Tressa Burke: Co-Chair Assessment Workstream
Disability and Carers Benefits Expert Advisory Group

To: Shirley-Anne Somerville, Cabinet Secretary for Social Security and Older People

By e-mail

11 July 2018

Dear Shirley-Anne,

I am writing to update you on the Assessment Workstream's most recent discussions, reflections and considerations in relation to four areas: automatic entitlement, best sources of evidence, award durations and the delivery body for assessments.

1   Automatic Entitlement

Workstream members recognise and welcome the fact that the values of fairness, justice and dignity are driving the consideration of auto-entitlement.

Workstream members considered a number of challenges with the concept of auto-entitlement and make the following recommendation. The key points underpinning this recommendation are summarised on the next page.

At this stage we would like to offer interim guidance pending further information regarding the payments to be introduced. We would like to review this guidance when further information about the regulations and guidance is available.
We note, however, that Part 1 of the Act is clear on the principles that need to underpin assessment decisions and outcomes including a commitment to respect the dignity of individuals.

Recommendation on automatic entitlement

<u>**Key recommendation**</u>: **Under a new system of disability assistance, with the exception of terminal conditions, we recommend a presumption against extending automatic entitlement.**

At present there is no auto-entitlement for Personal Independence Payment and auto-entitlement only in a very few limited circumstance for Disability Living Allowance and Attendance Allowance (please refer to Annex B). The workstream believes that the system should continue as it is at present with a view to reviewing it after the safe and secure transition.

The following points were raised by the workstream in reaching the recommendation above:

- A number of difficulties with the overall concept of auto-entitlement were identified, including:
  - The narrow range of conditions currently being considered, with no mental health conditions being included;
  - The current list being considered only includes medical conditions – there is no consideration of other non-condition specific circumstances that could lead to automatic entitlement to benefits, e.g. being under a Compulsory Treatment Order or other Mental Health Act related order.
  - However, no attempts to re-define a list of conditions are likely to produce a fairer system, for the reasons outlined below;
  - There are difficulties associated with making decisions purely on a diagnostic label;
  - A system of auto-entitlement allows no recognition of the effects of co-morbidity on functionality – it is based on presence or absence of single conditions. This is an over simplification and does not reflect the demographics of claimants.
  - A system of auto-entitlement allows no recognition that conditions may affect individuals' functionality in different ways;
  - Most medical conditions vary in their impact on the individual's life and also vary in that impact over time;
  - Given the system will be based on functionality, making *some* awards condition specific is unfair and inconsistent;
  - This creates a two-tier system and inequality of outcomes;
  - The principle that *any* person with 'x' condition has auto-entitlement leads to assumptions about the capability and potential of people with listed conditions, which can spread into other areas such as employment and education. We would want to avoid a deficit based system rooted in ill health conditions or disabilities per se rather than their functional impacts on individuals.

- We recognise that auto-entitlement eliminates the need for face-to-face assessments for some individuals. However even if the number of conditions covered by auto-entitlement is increased this will not have a significant impact on the number of face-to-face assessments that will need to be undertaken. A significant reduction in face-to-face assessment can be achieved with an improved system of assessment and evidence gathering. Reducing face-to-face assessments will be a major consideration when we undertake further work looking at award duration and the best sources of evidence (see below). However, we should be mindful that some people may wish to have a face-to-face assessment for access reasons. This should be respected and accommodated, even if the overall goal is to reduce them.

- We do not yet know what the assessment process in the new system will look like. However, early indications, through helpful conversations we have had

with officials, show there is every intention it will be based on a light touch and that the most appropriate sources of evidence will be sought. Whilst we appreciate this endeavour, it is wise to anticipate problems in the new system and to recognise that scrutiny, feedback and user experience must be present from the outset if robust and fair decisions are to be made with least inconvenience to claimants.

- Under such a system, entitlement to benefits should be quickly recognised during the assessment process, and no separate parallel auto-entitlement system would therefore be necessary. It is important that decision makers consider the range of functional impacts faced as a result of a condition rather than the condition itself. We welcome the potential opportunity to bring enlightened perspectives to evidence, assessments and decision making.

- We are aware that there is pressure to extend auto-entitlement to protect the interests of some claimants. This is in the context of the current system that is perceived as broken and hostile. However, we concluded that auto-entitlement is only needed in a system that is not functioning properly. There is now an opportunity to get the system right and your officials have demonstrated how they are looking at appropriate evidence gathering. This will be the key to a future system with no condition specific auto-entitlement.

- Our recommendation is that auto-entitlement is not extended in Disability Living Allowance, Attendance Allowance or Personal Independence Payment when these are transferred. Further, any new form of disability assistance developed in future should not be based on auto-entitlement, subject to the new system delivering on principles of dignity and respect, and values of fairness.

2 Best sources of evidence

Workstream members welcome a new system which will be based on a light touch form of assessment with the most appropriate source of evidence being the applicant. We are encouraged that officials are working to promote the principle of reducing the number of face-to-face assessments.

We have sought evidence from a range of stakeholders and we are mindful that while there is broad support for this principle, some people may prefer, in the first instance, to have a face-to-face assessment to explain their claim in person. This includes people who may not be confident about expressing themselves in writing or who would prefer a home visit. We think leaving the door open to face to face meetings for people who would prefer them would enhance the claiming process.

To consider what sources of evidence should be used in order to determine someone's entitlement to disability assistance we decided to establish a set of

principles to guide our discussion. The following principles have been considered by a wide range of stakeholders (please refer to Annex A) and there was a broad consensus that these should be applied.

The principles we established are:

1   The agency should take a proactive approach to establish, determine and assess an individual's impairment and its impact on functional ability. This should include deciding:
   a. What facts need to be established;
   b. What information is required to establish those facts;
   c. What gaps there are in the individual's evidence and how best to plug those gaps including, where appropriate and with the individual's consent, relevant information from a third party; and
   d. Identifying whether there are any inconsistencies in the evidence.

2   The starting point should be a clear and full account of the individual's situation.

3   The agency should use the least, most relevant and specific evidence required to get an accurate and robust decision.

4   The individual's own account should be the most important source of evidence.

5   Any further evidence needed should be identified on a case by case basis.

6   Where it is needed, the agency should gather easily available relevant and specific evidence.

Recommendation on evidence sources

There is a need for an empathetic and consistent approach which builds upwards from the individual's account, proactively seeking out further evidence where that is appropriate.

Key recommendation: Taking into consideration all the above, we are confident that in most cases an individual's account of the impact of their condition or impairment on their functionality should be sufficient to obtain an accurate and robust decision.

In order to test these principles further we propose to explore their potential application with officials and to produce an additional advice note in due course. In particular we would like to explore the use of a wide range of sources that could provide relevant information, including information from, or provided by:

- family members and carers
- social care packages
- Blue Badge applications
- Access to Work packages

- ILF packages or award
- third sector and voluntary organisations
- specialist nurses, OTs, physiotherapists
- health and social care IT systems.

We recognise that gathering relevant information from these and other sources presents challenges and opportunities including data sharing between agencies. Some work has already been carried out and we would like to further explore this with your officials.

The workstream also recognises the merits of the 'test and learn' principle: given the significance of getting the assessment system as good as it can be, we believe there is a strong case for trying out different approaches to information gathering to gauge effects on reaching the right decision first time around.

3   Award Duration

The workstream has held early discussions on award duration which we intend to revisit at our next meeting. Following this we will provide you with full advice.

Workstream members reflected that appropriate consideration of duration of awards flows naturally from a system, as described above, that is working well and seeking the most appropriate sources of evidence.

4   Delivery Body for Assessments (Options Appraisal)

The workstream were grateful to receive a copy of the options appraisal on the delivery body for assessments in February. We discussed this at our February meeting and communicated our views to officials. We now take the opportunity to convey that view directly to you.

The workstream strongly agreed that agency delivery seemed the correct option. The principle of separation from Scottish Government is important, but appropriate distance can be achieved through robust reporting arrangements. There are compelling practical and cost advantages to agency delivery, plus there is a reasonable public expectation that all functions happen under one roof. We agreed that the agency should be responsible for both paper-based and face-to-face assessments.

We also considered the issue of data protection. Information about individuals will be coming in to the agency anyway; if another body was involved to which this information was then being passed, this would complicate and build in risks. There are also advantages in having one system and body for audit, complaints and standards.

If you or officials have any questions about these points, please get in touch. We look forward to your response.

With best wishes,

Tressa Burke
Assessment Workstream Co-Chair

Annex A - Contributors

Organisations represented at the workshop

Child Poverty Action Group; Glasgow Disability Alliance; Joseph Rowntree Foundation; Scottish Commission for Learning Disability; Scottish Government; Scottish Independent Advocacy Alliance; Social Security Advisory Committee; Disability Agenda Scotland; Citizens Advice Scotland; Carers Scotland; Castle Rock Edinvar Housing Association; NHS Lanarkshire; Independent Living Fund; Scottish Association for Mental Health; BMA Scotland; Glasgow City Health and Social Care Partnership.

Membership of the Disability and Carers Benefits Expert Advisory Group Workstream on Assessments

Chairs: Tressa Burke and Alan McDevitt - Disability and Carers Benefits Expert Advisory Group

Jim McCormick – Disability and Carers Benefits Expert Advisory Group
Chris Creegan - Disability and Carers Benefits Expert Advisory Group
Shaben Begum - Disability and Carers Benefits Expert Advisory Group
Ewan MacDonald - Disability and Carers Benefits Expert Advisory Group
Ed Pybus – Child Poverty Action Group
Nicolas Watson – University of Glasgow
Carolyn Lochhead – Scottish Association for Mental Health

Annex B – Current automatic entitlement

Automatic Entitlement (AE)

There is currently a limited degree of AE in legacy DLA and AA benefits. It extends the range of people who are entitled to these benefits, including for example, blind children, children with no feet, and children and pensioners undergoing some forms of dialysis who may otherwise not be entitled. We are not saying that this form of AE should be removed after the transition to the Scottish system.

We are not including entitlement based on benefit 'passporting' or other forms of eligibility to benefits. For example, a paper-based assessment could be made for a claimant who has an ILF award. The information from the ILF assessment may be used to decide, for example, their PIP entitlement. The information supplied for the ILF application may be well sufficient evidence to make an accurate decision but getting an ILF award would not automatically give entitlement to DLA, PIP or AA. This issue was discussed at the assessment workstream's recent workshop on sources of evidence and we aim to cover this in our next assessment note.