



Housing Rights Service and Law Centre (NI) Joint Response to a Consultation Paper on a Rate Rebate Replacement Scheme

February 2015

1.0 Introduction

This is a joint response between Housing Rights Service (HRS) and Law Centre (NI) to the consultation on Rate Rebate Replacement Scheme.

HRS was established in 1964 and is the leading provider of independent specialist housing advice services in Northern Ireland (NI). We work to achieve positive change by protecting and promoting the rights of people who are in housing need and our policy work is based on the experience of our clients. Our services are delivered throughout NI and focus on the key areas of preventing homelessness, accessing accommodation, tackling affordability and poor housing conditions. Rates issues are becoming more of a priority for our clients. HRS has for many years encountered a number of problems experienced by tenants, landlords and owners of residential accommodation who are not fully aware of their liability for domestic rate payments or who have had difficulty in paying their rates.

Law Centre (NI) is a public interest law non-governmental organisation. We work to promote social justice and provide specialist legal services to advice organisations and disadvantaged individuals through our advice line and our casework services from our two regional offices in Northern Ireland. It provides a specialist legal service (advice, representation, training information and policy comment) in five areas of law: social security, mental health, immigration, community care and employment.

2.0 Summary

HRS and Law Centre (NI) welcomes the opportunity to respond to this consultation and is supportive of the general policy intention to simplify the payment of rates rebate, especially in line with the introduction of Universal Credit (UC). However, we do have a number of concerns with regards to backdating, appealing decisions and provision for hardship cases. We hope to address these in answer to the consultation questions.

3.0 Consultation Questions

Question 1 - Do you agree with the alignment of rate rebate with universal credit and the policy objectives of fairness and making work pay?

We agree that it makes sense to align rate rebate with UC. Our preference is Model A as it makes sense to build rate rebate around UC rather than draw on concepts related to Housing Benefit, which will eventually become obsolete.

However, we are concerned about the proposal to assess rate rebates on an annual, rather than on a monthly basis. One of the key features of UC is its flexibility given the incorporation of 'Real Time' information about a person's income. It strikes us as a missed

opportunity that the Department should adopt *some* UC concepts while diverging from one of the overarching principles of UC i.e. real time responsiveness to a claimant's changing circumstances.

The Department is keen to develop a rates rebates scheme that 'incorporates the principles of fairness and making work pay' (para 60). This aim is laudable. However, we are concerned that the current proposal of an annual calculation could in fact thwart both principles. First, we believe that it is unfair that a claimant, who experiences a drop in income after the rate rebate calculation, would continue to be liable for the same amount each month for the rest of the year, despite having less money. This is because, under the proposals, a drop in income will not count as a change of circumstances for the purpose of reviewing a person's rate rebate. We are mindful that the increased use of "zero hour contracts" means that many workers have incomes that fluctuate quite significantly from week to week. We acknowledge that some claimants (who experience an increase in income after the calculation) will benefit from the proposed system. Effectively, there will be 'winners and losers': while this may be administratively acceptable, an individual who is adversely impacted will feel a great sense of unfairness. The other principle that the Department is trying to incorporate is one of 'making work pay'. Our concern is that the annual calculation could act as a perverse incentive for some claimants to minimise their income before claiming a rates rebate in an attempt to maximise their rate rebate award.

There appears to be three ways of addressing this problem.

- i. Ideally, we would like to see a claimant's assessment for rate rebate being made in 'real time' in line with the assessment of UC. Clearly this would increase the administrative costs in the short-term. However, we note that the Department's ultimate aim is to have a 'data flow between the UC and rate rebate IT systems so that entitlement to rate rebates can be calculated automatically' (para. 34). Therefore, it seems that a monthly calculation might be viable in the long-term. We would ask the Department to keep this under review.
- ii. The second option would be to introduce a three month assessment period whereby the rate rebate calculation is based on the average of three months of income.
- iii. The third is to make special provision for those claimants who are adversely affected to be able to apply for a Discretionary Hardship Payment. Please refer to Question 4.

Further to our discussion with DFP officials on 9 February 2015, we acknowledge that the amount a rate rebate could fluctuate would be fairly minimal, (although it could still amount to a significant proportion of a person's disposable income). Therefore, while we maintain that a monthly calculation would be preferable, we think the focus should be on ensuring access to a hardship fund.

Question 2 - What views do you have on passing up on an interim scheme and moving straight to a long term solution?

Yes, we agree that this is a practical approach.

Question 3 - What views do you have on the proposed treatment of universal credit transitional protection?

We agree with the Department's general approach here i.e. that the amount of transitional protection is not taken into account as income and that, where the UC award is reduced due to sanctions / overpayments / third party payments, the Department will take account of the UC award prior to deduction.

We understand the Department's rationale of treating those whose UC award consists solely of transitional protection as if they are not entitled to UC. Therefore, this group of people will not be entitled to apply for a rate rebate. However, we believe that they should be eligible to apply for a hardship grant.

Question 4 - What views do you have on introducing safeguards/hardship scheme and do you have any views on the length of time such schemes should exist?

Whilst we welcome the Department's assurances that those who are least able to pay rates will be targeted by the new rate rebate scheme, there will always be a certain number of people who fall just outside of the qualifying criteria for assistance. We feel that sufficient safeguards need to be put in place to protect such people. Rates are a priority debt. As such, non-payment of rates can have serious consequences; such as potentially leading to homelessness, personal bankruptcy and even imprisonment! Therefore, it is crucial that further help should be made available to those who need it.

As we outlined in response to Question 1, we feel that, if an annual award of rate rebate is proceeded with, a hardship scheme will be especially important for claimants whose income falls during the course of their annual award. In these cases a hardship fund should be made available to alleviate the financial difficulties of having to find extra money out of a limited income to pay their rates bill.

We also think a hardship scheme should be available for claimants whose UC award consists solely of transitional protection.

The Department may want to consider a similar approach to that used by the Northern Ireland Housing Executive (NIHE) when assessing discretionary assistance to private rented tenants in receipt of Local Housing Allowance (LHA). Most private tenants in receipt of LHA will find that they have a shortfall between their level of LHA and the contractual rent that

they must pay to their landlord. In these cases, a tenant will be able to apply for a Discretionary Housing Payment (DHP) which can help to cover some of the shortfall. The tenant must apply for the DHP and must be able to illustrate that they are in financial hardship and that they need additional financial assistance to alleviate the shortfall between their LHA award and their contractual rent.

DHPs are currently time bound. In considering a hardship fund, we would urge the Department not to make hardship payments time bound. Anyone entitled to a hardship payment should either be able to continue to receive it until their annual rate rebate review is carried out or until their financial situation improves; whichever is earliest. This will make administering such a system easier and will offer greater security for claimants rather than claimants having to renew their application for hardship funding every few months.

We believe that the following guidance for local authorities in England, which was updated to take account of the impact of welfare reform, should be taken on board when looking at the awards of any discretionary assistance with rate rebate:

“There is no limit to the length of time over which a DHP may be made...you may wish to make a long term or indefinite award until the claimant’s circumstances change. You may wish to bear in mind that it may be more appropriate to make a long term award in cases where a claimant’s circumstances are unlikely to change, and making a short term award will cause them undue distress.”¹

Under the system of DHPs there is no formal right of appeal; however, the NIHE can carry reassess the decision, if requested. Due to the discretionary nature of any hardship payment scheme it is important that there is safeguards and consistency in decision making. It is important that the Department draws up comprehensive policies and procedures to give clear guidance to LPS staff on the administration of any discretionary hardship scheme and on its decision making, to ensure as great a level of consistency as is possible under a discretionary scheme.

Although the Department is wishing to reduce the time and expenditure paid on redressing challenges; it is important in a modern democracy that there should be an adequate means of redress made available to claimants. Please see our further comments (Question 11), below.

LPS should also refer claimants for independent advice and assistance on what to do if they are unhappy with a decision and advisers should be able to make submissions on behalf of a claimant, where necessary. Referrals for independent advice on benefits, debt or money management should be integral to any system for addressing hardship.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300220/discretionary-housing-payments-guide-apr-14.pdf

We note that the consultation makes no reference to the various additional schemes that are currently in operation such as the maximum capital value allowance, clergy residence concession, lone pensioner allowance and early payment schemes. We have consistently argued that savings could be found by removing these schemes, which we view as regressive.² The only scheme that we see value in retaining is the disabled person's allowance, which recognises the value of making suitable adaptations to a home and the low income rate relief scheme.

We think it would make sense for any hardship scheme to be included in the proposed Discretionary Support scheme. We understand that this proposed scheme is envisaged to be broader than just social security benefit and, therefore, ideally could encompass any rate rebate hardship fund.

Question 5 - Do you agree with the proposal to extend the time limit for claiming to 3 months and that there should be no provision to allow discretionary backdating?

We agree that 3 months would appear to be a sufficient period of time for most working-age claimants to make a claim for rate rebate. However, we are concerned that the Department proposes to make no provision for backdating. In the interests of fairness and equity the Department should not operate a blanket policy in this regard. There will always be some claimants in exceptional circumstances who are unable to make a claim during the set time limits. Usually these will be claimants who, through no fault of their own, have been unable to make a claim on time. Common examples would be a claimant who has been in hospital, or undergoing personal/family issues where applying for rates rebate may not be at the top of their agenda.

To accommodate these situations, there should always be provision made for backdating, so as to ensure that those who need the help will get it.

The Department might want to consider making a claimant's eligibility for rate rebate effective from the date that they become entitled to UC. Under the preferred Model A, UC will be a condition of entitlement to rate rebate. Therefore, it would seem reasonable that any claim for rate rebate should be backdated to the date of entitlement to UC.

Question 6 - What views do you have on limiting the effect of changes on a rate rebate award?

² E.g. Joint LCNI and HRS submission to the Committee for Finance and Personnel on Rate Rebate Reform and

We understand the rationale for limiting the effect of changes in terms of minimising administrative costs. This makes sense assuming that the Department does not adopt the monthly calculation (as set out above).

The Department proposes that claimants will be required to notify any change that affects their rate liability i.e. a change of address, death of a claimant or changes to the number of people sharing liability. We see the potential for some confusion here given that claimants receiving UC are required to report a number of changes in their circumstances.³ There is a need for clear communication from the Department on this point so that claimants are clear about their obligations. We are also mindful that not all claimants will easily be able to assess whether a change in their circumstances affects their rates liability or not. Therefore, if such a claimant were to notify the Department of a (non material) change in their circumstance, then the Department should respond and confirm whether liability has been affected.

Given that the rate rebate system is likely to be aligned to UC, we think a claimant might reasonably expect that s/he only needs to notify UC of a change in circumstance. Once data/information sharing systems are in place, we suggest that this should be a long-term objective.

Question 7 - What are your views on the Department's proposal to make all overpayments recoverable legislatively but introduce greater flexibility on whether to pursue recovery?

We agree that this approach is workable although, without seeing the proposed policy developed by LPS, we cannot comment definitively. On principle, however, we agree that a written policy can be more flexible than trying to cater for every eventuality in legislation.

Given our experience of advising clients about overpayments, we would welcome the opportunity to have an input into the written policy. We would propose that it is as expansive as possible and that it includes a number of options such as suspending payments, taking a flexible approach to repayment timescales, providing for debts to be written off in their entirety, etc.⁴

Question 8 - What views do you have on crediting the rate rebate to the appropriate rate account rather than paying claimants or landlords?

³ http://about.universalcredit.service.gov.uk/kms/Pages/Reporting_a_change_in_your_circumstances.htm

⁴ We note that the DFP Guide to Managing Public Money allows for the waiver of the recovery of overpayments where it would cause hardship. Annex A4.11.19

We welcome the proposal to credit the rates accounts of claimants and landlords. We believe that this would create a much simpler and cheaper system for administering and could help to reduce any misunderstandings between landlords and tenants as to who is liable to pay rates.

HRS has had many cases where a tenant is contractually liable under their tenancy agreement to pay rates to their landlord but the landlord fails to pass the payment on to LPS. Inevitably, LPS goes on to pursue the tenant, because they are legally liable for the rates under the Rates (NI) Order 1977 (as amended), even though the tenant had passed the money in good faith to their landlord. In such circumstances the tenant can end up having to pay the same money a second time to LPS to avoid prosecution, but can also find themselves having to take an action against the landlord in the Small Claims Court to recoup the money already paid. We believe that where landlords default on their arrangements to pay rates as set out in tenancy agreements, tenants should not be prosecuted for rates liability where it can be proven that they have made rates payments to their landlord in line with their tenancy agreement.

For tenants, the line between being contractually liable to pay rates to their landlord and being legally liable for the rates can be unclear. Therefore, crediting the account of the person who is legally liable to pay the rates would be an improvement on the current situation and could reduce the number of actions being taken in Small Claims Court on this issue and reduce the stress of being faced with action by LPS.

Crediting of accounts would be a substantial change from the current system for paying rates. As such, we believe that the Department would need to undertake an extensive advertising campaign to educate both tenants and landlords about any changes to how rates rebate will be paid. We would be concerned that landlords who are unaware of any changes could take retaliatory action against their tenants for failing to pay their rates directly to them. We note the legal requirement in Scotland for landlords to provide all new tenants with a Tenant Information Pack which could be a useful means of addressing this information deficit as regards to rates liability.⁵ We would recommend that the DFP consider liaising with the DSD when looking at what information should be provided to tenants and landlords; especially as the DSD will be carrying out a review of the private rented sector in the near future.

Question 9 - What views do you have on the frequency in which rate accounts should be credited?

⁵ <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privaterent/tenants/tip>

We welcome the Department's approach that allows owner occupiers to be credited on an annual basis but to allow for rebate rebates for the tenanted sector to be credited, to the appropriate rate account, monthly in arrears.

One issue for the Department to consider is how rate rebates will be affected if there are delays in awarding UC. Unfortunately, the experience in GB is that delays in UC payments are not uncommon and that there are different causes for delays.⁶ Given that Model A proposes to link the rate rebate closely to UC, we suggest that, where there is a delay, the rate rebate and any recovery action is suspended until UC payment is processed. It would not be reasonable for a claimant to be penalised for non payment of rates in situations where they have not yet received UC.

Question 10 - Do you have any views on the initial Integrated Impact Assessments carried out by the Department?

No comment

Question 11 - Do you have any quantitative or qualitative information that could be considered in order to supplement the statistical analysis carried out as part of the initial Integrated Impact Assessment?

No comment

4.0 Further comments

If Model A is adopted, we note that the Department does not envisage an appeal system separate from Judicial Review. We agree that this makes sense seeing as rates decisions will be based on the appealable UC decision.

Given the absence of a right of appeal, it is essential that the internal reconsideration process is robust. We make four suggestions, which we would recommend should apply both to the rates rebate calculation decision and any hardship fund decision.

- i. First, when the Department makes a rates decision, the decision letter should clearly set out the reconsideration process.
- ii. Second, the decision letter should signpost the claimant to independent advice.
- iii. Third, the reconsideration should be conducted by a Principle Officer who was not involved in the initial calculation, thus affording some level of objectivity. The

⁶ For example, TUC, 'Universal Credit: The Problem of Delay in Benefit Payments' (2014).

current NIHE system of considering negative homelessness decisions could be a useful model.

- iv. Fourth, the claimant (or their representative) should be afforded an opportunity to make submissions on the initial decision.

As a final point, we would stress the need for the eventual scheme to be communicated as clearly and as simply as possible. We are mindful that demand on the advice sector is likely to increase due to implementation of welfare reform and due to the fact that legal aid is likely to be reduced for housing, welfare and debt matters, (thus removing private practice solicitors from the picture).⁷ Realistically, this is likely to mean that many claimants may have to navigate UC and rates rebate without the assistance of an independent adviser – hence the need for a clear and simplified system. We are happy to participate in any discussions which the DFP may have as to how to carry these reforms forward.

For more information about this response, please contact:

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⁷ DoJ proposes to remove housing (except homelessness) and debt from the scope of legal aid <http://www.dojni.gov.uk/consultation-on-scope-of-civil-legal-aid.htm>