legacy benefits. Under universal credit, it is collecting more personal data, and I do not understand what that additional personal data is. I think that it would be helpful for the committee and for us as practitioners to understand what additional data is being collected that requires us to shift to such an extreme position where we need to have explicit consent.

If we all understood that, perhaps we could work with the DWP to overcome some of the barriers that are presenting themselves. I just do not understand what the additional data is. As the committee knows very well, we have fed a number of benefits into universal credit. We were already collecting all that data and we were operating under implicit consent. I do not understand why we have had to shift to explicit consent, because Mr Couling has not been explicit in explaining that to us.

The Convener: Okay—thank you.

Michelle Ballantyne: May I ask a question on that?

The Convener: Yes. Please be quick, given the time constraint.

Michelle Ballantyne: I will be very quick. Did you have implicit consent to deal with Her Majesty's Revenue and Customs? Was that the same?

Sheila McKandie: Under working tax credits, yes.

Michelle Ballantyne: That is fine. I told you that I would be quick, convener.

The Convener: You were very quick.

Let us go along the panel from my right to my left. That will mean that we take Sandra Stewart at

the end, so she will get the final word. I ask Richard Baillie to go first.

Richard Baillie: Sheila McKandie has made a really important point. The DWP has already made clear the information that it will not disclose. It will not disclose the person's address, date of birth, national insurance number, bank details, sort code or telephone number or the names of the members of their household, and I could go on. If that is clear from the outset, I do not see why it cannot use implicit consent.

I think that we all agree that we want implicit consent to be used for universal credit. If that is the message that comes across, I am glad about that. There need to be improvements—I think that that was the subject of one of the questions on explicit consent.

11:00

I take Richard Gass's point because, when people come to see us, they do not want to spend a lot of time. The type of consent that they want to give involves them saying, "Please help me with my benefits now and from this day forward, for all issues." If we want to restore agency to people, that is what we should be doing.

I agree with the point that was made about data breaches. Where are they? I also note that the move to explicit consent again involves the DWP deciding what is right and what is wrong for claimants, and not them.

Finally, I would say that explicit consent appears to support claimants in the way that a barbed wire chair would support your back.

Richard Gass: I have a final point on the Apollo list, which is a list of staff who have a right to access certain information without client consent—this is laid down in legislation—for such purposes as the administration of housing benefit, working out eligibility for the Scottish welfare fund and ensuring that there are the right residential and non-residential care charges.

Our staff have found a degree of difficulty in using the Apollo list to gain information about universal credit. They have been advised that they cannot do that and that the client would need to put information on the journal. In Glasgow City Council, we have access to the DWP's customer information system—again, that is strictly for certain purposes. However, under universal credit, there seems to be a misunderstanding about what information can be shared and when. I do not know whether that has been driven by the fear that was mentioned earlier to do with the amount of work that the DWP has to process, which is pushing things off the table.

The Convener: I promised to give Sandra Stewart the last word. I will put something on the record now so that she gets the last word. I have just received a reply from the Secretary of State for Work and Pensions in relation to protected date of claim. I cannot speak on behalf of the committee on that because it has not seen the reply yet, but I would describe the reply as woefully inadequate. I will ensure that the correspondence is put on our website as soon as possible so that others can see it.

You have the last word, Sandra.

Sandra Stewart: I agree with my colleagues on the panel. Not having implicit consent is just creating more barriers for our clients and making our jobs much more difficult.

The Convener: We will leave it there. I did say that that would be the last word.

I thank all four witnesses very much for their evidence. As I always say in such situations, if you are on your way back to Glasgow, elsewhere in Edinburgh or up to the Highlands and you think of a point that you should have raised, please remember that today's meeting does not mark the end of our consideration of the subject. We will consider the evidence that we have heard in private later this morning, but if you want to draw anything else to our attention, please do so through our clerking team. We very much appreciate you coming along this morning.

I will suspend the meeting briefly to allow the witnesses to leave before we move on to agenda item 3.

11:03

Meeting suspended.

11:06

On resuming—

Subordinate Legislation

Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (SSI 2019/193)

The Convener: Agenda item 3 is subordinate legislation. I refer members to paper 3, which is a note by the clerk. The Delegated Powers and Law Reform Committee considered the regulations, which are subject to the negative procedure, at its meeting on 18 June and has drawn them to the attention of the Parliament on the grounds that the meaning of regulation 18 could be clearer. The Scottish Government has undertaken to bring forward an instrument shortly to rectify the issue, which has been welcomed by the DPLR Committee. The Scottish Government is attending to the matter that our sister committee has raised but, before I ask whether we are content just to note the instrument, do members wish to make any comments?

Mark Griffin: There are a lot of good things in the instrument. In particular, there is the increase in funding from £3.10 a week to £4.25 a week. We should warmly welcome the fact that there will be no recovery of unintentional overpayments and the transitional protection, with the age of eligibility reducing from four to three. However, that brings me on to some of my concerns. I would like to hear more from the Government about why the age of eligibility should reduce from four to three. As the Government is able to fund that transitional protection, that raises the question as to why the funding could not be provided on an on-going basis to maintain eligibility for four-year-olds.

On a process question, the legislative route for the instrument is through the Social Security Act 1988 rather than the Social Security (Scotland) Act 2018, which means that it is not covered by some of the things that the committee worked hard to put in place. In particular, I am thinking about the Scottish Government's strategy to ensure maximum uptake.

Another issue that the committee has worked hard on is automation. I would like clarification from the Government as to why people who will move on to the new system will be invited to apply rather than automatically transferring. That issue is close to the heart of a lot of members.

Thank you for the opportunity to put some of those queries on the record, convener.

The Convener: Thank you for putting that on the record. It is absolutely valid that you do so, but I should put it on the record that the Scottish statutory instrument was circulated to members

two weeks ago, and we were asked to raise any detailed issues with it in advance to perhaps allow us to do something more meaningful on those points. Obviously, no one got back in relation to that.

Rather than skirt round some of the points that have been made, I point out that, in relation to take-up and automation, we are already in correspondence with the Government on potential lines of work for the committee, so I hope that we will be dealing with those issues in due course. Mr Griffin also raised a point about the criteria for qualifying for the money. The committee will of course carry out budget scrutiny, which might be an opportunity to return to that.

I am just trying to be helpful and to point out where the committee could move forward on some of the issues that Mark Griffin raises. However, he has put them on the record, which is absolutely his right and the right thing to do, because he feels strongly about it.

Keith Brown: I am happy for us to write to the Government to ask about the issues that Mark Griffin has raised, but I am not in favour of delaying going ahead with the measure. I am happy for us to note the issues.

Paragraph 6 in paper 3 says that the reason why we have to consider the regulations now is that the commencement date is 12 August, so it was not possible to lay the instrument 40 days before that. That is not a reason. The Government should work back from the commencement date and lay the instrument 40 days in advance. There might be a reason, and my view is that we should ask what the reason is. However, that issue is not sufficient for us to prevent the regulations from going forward, and nor are the questions that Mark Griffin has raised. It is important that the regulations proceed.

The Convener: I will make a couple of suggestions in a second, but a number of members want to comment now.

Alison Johnstone: I, too, am content for the regulations to go ahead, but I would like to raise the issues that the Child Poverty Action Group has raised with regards to the stigma of prepayment cards and the need to provide cash payments wherever possible because many smaller shops, particularly in poorer communities in rural areas, do not accept such cards.

As a matter of course when we are dealing with such issues, it would be helpful if the Scottish Government could advise what its position is on uprating in line with rises in the cost of food. I would also like to know what alternative provision there is for those who, for whatever reason, such as allergies, are unable to have cow's milk,

formula or eggs. Those issues should be covered as a matter of course.

Jeremy Balfour: I agree with Alison Johnstone and Keith Brown. We should not delay the regulations, but we should write to the Government to ask for clarification on the issues that Mark Griffin has raised.

On Keith Brown's point, I agree that we probably want to put down a marker now that we do not want things to come to us at the last minute so that we are having to chase our tails. We should say to the Government that we need to see instruments as early as possible. I take the convener's point that the regulations were circulated two weeks ago and we were asked to look at them then, but this is the first time that we have had a public session on the regulations to allow us to raise the issues.

With the regulations that will follow in the autumn and next year, we need time to reflect on them and call in the appropriate witnesses, if required. We should put that in a letter to the Government along with Mark Griffin's questions. However, I am content not to delay the regulations, because there are more positives than negatives.

The Convener: That is helpful. I will make a suggestion on what you have said after everyone has commented.

Michelle Ballantyne: I will probably echo a lot of what has been said already. Because it is a negative instrument, when it was sent to us two weeks ago, I did not see our objecting to it as such, but that does not mean that there are no concerns about timing and some of the points in it. I wanted to understand or have clarification of those issues. I also wanted to hear what other members thought, so that we could have a consolidated list of questions.

One concern that has not been mentioned relates to the removal of four-year-olds, which is being done on the assumption that they will all be in early years care and will get their lunch there. From talking to people, my sense is that not all of them will be, for various reasons, and I am concerned that some will lose out as a result. I would like clarification from the Government on the evidence base that it used to make the assumption that the removal of four-year-olds will not have any detriment to vulnerable families.

11:15

The Convener: As there are no more comments, it might be helpful to say why I mentioned the fact that members were made aware of the regulations two weeks ago. My point was not that we should not put the detail on the

record this morning. There was no requirement for members to raise issues earlier but, if they had done so, that might have afforded the clerks the opportunity to take a structured approach and to be ready to support our discussion this morning. That would have been the only reason for that.

I have captured three central points from what I have heard. I want to ensure that I have got this right. We have heard clearly about future uprating; we have heard about the qualifying criteria and how they were arrived at, particularly in relation to the issue of four-year-olds; and we have heard issues more generally about uptake.

That said, I think that everyone has, explicitly or implicitly, given our previous evidence session, welcomed the regulations. However, that does not mean that we should not still scrutinise the details. If members are content, I am keen for us to write to the minister in relation to uprating, qualifying criteria, particularly in relation to four-year-olds, and uptake more generally. We will also indicate that we want to look at that more widely anyway. Are members content for me to write to the minister on those points?

On the 40-day period, I imagine that the DPLR Committee is dealing with that matter. I am trying not to duplicate things and to be focused on what we write about, but let us mention the 40 days as well.

I see that members have more comments. I am keen not to open up a wider debate, but I do not want to curtail the discussion either, so I will take those comments briefly. We still have to finalise what we are doing on the regulations, and we have one more agenda item.

Keith Brown: I am content with what you propose, convener. To clarify, my point is not about the fact that the instrument is late. That might have been completely unavoidable, but my point is that no reason has been given. I am just looking to get the reason for that.

The Convener: I will check what the DPLR Committee is doing in relation to that as well.

Mark Griffin: Could we also ask why the measures have been brought forward under the Social Security Act 1988 and not the act that the Parliament passed recently?

The Convener: I am happy to do that.

The discussion has been helpful. We have to draft a letter that is reflective of the mood of the committee, so that helps. We welcome the fact that the Scottish Government is, we hope, making progress, but we still have to scrutinise the instrument robustly.

I will come to the question that I said that I was going to ask. Is the committee content, with the

caveats that have been mentioned, simply to note the instrument?

11:18

Members *indicated agreement.*

Meeting continued in private until 11:34.

The Convener: As previously agreed, we will now move into private to consider agenda item 4, which is on universal credit consent provisions.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba