



Health and Social Security Scrutiny Panel Quarterly Meeting with the Minister for Social Security

THURSDAY, 24th NOVEMBER 2016

Panel:

Deputy R.J. Renouf of St. Ouen (Chairman)
Deputy G.P. Southern of St. Helier (Vice-Chairman)
Deputy T.A. McDonald of St. Saviour

Witnesses:

The Minister for Social Security
Assistant Minister for Social Security
Chief Officer
Policy Director
Operations Director

[14:00]

Deputy R.J. Renouf of St. Ouen (Chairman):

Thank you, Minister, for coming along for this quarterly hearing and thank you for your Assistant Minister and department members. As you know, in the usual way, because this meeting is being recorded we will give our names and then ask you to do likewise for members of your team. I am Deputy Richard Renouf and I am Chairman of the Health and Social Security Panel.

The Deputy of St. Ouen:

Thank you. We are joined also by our Scrutiny Officers, Kellie and Andy. Can we give apologies for Senator Ferguson and Deputy Hilton who have other commitments and cannot be with us? Minister, we wanted to begin with some questions about the zero-hours contract issue, or particularly exclusivity clauses in zero-hours contracts. To thank you for, first of all, for reaching an agreement with Deputy Mézec on the principle prohibiting the exclusivity clauses in zero-hours contracts. We were pleased to note that you, with all the other Assembly Members, were able to support that. So can we ask you what it is proposed to do next as a result of the unanimous vote of the Assembly?

The Minister for Social Security:

Yes, it was, and Deputy Mézec and I agreed afterwards that had he had time to speak to us beforehand we could have explained the reasons why we could not accept part (b) of his proposition because of the timeframe basically that he was asking for. It was not realistic when we have already committed to do a review of family friendly rights, which we said we would do. We promised when it was brought in in September 2015 that we would start a review after a year, which is what we have done. We have asked the Employment Forum to do that, and in the proposition Deputy Mézec was asking for the Employment Forum to consult on the exclusivity clauses, well, they cannot do both. He very graciously sort of said that he would remove that part from it basically because it was not achievable by the department or the Employment Forum. So what we are doing is, as I said in the Assembly, the Employment Forum are now doing their review. They have had their days of training on what they have to look at with regards doing the review, the different aspects of maternity, paternity, increased or not maternity leave, it be a dual role of maternity and paternity care. So they are looking at that now for the next year. Then after that ...

The Deputy of St. Ouen:

Sorry, you mean for a full 12-month period they are considering this?

The Minister for Social Security:

It will be a year but in that period they also will have next year to look at the minimum wage again, as they do every year. So it is not an entire year devoted to it but a timeframe of such. After that ...

The Deputy of St. Ouen:

I had understood that they had already begun considering the family friendly legislation, so when did the process begin?

The Minister for Social Security:

In October.

The Deputy of St. Ouen:

And how long is it planned to continue for?

The Minister for Social Security:

Basically a year but there is an interruption in that year of looking at the minimum wage for next year. So the exact timeframe is movable but about a year. And then they will look at the zero hours but zero hours probably as a whole rather than just the exclusivity because it does not just work on exclusivity clauses alone, but look at zero hours, unless of course, something else jumps in to reprioritise, which we are not expecting. But family friendly was delayed by between 3 and 4 years initially because Woolworths went bankrupt and 80 people were left stranded because there was no insolvency or redundancy legislation in place for it. So the Employment Forum had to divert for that. So without any diversions then we would say in a year.

The Deputy of St. Ouen:

What questions would you refer to the Employment Forum in the light of the States decision to prohibit exclusivity clauses?

The Minister for Social Security:

I think the legislation to do that would not be so difficult. It is just that the proposition asked for a consultation on it, which we would like the Employment Forum to do obviously; that is the whole thing behind it. So that you get a basis of evidence on which you would base your prohibition of it, but I think it is a bigger picture than that. It is the whole zero-hours situation that we would ask them to look at.

The Deputy of St. Ouen:

But the proposition was amended and there was no reference in the amended proposition to seeking evidence. It was a very straightforward proposition that exclusivity clauses be prohibited. What will you be referring in that connection to the Employment Forum?

The Minister for Social Security:

That would be their remit, is to do that first and foremost; is to put in legislation or recommend we put in legislation that they should be prohibited. There is no question ...

The Deputy of St. Ouen:

But why would the Employment Forum be asked to consider whether exclusivity clauses should be prohibited when the States Assembly have already decided that they should be?

The Minister for Social Security:

Because that was not legislation. It was a suggestion that the Employment Forum would consult on it and on the basis there that they should be prohibited. The whole Assembly agrees that it is not acceptable.

Deputy G.P. Southern:

Surely not. What was left was part (a). Part (b) was removed and part (b) was the bit that you were amending to have a consultation period, and extending the whole thing. As currently passed, the States has said: "Come to us with proposals to ban exclusivity clauses" full stop. Not consult on it. Get it drafted, bring it to the States.

The Minister for Social Security:

We cannot do that all the time that we are doing the review of the maternity and paternity situation.

Deputy G.P. Southern:

Accepting that you are doing the family friendly stuff first, but that does not take another year to consult on because the instruction from the States is bring to us a proposition making ... the means of making exclusivity clauses banned, full stop. It does not need a lengthy consultation. It needs some law drafting.

The Minister for Social Security:

We could do some law drafting but it is just a matter of when we can do it.

Policy Director:

Given that we have the Employment Forum, which was well respected as gathering evidence as to kind of how employment principles from other countries should be applied in Jersey to the local labour market, the local small employers, taking into account the views of different people, the question of exclusivity, as the Minister said, is a tiny part of the zero-hours' issue. If you wanted to address it properly, that is what you would do. You would look at how zero-hours contracts have been used in Jersey as a whole and you would look to see what, if anything, it makes sense to write into the Employment Law to make that situation different to what it is today.

The Deputy of St. Ouen:

Can I just say, Minister, you have said in response to our report that you do not propose to do any work on legislation relating to zero-hours contracts. You do not think it was necessary. That was your response to us. So a proposition was brought to the States and the States have said: "Go as far as prohibiting exclusivity clauses." That is a clear statement the States have made. Is it the next step to implement what the States wish? So therefore why not simply do that, and it is not work for the Employment Forum to consult upon if the States have already taken that decision? Should it not go to the law draftsman's office?

The Minister for Social Security:

Because, as the Policy Director has just said, it is not a simple matter of just the exclusivity clauses. It has to be legislated in such a way because in some cases exclusivity clauses are quite relevant. Not as the public sees zero hours as being sort of normally on a lower wage level, but in some cases zero hours can be termed as consultancy or whatever, and then the exclusivity clauses are quite pertinent. So it is not just a matter of exclusivity clauses being banned across the board. It would have to be very carefully legislated.

Deputy G.P. Southern:

What you are referring to are confidentiality clauses. Not you cannot work for anybody else.

The Minister for Social Security:

There are, there are geographical areas. I mean Jersey is quite difficult with that, but certainly in the U.K. (United Kingdom) you can be banned from working for somebody else within a geographical area, so exclusivity clauses are not quite as simple ...

Deputy G.P. Southern:

How would that create in Jersey?

The Minister for Social Security:

Well, it would not, of course. But if you have a bank, for instance, and you have somebody who is receiving fairly confidential information, as you say confidentiality agreements ...

Deputy G.P. Southern:

That is a confidentiality clause. Not an exclusivity clause.

The Minister for Social Security:

But you can put into an exclusivity clause that you will prevent them working for another bank down the road.

Deputy G.P. Southern:

The opposite of what you have been instructed to do.

The Deputy of St. Ouen:

Those are 2 things therefore, are there not? There is an exclusivity clause and there is a confidentiality clause.

The Minister for Social Security:

Those will have to be determined as to which one was which.

The Deputy of St. Ouen:

Is this not a matter for the law draftsman?

The Minister for Social Security:

Yes, it probably is.

The Deputy of St. Ouen:

So will you be referring the matter ...

The Minister for Social Security:

We would have to then say what we want the law draftsman to do.

Policy Director:

I think the States last week emphasised how complicated this area is and how much confusion there is as to ...

The Deputy of St. Ouen:

I don't think so.

Policy Director:

We use the words "zero-hours contracts" as if it has some specific meaning, like there is a glass of water, you know what a glass of water is. Zero-hours contract is a phrase that has grown up in the last couple of years. We have had casual work, bank work, supply teachers, these things have been around for a very long time. Just recently it has become kind of consolidated into an idea. That idea is not reflected in our Employment Law at all. The way it has been put into the U.K. Employment Law is very easy to get around, if you were so inclined. So that is what I am saying. If you were going to do this in Jersey, I think we pride ourselves on the Employment Law being a good law written for local conditions, keeping it reasonably simple, reasonably easy to understand,

so that employees can understand, employers can understand. We do not want to add in sloppy phrases, which are not really well defined. We do want to do this properly. So we would want to do it through the Employment Forum because that is the right route and the route is accepted by everybody that that is the way to develop major new parts of legislation should go through the Employment Forum.

The Deputy of St. Ouen:

But how can the Employment Forum assist us in a drafting exercise? You are speaking there of a drafting exercise.

Policy Director:

You are absolutely right. There are 2 different things. There is first of all understanding the concepts, understanding the potential that you want to provide for in Jersey. That is number one. That is what the Employment Forum will do in the same way that now how should it extend parental rights? The Employment Forum will come to us: "We think you should be extending parental rights in these kinds of ways." They do not do law drafting, you are absolutely right. So ask them another question: "How are zero-hours contracts being used in Jersey and what are the problems with them, what the advantages and how would you want to see that reflected in the Employment Law?" Ask them to do that policy, that investigative work, then the law draftsman comes and does the ...

The Deputy of St. Ouen:

That was not what the States have decided to investigate how zero-hours contracts are used in Jersey; it was a much narrower point.

Policy Director:

No, sorry, so the States agreed that exclusivity clauses in zero-hours contracts should be prohibited. That is a statement of intent that is not set to any timetable, it is not set to any particular actions to do anything, in particular.

[14:15]

We are not ignoring the actions, I am not saying that at all. But I am just saying we will incorporate this into a more useful piece of work when the time is right and we have the resources to do it, when we see the problems that exist at the time. In 2 years' time, in one or 2 years' time, we do not know what the employment situation will be like in Jersey. It might have changed by then.

The Deputy of St. Ouen:

This is a very great change from your response to our report in which you said you would not refer or deal with any legislative changes relating to zero-hours contracts. Are you now saying that you are going to be doing that?

The Minister for Social Security:

We will ask the Employment Forum to consult on it.

Deputy G.P. Southern:

What has it got to do with consultation? You were asked to define what a zero-hours contract is. You were asked to define. It is not something you go to consult about: "What do you think it means? What do you think it means?" You seek some legal advice possibly but you have defined zero-hours contracts, you define confidentiality clauses and you draft legislation accordingly. It is a definitional issue to be taking place. It is a law drafting issue. It is not a consultation. It is not: "Come and tell us what you think." You are very clear because J.A.C.S. (Jersey Advisory and Conciliation Service) guidelines suggest to you exactly what is appropriate and what is inappropriate use of zero-hours contracts. It defines that mutuality of obligation and sets out some limits already. So if you are looking for: "What do we do with the whole concept of zero-hours contracts" you have got a massive steer from J.A.C.S. already there in their guidelines. So it is not an issue that needs vast consultation on it. It needs action.

Policy Director:

You are saying 2 different ... you are saying that J.A.C.S. already provide very good advice, which we would agree with, and therefore there is clear guidance to employers on the current employment situation. Change to the 8-hours rule during 2015 means that people ... the great majority of people working zero-hours contracts are fully covered in the Employment Law. So those employment rights already exist. You need to work out from a policy point of view, from a local point of view, what extra protection you want to incorporate into the Employment Law in respect of zero-hours workers. That is the question you want to ask. That is not a question that J.A.C.S. can answer directly. Nor is it a question the law draftsman can answer. It is a question that the society, that Jersey as a whole, needs to decide what level you want to do.

The Deputy of St. Ouen:

What level of extra protection? That is what our report was suggesting and you recommended the degrees ... you recommend not to proceed with that sort of investigation but you are now saying that you will proceed with it. I am quite confused. Is this a turnaround in your view that you do want to look at legislative protection for people on zero-hours contracts?

The Minister for Social Security:

We do already have legislative protection, which is far more ... well the U.K. does not have any.

The Deputy of St. Ouen:

We do not, because we do not have a definition of zero-hours contracts in the law itself. There is nothing relating to zero-hours contracts.

The Minister for Social Security:

No, there is not. That is almost deliberate in a way which is, by your line of questioning, would say that by just doing legislation, which is why we do not want to just do legislation, would complicate the Jersey Employment Law considerably. The whole idea of it, as the Policy Director said, is to keep it simple and appropriate for Jersey. You run - and I think I said this in the Assembly - the question is if you start complicating things ... we are very lucky in Jersey, we have very scrupulous employers. But there are some who ...

Deputy G.P. Southern:

We have a measure of unscrupulous employers as well.

The Minister for Social Security:

Well you said it, Deputy. You then run the risk that the less scrupulous employers would go underground or sideways to avoid the red tape and then you may end up with this gig economy, which is exactly what has happened in the U.K., where there are no employment rights whatsoever because they are not employees anymore, they are self-employed contractors. So they have none of that whereas in Jersey people on zero-hours contracts have the employment rights of other employees, so they have the right of unfair dismissal. They have holiday pay rolled up at 4 per cent on top of their pay already. So they have these employment rights which if you push this underground, and Uber is a big example in the U.K. where they are facing court cases at the moment, you stand a chance that people will move that way whereas at the moment the law is simple, people know their rights and does one want to complicate it? So it is bigger than just saying: "Prohibit exclusivity clauses."

The Deputy of St. Ouen:

But the trouble is, Minister, you in response to our report, rejected any notion of legislation. Since then the States have asked you to make one limited change to Employment Law, which is to prohibit exclusivity rights, and surely you must have regard and act upon what the States have decided to do: prohibit them.

The Minister for Social Security:

They have asked us to look at prohibiting them.

The Deputy of St. Ouen:

No, they have asked you to prohibit them. Not to look at it. That was part (b) of your proposal which you withdrew, Minister, when it was clearly the mood of the House that there was no need to look at prohibiting exclusivity clauses because everyone agreed they should be prohibited.

The Minister for Social Security:

Everybody agreed with the principle that they should be and I think the Bailiff summed up before asking for the withdrawal of the amendment, that this was not asking for anything to be in legislation - I think that is in Hansard - and we agreed that we would look at it, which is what we are sticking to. We will.

The Deputy of St. Ouen:

So, Minister, you are saying you would look at it?

The Minister for Social Security:

Look at the bigger picture.

The Deputy of St. Ouen:

So we are no longer dealing solely with exclusivity clauses?

The Minister for Social Security:

As the Policy Director said, the exclusivity clauses are a very tiny part of zero hours as a whole, and so you cannot ... well, it is down to the law draftsman, but you cannot just pick out a tiny piece without examining the whole.

The Deputy of St. Ouen:

This is very interesting because it was the view of this panel that you should do that, looking at all of the field of zero-hours.

The Minister for Social Security:

Which we have agreed to.

The Deputy of St. Ouen:

You rejected that. The States did not want to look at all of zero hours because that was not before them. They have asked you to do something very limited, but you are declining to do that and

saying you are going with what this panel felt in the first place, and you had initially rejected. It is a bizarre scenario.

The Minister for Social Security:

With respect, Chairman, the panel asked us to change legislation and we said: “No, we could not do that” for the same reasons as I have already explained, because in the timeframe family friendly was coming first.

The Deputy of St. Ouen:

No, we asked you to consult and we did not say: “Put family friendly to the side.” We did not give you any sort of timetable but you said, no, you would not do it because you are doing family friendly. We did not ask you to delay family friendly. But in your response you suggested that we were saying that to you, but we did not say that at all in any recommendation.

The Minister for Social Security:

No, but the proposition would have said that. But, as you say, that is going back to ...

The Deputy of St. Ouen:

We are not responsible for the proposition.

Deputy G.P. Southern:

Can I just focus this for a minute? After you have spent a year doing family friendly legislation you are now saying you want to examine zero-hours contracts in some depth. How long will you expect it to take, barring an earthquake on a Richter scale of at least 8 or 10, how long before you would expect it to be coming to the House with some legislation?

Policy Director:

I can answer the question and, perhaps, draw the 2 questions together about the Scrutiny report as well. The Scrutiny report was making recommendations to enact specific bits of legislation in respect of zero-hours contracts. Our response to that was that we did not feel there was sufficient evidence given in the Scrutiny review as a whole to justify those particular actions. What the Minister is saying now is that we are fully aware of the large proportion of contracts in Jersey that are run under zero hours terms at the minute. That is obviously something that is slightly unusual in Jersey, and something that needs to have our attention. We have already agreed to provide statistics around that.

The Deputy of St. Ouen:

More than slightly unusual, I think.

Policy Director:

On the other hand there is very little evidence ... it is a moot point as to kind of what the impact of the zero-hours contract is on individual people because many people may not really see much difference at all in their ... the way they work from day to day. But what we are saying is that we are not ... obviously the work the Minister does, the work the Employment Forum does needs to reflect the pressures in Jersey from time to time and family friendly is the pressure that we see as being the most pressing at the minute. Once that is out of the way it will be appropriate, if it is still the same situation ... if it was today, if we just finished family friendly today, we would probably say: "Yes, it is a good idea to look at zero hours because it is a matter of concern among the population and we need to understand what we should do about it." Whether we should do any change to the Employment Law at all we do not know. That is what you would be looking at. That is the point; you do not know what it is that ...

The Deputy of St. Ouen:

But can I correct you? You do know because the States have said something needs to be changed.

Policy Director:

The States have made a very ...

The Deputy of St. Ouen:

Prohibited.

Policy Director:

But it is interesting, is it not, and I am not quite sure, I am not an expert in political things, but the States have made a statement to say that exclusivity clauses in zero-hours contracts should be prohibited. I think that was the wording. But then there is no action that follows with it. Now the Bailiff when he agreed that proposition should be allowed to be an (a) and a (b) obviously had in his mind the possibility that (a) would be agreed and (b) would not be agreed, and then we would have a theoretical statement of content that had no action associated with it. Now as it happened the States as a whole kind of came to that conclusion, that is great, people were in agreement with it. But it leaves that statement sitting there just as a statement of intent with no action required to be ... there is no actual action that sits with it that you can say: "Oh, Minister, you have not done this because there is no action to be done." It was just statement of intent as to how it should ...

The Deputy of St. Ouen:

I think the mood of the House was that something should be done. The Minister should go away and prohibit exclusivity clauses.

Policy Director:

But in that case they could have agreed (b) either in its original form or as amended.

Deputy G.P. Southern:

It sounds like you are just making excuses to do nothing. If I was to suggest that that is what in effect you will be doing, next to nothing, what would you say in defence? Are you going to come with something eventually?

The Minister for Social Security:

I would not say anything in defence because it is not the sort of, I have to say, a real route. I mean it is something that people are concerned about quite clearly but where is the evidence to say there is a problem. If we were going to change Jersey law, which is, as I said before, quite simple and appropriate for the size of Jersey, it needs to be on a qualified reason to change it. At the moment there is not one.

Deputy G.P. Southern:

We have got a definition of zero-hours contracts.

The Minister for Social Security:

No, because it was a media definition. It is not a legal definition of zero-hours contracts. So if you are going to change a law to that effect you would have to put it into the law to change it and at the moment there is not anything in the law.

Deputy G.P. Southern:

You just said you want to do a wider remit ...

The Minister for Social Security:

Yes, I think that would be ...

Deputy G.P. Southern:

... than just exclusivity clauses and the starting point for that is what legal definition are we going to have for zero-hours contracts, and then what legal definition are we going to have for exclusivity clauses? Right, now we can do something.

The Deputy of St. Ouen:

Which is a matter for the law draftsman, is it not?

Deputy G.P. Southern:

But my first question was: when can we expect to see you return to the House or to ask ourselves with some proposals?

The Minister for Social Security:

I cannot give you a timeframe.

Deputy G.P. Southern:

Two years or less?

Policy Director:

It is very hard to say, is it not? We started doing family friendly in 2007 or 2008 and we are now going back to it in 2016.

Deputy G.P. Southern:

If the panel were to consider what you have been saying today and come back with the thought that you probably need some more policy people to get on with more than one thing at a time, would you expect that as a reasonable way forward? Do you not need some more staff to do more than one topic at a time?

The Minister for Social Security:

I think there is a confusion of the issues here. If we are asking the Employment Forum, which is what they were set up for in 1999, which consists of 3 employer representatives, 3 employees and 3 independent people, and have done a remarkable job. They are not paid. It is all in their own time, are completely independent, and they come to us with recommendations. I think when you are looking at something as complicated as employment law, which is what they have been set up to analyse, consult on, then it is only right that they should have the wherewithal and the instruction to consult on it and come back to us with all the evidence that the public provide, which is their job to give us that evidence, and a recommendation based on that analysis and evidence.

The Deputy of St. Ouen:

Right, Minister, so if the Employment Forum were to consult upon the use of exclusivity clauses and seek evidence on the use of exclusivity clauses, notwithstanding the unanimous States view that has been expressed, and if the Employment Forum came back to you and said: "We have not got a great deal of evidence on the use of exclusivity clauses" and I think that very likely because of the nature of the contracts they are placed in. You would not get people coming forward. What would your view be in the absence of evidence?

The Minister for Social Security:

They would give a recommendation and it is up to the department to accept or not.

The Deputy of St. Ouen:

So does the recommendation of the Employment Forum take precedence over a direction from the States that exclusivity clauses should be prohibited?

[14:30]

The Minister for Social Security:

No, the Employment Forum would be asked to look at the whole issue as a whole. I just do not think that you can remove ...

The Deputy of St. Ouen:

No, I was thinking if they will be gathering evidence on the use of exclusivity clauses and they make a recommendation to you does that override a decision by the States Assembly to prohibit them?

The Minister for Social Security:

No, it would not because their recommendation is what I would bring back to the States and then it would be up to the States to decide whether they accept the recommendation.

The Deputy of St. Ouen:

Should they say, in the absence of evidence - because I do not think they will find a great deal of evidence, frankly - there is no need to prohibit exclusivity clauses? You would bring that back to the States, would you?

The Minister for Social Security:

If that was their recommendation, and we agreed with it, I would bring back what the ... same as the minimum wage.

The Deputy of St. Ouen:

So, Minister, therefore, you were doing nothing about the States' decision of just a few days ago saying that we must prohibit exclusivity clauses?

The Minister for Social Security:

I am saying that there was no legislation decided in that. As a principle, we all agreed unanimously that exclusivity clauses should not be in zero-hours contracts. That is not in debate.

The Deputy of St. Ouen:

That is not in debate, so why are we putting it out for consultation?

The Minister for Social Security:

Because you want to put it, or the question you have asked is: should it be in legislation? Well, putting it in legislation is a different question.

The Deputy of St. Ouen:

Sorry, prohibit means legislation.

The Minister for Social Security:

In the proposition or the agreement by the States there was no definition of it, and the Bailiff said that. He said: "This does not mean legislation." It is a principle that we agreed that they should be prohibited. But if we are going to bring it forward for legislation so putting it in legislation, as a lawyer you are far better equipped to understand ...

The Deputy of St. Ouen:

Not necessarily. No, you are the Minister that gives drafting instructions.

The Minister for Social Security:

In order to prohibit it, it has got to be there in the first place. At the moment, it is not. So you cannot just put into legislation: "We prohibit the use of exclusivity clauses in zero-hours contracts" because, as Deputy Southern said, what is a zero-hours contract? It is a much bigger picture. You have got to put the entire thing into legislation in order to include the rather minor part of exclusivity clauses.

Deputy G.P. Southern:

I think I got there, Chairman. It is 3 or 4 long-winded ways of achieving nothing. It is what politicians sometimes do.

The Deputy of St. Ouen:

Perhaps so, Deputy. Your remarks are most interesting, Minister. I am glad we have these meetings recorded because ...

Deputy G.P. Southern:

I am glad we started with this one, an easy topic. We did not want to be confrontational.

The Deputy of St. Ouen:

I think we are rather surprised at your interpretation of the States unanimous vote and your proposal to put it all out for consultation. I think we better move on

Deputy T.A. McDonald:

Just before we do, I am confused now. Whose job is it to decide on the definition of zero-hours contracts or exclusivity? Would it be something the department drafted and passed to the Law Officers' Department? We talk about these things, there is not a definition of zero-hours contracts, so where would the recommendation come from and who would decide that that definition is right?

Policy Director:

The Minister is responsible for setting the policy. The Minister will explain her policy in a law drafting instruction. She is basically writing in plain English: "I want you to have a law to do so-and-so." So she says: "I want you to have a law that bans zero-hours contracts" or whatever, and by zero-hours contracts I mean this kind of thing. We will pass that to the Law Drafting Department of the States, which is a specialist group of lawyers whose job is to draft law.

Deputy T.A. McDonald:

That is their job, yes.

Policy Director:

Sometimes we also need to refer to the Law Officers' Department to provide more general legal advice, but at the end of the day what you end up with is ... we set out the policy we want to achieve, the policy intent. The law draftsman will turn that into the appropriate legal wording and so on and so on. The law officers will prove that it is human rights compliant and that kind of thing. Then if it comes back to the States - and the States is the Legislature, the States always has to approve all primary legislation - so the final decision as to what the definition is, is held by States Members. So if the Minister starts the process going, and in this particular situation the Minister would use the Employment Forum as giving her unbiased expert advice as to what the mood was in the community. We also have sometimes employment advisers of our own to help with some kind of more complicated policy. But then we will run it through that normal process. So that is how laws get developed in Jersey as a whole. But it always comes back to the States to make that final decision.

Deputy T.A. McDonald:

It is just that ... I certainly speak as a Deputy, somebody is bound to ask me: "What was decided? What is this definition?" So to understand the processes is vital, so thank you for that.

The Deputy of St. Ouen:

Does that answer your question?

Deputy T.A. McDonald:

It does indeed.

Deputy G.P. Southern:

Could I move us on to what is known as the flexible care component of income support, which is one of the mechanisms to fund long-term care in the home? Can I ask where you are with the devising, construction of the flexible care component of income support?

The Minister for Social Security:

Yes, this is essentially, which you will know anyway, but for people listening or for the record, or whatever, is with the reduction in the grant, Family Nursing and Home Care, on the basis that they are subsidised so it is able to charge £11 an hour instead of the £19 or £20 that other private care providers' businesses have.

Deputy G.P. Southern:

Agencies.

The Minister for Social Security:

There may be then a gap that is unsustainable for some people, so it is really to sort of fill that gap inasmuch as because they are then having to provide an extra amount of money per hour for care, they may fall then into an income support bracket. So that is - I know you understand that, but for the benefit of others - what this would be. Our computer system is already set up to be able to do this and we are working very closely with Health. As you know, Health have delayed or are staggering the introduction of the reduction in the grant. So we are working with them and it will be implemented. But I think probably Sue is going to add some more detail.

The Deputy of St. Ouen:

Have law drafting instructions been issued?

Policy Director:

Yes, the Minister issued law drafting instructions in August but we were not able to provide all the law drafting instructions in August because we did not have instructions from Health as to what they wanted to achieve, so we have done as much as we are able to at the minute. We do have draft legislation and there are some small details to be finished off.

Deputy G.P. Southern:

Is that regulation?

Policy Director:

Yes. Basically you are adding an extra layer to the system ... income support regulations where you have got the various different kinds of care components. It is just an extra one of those.

The Deputy of St. Ouen:

Can I just ask: do we know what date those regulations might be brought before the Assembly approximately?

Policy Director:

We are in the hands of Health at the minute. We need ...

The Deputy of St. Ouen:

Still Health's work, is it?

Policy Director:

Yes.

Deputy G.P. Southern:

So Health are working on their definition of what they see it?

Policy Director:

Yes.

Deputy G.P. Southern:

What they wanted to do. This is to cover the gap between £145 a week, which is top end of level 3 personal care to around about £350?

Policy Director:

Yes.

Deputy G.P. Southern:

So a significant care element that some people could be missing out on would be funded through this mechanism?

The Minister for Social Security:

And Health will then fund Social Security to provide it.

Deputy G.P. Southern:

That is interesting. The whole of this particular ...

The Minister for Social Security:

We do not know of course until we see who drops below the level as to how many there are going to be.

Deputy G.P. Southern:

Our understanding is that current people who fall into this gap and who have previously been funded by Health, you will get that money, but newcomers into this, say for example people on level 3 who get reassessed and turn out to be level 4, but that will be funded elsewhere. We do not have any commitment from Health saying: "That will be funded by us."

The Minister for Social Security:

I think we have got to be careful not to call it "level 4" because PC1, 2 and 3 are personal care components. This is a different ... it is not necessarily a level of care component. It is a completely separate level.

Deputy G.P. Southern:

What do you see as a difference then?

Policy Director:

It has been called ...

Deputy G.P. Southern:

So far as regulation to the legislation you are saying ...

Policy Director:

Things live in code; so policy 1 and PC4 have been used by lots of people as somewhat kind of cryptic names of things. The thing that we are introducing, we are calling a flexible personal care component. It is flexible because it has not got a fixed amount of money attached to it. It will fund a specific care package that will be identified at the time. So personal care levels 1, 2 and 3 are based on statements that are included in the regulations and there are various points associated with each statement and you add them up. So to get 15 points you get one, 70 points you get so many. So that goes up in numbers: 1, 2, 3. Four, the flexible one, is nothing to do with that

assessment system. It is going to be assessed in the same way that long-term care plans are assessed by a social worker looking at the person's care need and creating a budget summary, which is kind of way that you record, the amount of home care that the person needs during the week. It is a different way of doing it, so we are using the assessment process for the long-term care system.

Deputy G.P. Southern:

So what you are saying is that the new assessment run by Health for social workers assesses the level of need and does not attach it to a fixed sum of money but says in order to meet this need that will be, whatever it is, 6 hours, 8 hours, 10 hours of personal care.

Policy Director:

It is a bit complicated, but if I can explain a bit more. So the assessment that the social workers do also has a number scale attached to it, that goes from 1 to 6. At the minute to get long-term care benefit you have to be at level 3. That is nothing to do with income support level 3. It is a completely different level. So they have got numbers attached to them. In particular, 1 and 2 are assessments the social worker might make but they sit outside the long-term care benefit system at the minute. So for level 3 you get the bottom £350, and so on, on that. So what the social workers will do they use the same care assessment tool they have got now, but if somebody comes out at level 1 or 2 then they cannot be inside the long-term care scheme but if it is a low income person then they might be able to be inside this new flexible care component. They will do the same things they do now, which is, as I say, to identify the person's holistic needs for the week, write down the number of hours of formal care. That will also include respite and all that kind of stuff, and put that together and that converts into an amount of money for which might be £100 a week, £200 a week and then that is the value of the benefit that we translate into the income support system. Then from Income Support's point of view, we just add that to the other household components of that household be included in the income support in the normal way.

Deputy G.P. Southern:

Will be included in income support in the normal way. So does it build on to, on top of, let us say, personal care level 2?

Policy Director:

No. You cannot get ... so you have personal ...

Deputy G.P. Southern:

So no duplication of assessment?

Policy Director:

You have got personal care, clinical costs, mobility. There are 3 different kinds. You can get one kind of personal care, so flexible will be the one kind. You can also get mobility but you could not get 2 kinds of personal care at the same time. So if you have got the flexible one you have not got 1, 2 or 3. You have just got the flexible one. It will swap out.

The Deputy of St. Ouen:

Why could it not be part of the long-term care scheme if it is the long-term care assessment?

Policy Director:

This is to do with the funding of it; that is a question to ask Health and Health asked us to pursue this route.

Deputy G.P. Southern:

And the assessment is done as with the rest of long-term care by social workers or the equivalent professionals?

Policy Director:

It has to be a qualified professional person, yes.

Deputy G.P. Southern:

One of the aspects, you appear to be under the impression that Health will be funding this flexible care?

Policy Director:

We do not have any budget. The M.T.F.P. did not ... there was no growth bid in the M.T.F.P. for extra funding in this area and therefore the funding is the funding that Health currently holds, so all the funding has to come from the Health existing budget.

The Deputy of St. Ouen:

What if it proves to be insufficient?

Policy Director:

Well, you will have to go back to ...

The Deputy of St. Ouen:

Health talk about a subsidy so they are not paying in full the care costs of the family nursing clients at the moment. Family nursing clients are paying something themselves and Health are topping

up, so straight away you do not have a full fund, if that was passed over to you. Of course they are only partially funding the Family Nursing and Home Care clients.

[14:45]

There will be other persons who will be able to apply for this new flexible care benefit.

Deputy G.P. Southern:

Does it fit within the long-term care fund? Is that where the money is coming from, do you know?

Policy Director:

No, that is tax funded money.

Deputy G.P. Southern:

It is separate from?

Policy Director:

It is a new income support fund that sits exactly inside income support.

Chief Officer:

Therefore it is means tested.

Deputy G.P. Southern:

You think Health are paying for it?

The Deputy of St. Ouen:

Yes, it is.

Deputy G.P. Southern:

I do not think we have heard that Health know that they are paying for it. Correct me if I am wrong.

The Deputy of St. Ouen:

You are not wrong. It is shrouded in mystery really.

Deputy G.P. Southern:

Okay. That is a point I think we need to clarify with them before we start writing our reports. That seems to me a possible problem in that as ever, with anything, the first place we should be looking at is where is the money coming from.

Policy Director:

Can I clarify? I think the money is already in the system, so what we are talking about is that you have got an income support household today and they are currently getting one of the personal care components now, and that is being used to support the costs they are paying to Family Nursing today. What we are saying is that that family who has not got the extra cash to pay the market rate for the Family Nursing package and therefore they are going to need more help. So it is the extra money which is the new money in the equation because obviously in the Income Support budget we have already got the personal care component for that family, it is only the extra money that needed to be added into it. It is not the whole of that ...

Deputy G.P. Southern:

That would be quite significant. We are talking about the top end of personal care 3 is £145 so this could stretch up to £300 or more.

Policy Director:

The £350 is absolutely the correct number to use but in reality the £350 is the value that we ... instead of the set rate that we use in residential care homes, and then for domiciliary care packages it is a value up to £350. In actual fact most domiciliary care packages do not cost anything like £350 a week. People are at home because they have got a partner with them at home, they have got care needs but they are not that significant. So the difference between what they are getting now and the new will not be that perhaps not quite ... it is not like everybody is going to have £200 extra a week.

**The Deputy of St. Ouen: **

I suppose as well, there is the ...

Deputy G.P. Southern:

Some will?

Policy Director:

If you have got a domiciliary care package that costs £350 a week and you are not GNS3, you are not within the long-term care scheme, that seems like an unusual set of circumstances. I think it is only the high level care that costs that amount of money, it would already be included in the long-term care scheme because if people are in the long-term care scheme, at the higher care needs, their packages do not cost £350 a week. There is a big gap between what it costs for domiciliary care and what it costs for residential care homes.

Deputy G.P. Southern:

I am aware that residential care homes cost an awful lot comparatively.

The Deputy of St. Ouen:

More than £350.

Deputy G.P. Southern:

What you are saying is making me somewhat confused that it is not a graduation of the amount of help, the assistance that is needed, and thereby the number of hours that are needed and thereby the cost that is needed. Because if you are down £145 on personal care 3, that will get you at £19 an hour, about an hour a day, which might be all you need or you might need more but since you have not got the next stage, the flexible component covering the next gap.

Policy Director:

It will cover the gap. There is no difficulty there. So the bit of the law that we have already written talks about costing a care package and the cost of the care package can be a variable amount up to the bottom of the standard level at £350. So that is all kind of all neat and tidy. So it maps out at the bottom of long-term care. This is the point: lots of people have personal care needs and they do not access any formal care at all. They do not use Family Nursing. They are somebody that is quite independent but have some health conditions, they can sort themselves out. They do have trouble doing ... yes, sometimes. But they do not get help with that through buying in paid care from an agency. That is perhaps buying ready meals rather than chopping things up themselves. There are all sorts of things that you pay for because you have got some health conditions and that is what the existing income support components allow you to do, they give you some extra cash in your household budget to allow you ...

Deputy G.P. Southern:

But you do not have to spend that on personal care.

Policy Director:

No. That is the big difference between ...

Deputy G.P. Southern:

I am aware of that. However, I am also aware that in order to qualify for personal care level 3 you have got to have a serious disability. If we are looking at an assessment that covers that disability it is going to cost more somewhere along the line, it seems to me.

Policy Director:

It might do and there is cost overlap between people on income support with PC3 and people getting Family Nursing care. You are right, there is that group of people there. There are people with other kinds of care needs whose needs are not satisfied by Family Nursing type services, that applies to other uses of money in other ways. I am just saying there is a whole variety, there is a whole spectrum of things. So we are talking about the extra cost of it. There will be some extra cost and we will get funding from Health for that. It is perhaps not ... you cannot just say: "Right, take all the PC3 people and times it by £200 a week" because that would be an enormous amount of money and nobody is funded to that. It will not cost that amount of money. It will be less than that. It will provide a very good continuum linking the 2 schemes together.

Deputy G.P. Southern:

It depends upon that overlap between the 2 methods of assessment. One which is that tick box thing.

Policy Director:

You will be able to choose. The client will have the ... because there will be 2 different offers. You can say if I have got ... because of the number of points on the income support form to qualify for PC3 I can access £145 a week and it is cash. It is up to me what I do with it. Or I can go for an assessment with a social worker and if I hit GNS1 or 2, so I have a care ... I have needs for a formal care package, I can access the cash to fund that formal care package. I can choose one or the other. I cannot have both anymore. So at the minute I can only have the cash. If the cash is not enough then I am left to my own devices. At the minute there is a subsidised Family Nursing services therefore the problem does not really arise because people access Family Nursing services. When that subsidy goes there could be a gap and that is what people are trying to fill that gap. This is a good way of doing it and it will still give people the option to choose to still take the cash and to either buy a few hours a week and something else or provide care their own way.

Deputy G.P. Southern:

Interesting to provide choice. I had not thought of it in that way before. However, I am hearing clearly from you that ... you know Health are funding the extra ... okay. Is that done? How well informed do you think? What about numbers, how many additional numbers do you think we are talking about here will fall into that gap? And how well informed are either those receiving long-term care benefit or PC3; for example, how well are they informed about there is a change coming?

Policy Director:

That is not within our remit to do that at the minute. At the minute we are running income support the way it runs and running with the way that it runs. So Health have been obviously negotiating with Family Nursing as to how the Family Nursing clients be told about that. We are aware that there are ... there were less than 100 people who ... we have had some data analysis of the Family Nursing clients at the minute. So there are Family Nursing clients who have already got long-term care: 50. But the ones you want to know about ... what you are interested in is the Family Nursing people who are not on income support at the minute but who might find it to be financially difficult to manage. They have got to jump up to a much higher rate. That I cannot ... it was well under 100 people. So there are a small number of people. Of those people many of them will be able to cope with the extra cost and there is not ... I mean, the support, to be very clear, is within the income support system and it is the normal income support system. There is comment in the media in the last 24 hours about people in their own houses. That is not a barrier to receiving income support. The value of your house is disregarded in terms of income support purposes. You can get income support if you are a homeowner. That is not a problem at all. It is not the same as long-term care. Long-term care works in a slightly different way. So the person who owns their own home who has a limited income, who is managing to cope with the Family Nursing fees at the current rate, when they go up they cannot afford the extra cost of that. They do not need any more hours, it just the physical, extra hourly rate going up is too much. That person can apply for income support and will get a small amount of help with the extra cost there. That is how it would work. So there will be some people who fall into that category but obviously until you ask people to apply, and it will be up to people to apply themselves, they need to be given information about how it works and talk to us ... given help to do that.

Deputy G.P. Southern:

Back to the beginning. You are still waiting for further instructions or definitions from Health and when you get them you are all geared up to plough ahead. Will you have the legislation in place by July? Is that a safe bet?

The Minister for Social Security:

There is also within that ...

Deputy G.P. Southern:

For the recording, that was a: "Yes, I think so."

The Minister for Social Security:

Because the income support system, as you well know, is means tested. I mean a lot of people, although there is a hike in the cost of it, will not wish to go down the means tested route if they do not have to. So it is very difficult to assess what the numbers might be.

Deputy G.P. Southern:

It is certainly telling us that have not got a clue what is going to happen, I do not think.

Operations Director:

Just to reiterate, the Social Security Department is ready to do it next week. As I say, we have already done the infrastructure. The I.T. (information technology) systems are all ready to go so I think it is fair to say as far as we are concerned we have got things in place.

Deputy G.P. Southern:

Okay, thanks for that.

The Deputy of St. Ouen:

Minister, we are going to ask you one or 2 questions about foodbanks as a result of the recent report. The report indicates that one of the reasons why people use the food banks, 29 per cent of them, it was because a long-term health condition meant that they were driven to a foodbank. So how are you responding to that statistic?

The Minister for Social Security:

It is very pertinent you should be asking about foodbanks because we had a meeting with the 3 providers who were mentioned in the report. It was the St. Vincent de Paul, the Methodist Church and the Grace Trust who were mentioned in the report. They have had a meeting with Steve, so I will pass over to him this morning, with Malcolm Ferry from Citizens Advice and John Hodges and Vinnie Jones. So you finished the meeting just before we came here.

Operations Director:

It is fantastic now we have got them working together on collecting some statistics and some data. At previous Scrutiny hearings we have said that we needed some data to understand what is being given out, what kind of statistics are we gathering. It has been great that we have got to a place now where we are getting some data and this is the first report we have had that has come back that has given us some useful information. We had 7 meetings with relative charities since June 2015, so we are constantly meeting them to understand the challenges they are facing and what is happening with food parcels and things they are giving out. It is fair to say they came today and we had a very good constructive meeting. We started to first of all just explain the

processes around our benefit system again, because it is a difficult system to understand sometimes. We want to make sure the charities understand the process. What we wanted to do today really was just take them on a bit of a tour of the department and explain about our processing and what we are doing now, because the landscape of our customer service in income support now is very different to what it was a few years' ago. We have got a lot more income support advisers on the desk now. So we explained a lot about the processes that we do. We have a customer service assistant that meets people on the way in, so we are showing the charities all that process this morning. We kind of make sure that our customers have got the right information to process whatever changes they have. We explained that to the charities to make sure they understand the process. But things are being done a lot quicker now. We have got a lot more customer service advisers in the front of house.

[15:00]

Change of circumstances are done straightaway now. A customer coming in with the information will be put on a desk. We talk about the change of circumstance and that is processed straightaway with a letter handed back to the customer and a full explanation about the change and why it has happened and what that means to the benefit. So it is very different customer service now as to what we used to do. It has been good to explain that process to the charitable organisations on what we are now doing from a customer service perspective. We also talked about new things that we are doing, for example, assisted digital and e-forms. A lot of our processes now, the change of circumstance for example income support can be done online. We have got a change of circumstance form that is online. The customer can access that and fill in the change of circumstance details, send that into the department and that will be done in the next day. So we have got lots of different ways that we are delivering our service. I think it was key for us to explain that to the charities and I would welcome any of the panel members who want to come and have a look at the changes that we have done and I am happy to show you that. But I think from our perspective it was good to hear what the charities have got to say, understand some of the challenges. They did talk about mobile phones. It was a topic that came up today about some of the people that they are seeing have debts on mobile phones, which was an interesting bit of feedback that we got today. But I think what I would like to say is we are working very hard with the charities. It is great that we now have some statistics to work with and we will continue to have frequent meetings with them, explain about the benefit. My income support manager openly gave out her email address: "Any customers or challenges that you face, please email us. Please email me. Here is my email address." We even have her email address on the door in the customer service area. For any customer that comes in and wants to communicate with the income support manager, they can do that. So we are very open and we want to help in any way

we can. I think the relationship we now have with the charities is much more improved than it has ever been.

The Deputy of St. Ouen:

Was it the 3 charities who were with you this morning?

Operations Director:

Yes, we had S.V.P. (St. Vincent de Paul) this morning, we had the Grace Trust, and we had the Methodist Centre who were there again today, along with Citizens Advice Bureau and we had John Hodge from the trust as well. So, yes, it was a very productive meeting and we will continue to do that. We will continue to listen, understand what feedback they are getting and obviously whatever data they can provide, it gives us information that we can then obviously try and support them.

The Deputy of St. Ouen:

Are they in a position to provide the data that you need? Because I am aware they would only be small charities and reliant on voluntary donations, so are they in a position to undertake that work and give you data?

Operations Director:

Well, they have committed to do that. So we have been working with the Ministers team to formulate a series of questions and it is going to give us a consistent theme across the charities around the data: what are we giving out, who is it to, what are the demographics, what is the age? We need some information to understand the problem. We cannot just say we have a problem and not really understand the measures. We need information.

The Deputy of St. Ouen:

I understand. When you say they are telling you who they are providing to, is it on an anonymous basis they are giving you this data or are the names involved?

Operations Director:

It will be data around age group. They are obviously not giving out names on a list.

The Deputy of St. Ouen:

That I think might be perhaps concerning to their users.

Operations Director:

Yes, but it is data around age group profile of the customer. We obviously just need to understand what age groups we are talking about. Some of the statistics that came back from the report indicated most of the parcels that were given out were for a male, 34 to 54 I think it was in age group, so that kind of information is helping us understand what parcels they are giving out and what support we can give. I think the more meetings we have and the better the communication that happens across the charities and us will help us give any support that we need to give.

Policy Director:

The Minister for Housing is planning to do the survey again in the same months next year, so January to March next year, so that will give you a really helpful indicator of demand from the same time of the year again. So that has been planned in December.

The Deputy of St. Ouen:

Okay. To come back to the question I put to the Minister, if around a third of users have long-term health conditions, would that indicate that we are perhaps not in the first place giving enough support to those with long-term health conditions?

The Minister for Social Security:

Well, I think with the long-term incapacity allowance, which is covered by what you are saying, long-term health conditions, the support that we provide to getting people back into work is the main initiative with this, which has been huge.

The Deputy of St. Ouen:

I am sure if they could work let us trust that they would work, but to go to a foodbank I imagine that they would be in a position where they cannot work and what they are receiving is insufficient to keep them. Recent changes have meant that there is no longer a disregard, is there, for the benefit they are receiving? So their income may well have reduced. Could that be a reason why they are being driven to the foodbanks?

The Minister for Social Security:

Their income may ... well, would have reduced if they were on 100 per cent incapacity, in which case, of course, they would not be expected to look for work.

The Deputy of St. Ouen:

No, but there would have been some reduction even at lower levels than 100 per cent.

The Minister for Social Security:

The main band of people on L.T.I.A. (long-term incapacity allowance) are 45 per cent, roughly speaking, and it is an in-work benefit but you are not expected to look for work over that area. Their reduction, if you like, would have been £6 a week, I think.

Operations Director:

£5 or £6.

The Minister for Social Security:

Yes, but they get the allowance and whatever income support the household gets. As I said in the Assembly, we cannot dictate to them how they spend that allowance, so it is not necessarily saying they are not getting enough to feed themselves. Steve mentioned earlier some of the charities were saying that they were in problems with racking up mobile phone bills. We cannot tell them not to have an account on a mobile phone. We cannot say that. So their choice of going to foodbanks does not necessarily mean to say they are not being given enough on income support or L.T.I.A. for food. There is not a correlation.

The Deputy of St. Ouen:

It does not necessarily ... does it cause you, though, to review it given that one in 3 using the foodbanks are on long-term health conditions?

The Minister for Social Security:

Well, as Steve said so eloquently before, we are reviewing it and we have had them in this morning. We can only review so much on what information we are given and this recent report, which was January to March as was said, we only got in November. It will be done again next year, so there will be another report coinciding with the same facts, figures, same questionnaire, for us to be able to assimilate whether the same results come through. If you are asking people in a questionnaire ... and it was, in my view - and it is only my view - quite a loose questionnaire and it was anonymous. It is difficult to correlate the figures if you are filling in something to say, well, yes, that is a cut in benefits. It is quite an easy option to give and I think until we have another report from the same time from similar charities, then it is difficult to ascertain whether that is really the cause or not.

Deputy G.P. Southern:

The long-term sick were signing up for a long-term health condition plus one or more other reasons, generally, so they did go to a second box to say: "And this is happening." Significantly ...

The Minister for Social Security:

Some of it was just wanting company, was it not, in one of the ...

Deputy G.P. Southern:

Some of them, yes.

Operations Director:

Seventeen per cent was, yes, just somebody to talk to.

Deputy G.P. Southern:

Yes, someone to talk to was in there. As was awaiting benefit approval, benefit sanction or benefits reduced in ... I do not know, perhaps a third of the responses. So would you accept that, Minister - I may well refer to you later - that sanctions or reduction in benefits has happened? That evidence says that that has had some effect?

The Minister for Social Security:

The sanction situation is quite clear. If you are refusing to ... you are claiming the benefit and if you do not attend interviews or ... I will pass it over to Graham because he is in charge of the Back to Work thing, but if you do not attend what you are supposed to attend, i.e. interviews that are set up for you, there are 3 different warnings that you get. So it is not just a sanction like that. Graham, do you want to ...?

Assistant Minister for Social Security:

There is not really more to elaborate on that particular policy. I mean, it is like I own a business. If I have members of staff that do not turn up on Monday or whatever and they continually do that, they are given verbal warnings, they are given written warnings, and then basically they are sacked. I am very fortunate I have good staff that do not do that, but you do need ...

Deputy G.P. Southern:

But it is continual, it is a repeated offence, is it? Is that the key? Nobody would get sanctioned for once missing an interview without an excuse?

Assistant Minister for Social Security:

No. I mean, I think the advisers are very sympathetic to the clients and we obviously listen to the reasons given why they have not done certain things, but as I say, if it is a consistent disobeying of our rules then we have to have some kind of discipline to ...

Deputy G.P. Southern:

Okay, I hear that, but the largest category here was benefits reduced. Now, benefits can be reduced by, let us say, one of 3 means. You might have had an overpayment for some reason, in which case you will get your benefit reduced while it gets taken at a rate of at least a minimum of £21 per week; (b) you might have rearranged some of your benefit into a Household Medical Account because of your long-term illness, so you might lose some money that way because, I am afraid, you do take money from living components to put into that Household Medical Account. Or you may have had some sanction or you may have had a loan for a special item and you are paying that back. It is a loan, increasingly it is a loan for particular special services, special goods.

The Minister for Social Security:

For whitegoods.

Deputy G.P. Southern:

Yes. So there are lots of reasons why your benefit might be cut and when the basic benefit is one of adult component, household component, rent paid - that is basically it - after that process you are living off ... your disposable income is around about £140, £145 a week. That is the bare bones. If you lose any of those components through a loan or an overpayment you are going to be seriously struggling. Do you not accept that? Is it not time ...

The Deputy of St. Ouen:

Well, there is a question there. Do you not accept that?

Deputy G.P. Southern:

Do you accept that? Stop there, I will do that one and I will follow it up.

The Minister for Social Security:

It is difficult to say: "Do you accept it?" because the encouragement always, the incentive, the wish, is to get people back into work. So you are saying a basic of £145 a week. Well, if there has been an overpayment, as you referred to, that is very largely due to a lack of information being provided by the claimant to the department. So the department keeps paying them at the rate they were without them saying they have a part-time job or their situation has changed or ... so all these things have to be taken into account. All I can say is what we always say, that people are far better in work and the encouragement and the back-up, the resources, are there to encourage them to work.

Deputy G.P. Southern:

An overpayment often occurs because of an error. That might be an error on the client's part. It might be an error on the department's part.

The Minister for Social Security:

Oh, yes, and we hold our hands up to that. Sometimes it is, but it is getting less frequent.

Deputy G.P. Southern:

Sometimes it is very difficult, even though it is a departmental error, to get the officer to admit it and to get redress.

Chief Officer:

If I may, just for clarity, obviously when there is an overpayment the claimant has had the money already. So that is the other important thing to bear in mind. They would have received the monies.

Deputy G.P. Southern:

Yet a lot of very confused people who live from hand to mouth and find it difficult to organise their lives will accept what the money is and not question it. The duty of care lies with your department to make sure you are doing it right ...

Chief Officer:

Absolutely, yes.

Deputy G.P. Southern:

... and not letting it run for 6 months, 2 years, 5 years and facing them with massive bills. Because that is what happens occasionally, does it not?

Operations Director:

I just wanted to pick up on your first question, if I can go back, because there have been several since we started this train. You talked about benefit delays. What I was talking about earlier on was around our processing and how we are processing much faster. So for me the change of circumstance within the department are done as you walk in. If you came in the department today with a change of circumstance, you would be taken to the desk, your change of circumstance will be done on that day. There will not be a delay. It will be done on that day. If you choose to put something in the mailbox or post it, there will obviously be a delay on it, but what I am trying to say is the department is moving in a direction now where changes of circumstance are done straight away at the moment of entry. We are also allowing through digital and e-forms the ability for the

customer to do it in the department with the help of somebody if they want their help or to do it in their own home, and that will be done straight away. So the benefit delay that you are referring to, that is not the reality of what is happening and I would welcome the panel ...

Deputy G.P. Southern:

It is for some.

Operations Director:

I would welcome the panel to come and have a look in the department. Walk round with me and I will show you what we are talking about as far as our processing because it is a very different place now. The service we are delivering is very different. So that is one of the main things we have been tackling through Lean and continuous improvement is to make sure when somebody needs a change of circumstance it is done immediately. If somebody secures a job in Back to Work, they pick the phone up straight after a consultation and change with Income Support the benefit straight away. That is not delayed, putting it on a piece of paper, sent in a tray, travelling across the department. It is done straight away. So the delays we are referring to, that is not what we are doing in the department at the moment. We are processing much faster and more efficiently than we have ever done.

[15:15]

Deputy G.P. Southern:

Length of time to get a second determination, has that come down as well?

Operations Director:

Redetermination? Absolutely, yes, it has.

Deputy G.P. Southern:

If I want to look at ... if the client wants to look at their file and determine their file to make sure you have the accurate figure so they are not suffering from an overpayment, how long does that take to get access to your file?

Operations Director:

Well, the income support adviser will ... so if you come in with a change of circumstance and you want to know about your claim, the income support adviser is going to explain the benefit to you and explain your award in detail. The letter that we give you, there will be a full breakdown of that. But that is not good enough, we are not just going to give you a letter. We are going to explain it with you at that consultation so you understand the benefit award that you are getting.

Deputy G.P. Southern:

Okay. If you want a subject ... what is it called, subject access, does that still take a month?

Operations Director:

Subject access is ... yes, you will get the ...

Deputy G.P. Southern:

It is a month?

Operations Director:

Yes, I think it is a month, yes.

Chief Officer:

There is a statutory ...

Operations Director:

Statutory requirement, yes.

Chief Officer:

We try to do that within the timeframe but there is still a ... I think it is 20 days.

Operations Director:

But it is done in the timescale, yes.

The Deputy of St. Ouen:

Okay?

Deputy G.P. Southern:

There was a chain there but I will leave it there.

The Deputy of St. Ouen:

Shall we move on to minimum wage questions? No, let me start.

Deputy G.P. Southern:

Oh, yes, yes.

The Deputy of St. Ouen:

Well, Minister, I understand that you are bringing a proposal to increase the level of the minimum wage and that is coming forward in the new year. Is that correct or have I misunderstood?

The Minister for Social Security:

It is going to be discussed ... the minimum wage?

The Deputy of St. Ouen:

Yes.

The Minister for Social Security:

Sorry, that was not on the agenda but I can answer the question. The minimum wage is the proposition for the regulations to change, which is going to be discussed in the Assembly next week.

The Deputy of St. Ouen:

Okay. Do you have any reaction, and maybe not yet, to the Chancellor of the Exchequer's announcement yesterday that in the U.K. they were going to increase what they call their living wage to £7.50 an hour?

The Minister for Social Security:

The national living wage?

The Deputy of St. Ouen:

Yes.

The Minister for Social Security:

Which is statutory as opposed to living wage, which you will understand but again for people who are listening it is a very confusing terminology. I think people do get confused with it. So the national living wage, which is the one that they are proposing to increase - it was only in the Budget; it has not been agreed - is statutory and it is for over-25s. You will recall the debate we had in the Assembly as to whether we had a difference in age, which was not accepted at all, so we have already taken that to the States as to whether there would be a differentiation in that. What we are bringing next week is the recommendation of the Employment Forum, who have spent a lot of time consulting on this and they have come up with a proposed increase, which is 3 per cent so quite a considerable increase, to £7.18. We have the advantage of the Employment Forum, an independent body as described earlier who have been doing this job since 1999, a different cohort of people but the same 3 employers, 3 employees and 3 independent people, who

do the consultation, analyse all the results and then advise us. So they are doing it across the board, so it is across agriculture, hospitality and perhaps retail, which are the main users of the minimum wage, balanced with stakeholders in business, the Chamber of Commerce, C.I.P.D. (Chartered Institute of Personnel and Development), I.O.D. (Institute of Directors), so business who would balance it out as to how far business can go to afford an increase. This is quite a big increase and keeping on the 41 per cent aiming for the 45 per cent of mean earnings by 2026.

The Deputy of St. Ouen:

That is right.

The Minister for Social Security:

So I have accepted the recommendations of the Employment Forum as an independent recognised body assembled and appointed by the States, so that is what I am recommending to the Assembly on Tuesday.

The Deputy of St. Ouen:

Minister, I am sure there are the same sort of pressures on business in the U.K. but yet we see as a matter of policy the U.K. Government seems to be driving forward and increasing its “minimum wage level” by significant amounts, more than Retail Price Index, for example. So what policy do you believe is driving that in the U.K.?

The Minister for Social Security:

In the U.K., as it is in Guernsey, it is politically driven. It is a political decision. Ours is not. Ours is a recommendation by the Employment Forum, which is an independent body, which has to be accepted by the political Assembly, if you like, but it is not a politically driven recommendation whereas it is in the U.K.

The Deputy of St. Ouen:

The politics is about lifting people out of low income.

The Minister for Social Security:

We have the recommendation subject to economic conditions, so we stick by that. So it is a balanced recommendation, not a politically driven one. So the universal credit is another area in the U.K., which they have been caught coming backwards down the same tunnel I think with, being politically driven and not informed and balanced recommendations. Also, you cannot forget that the national living wage, the one you refer to as just going up possibly to £7.50, is only for those aged over 25. Our minimum wage is from 16-plus, which is quite a considerable difference.

So everybody over the age of 16 will be entitled to the £7.18, whereas in the U.K. that national living wage is only for those over 25.

Deputy G.P. Southern:

But that is still a significant number ... or are you saying that younger workers are the main recipients of the minimum wage? Is that the case?

The Minister for Social Security:

I do not necessarily think it is younger workers, but the Assembly were very clear in the debate as to why we do ... and I think you yourself, Deputy, said why would you differentiate between somebody who is 24 and 351 days and somebody who is 25? That is what the U.K. law, because it is statutory, does.

Deputy G.P. Southern:

We chose not to go down that road.

The Minister for Social Security:

We decided not to, yes.

Deputy G.P. Southern:

You did also consult with the Employment Forum about the possibility of a more rapid and larger rise in the minimum wage by 2020 or 2026. Were you happy with the response you got from the Forum, which said we appear to have asked an unclear question when we suggested equivalent to £7.65? The majority or many of the respondents took that as over 10 years raise it to literally £7.65 instead of: £7.65 is the indicator; it would be at that position now; what do you think if it were to rise to the equivalent of that by 2020 or 2026? The response was very mixed because many of the respondents misinterpreted the question. They thought that was a rise to £7.65 over 10 years and responded appropriately to say: "That is not a problem." In fact, the consultation ...

The Minister for Social Security:

Well, I think it would be a problem. I think it needs to be more than that over 10 years.

Deputy G.P. Southern:

Yes, exactly. They misinterpreted the question. Are you going to consult again on that since they got that wrong? They did not give you a decent answer.

The Minister for Social Security:

No, they have given their recommendations and I think apart from what I have already said - I do not want to repeat myself - about the independent consultation there is also a huge amount of uncertainty, as we all know, over the Brexit situation and to have a higher rate, which again probably a lot of us would like to see, in times like this is not appropriate for business. So, again, you are in a balancing act as to what business can afford and what you would like to see as people earning a higher minimum wage. But you have to balance the 2.

Deputy G.P. Southern:

Yet it seems to me that the U.K. Government has committed itself to raising minimum wage to of the order of I think £9.20 perhaps by 2020. Would you think that is an example we could follow?

The Minister for Social Security:

It was in my view - again, my view only - a totally political decision to do that just prior to the previous election.

Deputy G.P. Southern:

Gosh, we share an opinion. **[Laughter]** Nonetheless ...

The Minister for Social Security:

Hallelujah, is it time to go? **[Laughter]**

Deputy G.P. Southern:

Nonetheless, they do appear to be committed to it. They have just seen a major rise to £7.50. It looks like they intend to arrive at £9.00 in the appropriate scale. Given that, what that does is redress or change the balance somewhat between supporting somebody through the wage and supporting somebody through a benefit. It represents a saving in that sense to Government. Would you favour adopting that approach?

The Minister for Social Security:

Again, I have trouble with this constant comparison with the U.K. We are not the U.K. We are a tiny microcosm of an Island and in the U.K. - and it is well known, I am not talking out of turn - a lot of people on minimum wage can migrate from one town or city to the next. They have the option to move around if they are not particularly happy with their lot or what they have or want to move to another industry. We do not have that sort of option over here so the people who are here working on those wages ... and again you have to take into account offsets as well, accommodation and meals being provided if it is hospitality and, to a large extent, agriculture. I do not know if you have seen the letter sent out by David Rankin today from Jersey Royal just saying

that they are going to really struggle with just the increase that we hopefully will get through the States next week. So it is just completely a balancing act and I think that is where the independent and very intelligent recommendations and balance of the Employment Forum should be taken notice of.

Deputy G.P. Southern:

Despite the fact that we are, according to the stats unit, a 20 per cent more expensive place to live than on average in the U.K. and yet we appear to be embarking on a lower minimum wage than that which appears in the U.K.

The Minister for Social Security:

It is only lower for the first time ever, actually, but it is still a 3 per cent increase where there is no saying whether the U.K. can absorb this proposed increase. It is quite high, a 30 pence per hour increase. It is only a proposition in the Budget. It has not been agreed.

Deputy G.P. Southern:

It does seem to me, though, that that smacks that we are surviving as a low wage economy in that sense.

The Minister for Social Security:

I think the fact that it has gone up by 21p an hour in the proposed regulations, which hopefully will be accepted on Tuesday, is quite considerable. If you run a business, and again back to Graham who has his own business, that is 21p an hour. If you have 5 or 6 employees working 35 hours a week, it is quite considerable.

The Deputy of St. Ouen:

Minister, in the last 5 minutes can I just ask you about the cost of visits to G.P.s (general practitioners) because that was a major factor in our review on living on low income? People on low income were often fearful, we found, about the cost of visiting their G.P. We know a review is taking place. When will that report and what sort of assistance is being considered?

The Minister for Social Security:

This is a review ... probably Sue is better able to answer this than me, but just very quickly, Deputy Southern referred to earlier about H.M.A.s (Household Medical Accounts) and people having money taken out of their benefits. It is a way of budgeting. They are normally at their request so it is not being taken out, it is being put aside for medical conditions. So it is just worth clarifying that.

The Deputy of St. Ouen:

But that exists now and we still hear that people still have difficulty and do not go to the doctor when they should. Is anything going to be done to alleviate those problems that people seem to suffer from?

Policy Director:

We have done ... Steve's team has been working this year on improving the existing system, which is the H.M.A. system. There is limited ... you know, it is what it is, yes. It is a saving scheme and we are trying to make that easier for people to understand. The work that is being done at the minute is through an external consultancy on looking at international models to find a model that would provide better support in a cost-effective way. So that work is under way at the minute. It should report early next year. It will result in a written report that will be available for people to look at.

[15:30]

Obviously, though we have asked people to look at options for us I could not tell you what the options are because they are looking at them at the minute, but we have great ... the consultants are very proficient and drawing on lots of experience that we would not have known about ourselves. They are experts in this area.

Deputy G.P. Southern:

Did you say you had some options or not yet?

Policy Director:

No, I am saying the consultants are working up options at the moment.

Deputy G.P. Southern:

They are working up options and you should have them, you say, early next year?

The Minister for Social Security:

Early next year.

Policy Director:

Yes.

Deputy G.P. Southern:

Are we talking first quarter; are we talking first month?

Policy Director:

Let us say first quarter.

The Deputy of St. Ouen:

That is for the release of a report, is it?

Policy Director:

Yes. So we are working with Health on a number of areas of primary care and this is one that is being pursued at the minute. So, at the end of last year you came to the launch of the primary care strategy, so out of that piece of work there are a variety of things happening this year, some pilot projects, working with pharmacists and G.P.s and nurses, and some other work on redesigning some of the funding streams. This is one of those for those areas.

The Deputy of St. Ouen:

Okay, that is encouraging.

Deputy G.P. Southern:

Just a thought, Chairman, if I may?

The Deputy of St. Ouen:

Please.

Deputy G.P. Southern:

Would you be agreeable to letting us have access to your reviewers so that they can fill us in on their thinking before you publish a report in March next year?

Policy Director:

We can look at the timetable, yes.

Deputy G.P. Southern:

It might be useful for us to explore their thinking and see where we are and where they are.

The Deputy of St. Ouen:

That is just what I was thinking, yes.

Policy Director:

The Minister met one of the partners a couple of weeks ago, so yes.

Deputy G.P. Southern:

Thank you.

The Deputy of St. Ouen:

Are there any other questions?

Deputy G.P. Southern:

I have no more barbs left.

The Minister for Social Security:

I do not believe it.

The Deputy of St. Ouen:

So, Minister, thank you for meeting with us today, and your team. We are very grateful. That brings the meeting to an end.

The Minister for Social Security:

Thank you, Chairman.

[15:31]