

From: <redacted s40(2)(1) Officer 2>
Sent: Thursday, July 6, 2023 7:21 PM
To: <redacted s40(2)(1) Officer 1> (ESJWL - Communities & Tackling Poverty); <redacted s40(2)(1) Officer 3>
Cc: <redacted s40(2)(1) Officer 4>(ESJWL - Communities & Tackling Poverty); <redacted s40(2)(1) Officer 5>(ESJWL - Communities & Tackling Poverty); <redacted s40(2)(1) Officer 6> (ETC - Constitution and Justice - Justice Policy); <redacted s40(2)(1) Officer 7>(ETC - Constitution and Justice - Justice Policy); <redacted s40(2)(1) Officer 8>(ETC - Constitution and Justice - Justice Policy); <redacted s40(2)(1) Officer 9>; <redacted s40(2)(1) Officer 10>; <redacted s40(2)(1) Officer 11>; <redacted s40(2)(1) Officer 12>; <redacted s40(2)(1) Officer 13>; <redacted s40(2)(1) Officer 14>; <redacted s40(2)(1) Officer 15>
Subject: RE: Wales Basic Income Scheme Pilot - MOJ contact Exceptional Case Funding

Hi <redacted s40(2)(1) Officer 1>

Please see below the response to the questions posed in your email below.

Deprivation of resources & passporting:

Reg 17 (intentional deprivation) applies when determining an individual's gross and disposable income and disposable capital for the purposes of Regs 7, 8 and 14. Where an individual's monthly gross and disposable income and disposable capital exceeds the thresholds set down in Regs 7 and 8, DLAC must determine that they are not financially eligible for legal aid. Regs 7, 8 and 14 are subject to the passporting provisions in Reg 6.

Reg 6(2) mandates DLAC to determine someone as financially eligible for income purposes where they properly receive one of the benefits listed therein (UC, IS, IB-JSA, IB-ESA and GSPC) but a capital assessment is still required. For those in receipt of asylum support payments under s4 or s95 IAA 1999, individuals are passported for both income and capital where the relevant requirements in Reg 6(1) are met.

Although DLAC is not required to determine an individual's gross/disposable income (including whether there has been any deprivation of income pursuant to Reg 17) where they are passported, to passport an individual in receipt of a state benefit listed in Reg 6(2) DLAC must be satisfied that the individual is properly in receipt of it. This requires a passporting benefit to be currently in payment, and for an individual to be legally entitled to it.

Where there is any reason to doubt that an individual is 'properly' in receipt of a passporting benefit, DLAC may contact DWP for clarification. If having considered DWP's response, DLAC is not satisfied that the individual is properly in receipt of the benefit, they will not be passported for income purposes under Reg 6(2) (Lord Chancellor's certificated work guidance (May 2023) at 2.5.4).

Deprivation & BISP:

Applying this to various scenarios which might present in the event a care leaver withdraws from the BISP and secures another benefit/form of support/employment prior to applying for Legal Aid:

- Universal Credit – those ‘properly’ in receipt of UC will be passported for all forms of civil legal service for gross and net income purposes under Reg 6(2). Where the question of ‘properly’ may arise is where DLAC is provided with evidence suggesting that DWP was unaware of the individual’s withdrawal from BISP when awarding UC. In such a case, a check may be made with DWP as to whether the circumstances were fully known and triggered DWP’s own deprivation assessment (Regs 60 and 74 of Universal Credit Regulations 2013). If DWP confirm the individual no longer qualifies for UC based on their deprivation assessment, DLAC would not treat the receipt of UC as passporting and a full means assessment, including the deprivation provision in Reg 17, would be undertaken.

Even if an individual properly in receipt of UC is passported for income purposes, a disposable capital determination will still be required.

- s95/s4 IAA 1999 – those in receipt will be passported for Legal Help, Help at Court or Legal Representation under the asylum and immigration category for gross and disposable income and capital purposes under Reg 6(1). There will be no intentional deprivation of resources consideration for that work. However, if their legal aid application is for a separate category of work e.g. housing and debt, a full means assessment - including consideration of the deprivation provision in Reg 17, would be undertaken.
- Employment, other benefit or financial assistance not listed in Reg 6 such as Children Act support from the local authority or support from family, friends, charities – a full means assessment will need to be carried out to determine the individual’s gross and disposable income and disposable capital (pursuant to Regs 7, 8, 14 and 21 to 43) and this will be subject to consideration of whether they intentionally deprived themselves of resources including BISP under Reg 17.

With best wishes,

<redacted s40(2)(1) Officer 2>

From: <redacted s40(2)(1) Officer 1>

Sent: 15 June 2023 11:10

To: <redacted s40(2)(1) Officer 3>; <redacted s40(2)(1) Officer 2>
Cc: <redacted s40(2)(1) Officer 4>; <redacted s40(2)(1) Officer 5>; <redacted s40(2)(1) Officer 6>; <redacted s40(2)(1) Officer 7>; <redacted s40(2)(1) Officer 8>; <redacted s40(2)(1) Officer 9>; <redacted s40(2)(1) Officer 10>; <redacted s40(2)(1) Officer 11>; <redacted s40(2)(1) Officer 12>; <redacted s40(2)(1) Officer 13>; <redacted s40(2)(1) Officer 14>; <redacted s40(2)(1) Officer 15>

Subject: Wales Basic Income Scheme Pilot - MOJ contact Exceptional Case Funding

Hello <redacted s40(2)(1) Officer 3>

Thank you for your response regarding consideration of the Basic Income for Care Leavers in Wales pilot payments in assessing legal aid eligibility.

In terms of deprivation of income, it would be helpful if you could provide a bit more clarity, please? The pilot is entirely voluntary and young people on the scheme are able to withdraw from the pilot at any point. For example, if someone's circumstances changed which resulted in them no longer being better off on the pilot and they decided to withdraw and sign up to universal credit instead. Or, if someone on the pilot was struggling to manage their finances and decided they would rather be on universal credit. To confirm that once they withdraw from the pilot they no longer receive any Basic Income Payments.

Our assumption in this case is that if they are on Universal Credit (or their application for UC had been approved) following withdrawal of the pilot, as a passported benefit they would be eligible for legal aid and they would not be treated as having deprived themselves of income by withdrawing from the pilot. Can you confirm if this is the case. Effectively we are asking if reg 6 overrides reg 17 in this situation – ie that if a recipient of the basic income pilot withdraws from the scheme and re-claims a passported benefit then reg 17 is extraneous once the claim for the benefit is confirmed?

For those who may not be able to apply for Universal Credit – for example unaccompanied asylum seeking children (UASC), assuming that they had not been able to accrue any savings (assets) during their period on the Basic Income pilot and in terms of being able to advise young people on the scheme and the local authorities who are responsible for them, it would be helpful to have confirmation that UASC participants of the pilot would not be treated as having deprived themselves of income when making an application for legal aid following a withdrawal from the pilot.

We have assumed that if someone chose to leave the pilot and are employed then the basic means test will apply first and that this will not be relevant.

Thanks
<redacted s40(2)(1) Officer 1>

[Yr Is-adran Trechu Tlodi a Chefnogi Teuluoedd](#) / Tackling Poverty and Supporting Families Division

Y Grŵp Addysg, Cyfiawnder Cymdeithasol a'r Gymraeg / Education, Social Justice
and Welsh Language Group
Llywodraeth Cymru/Welsh Government
Ffôn/Tel: <redacted s40(2)(1) Officer 1>
e-bost/e-mail: <redacted s40(2)(1) Officer 1>

<redacted s40(2)(1) Officer 1>

From: <redacted s40(2)(1) Officer 3>

Sent: 23 May 2023 20:07

To: <redacted s40(2)(1) Officer 1> (ESJWL - Communities & Tackling Poverty);
<redacted s40(2)(1) Officer 2>

Cc: <redacted s40(2)(1) Officer 5> (ESJWL - Communities & Tackling Poverty);
<redacted s40(2)(1) Officer 4> (ESJWL - Communities & Tackling Poverty);
<redacted s40(2)(1) Officer 6> (ETC - Constitution and Justice - Justice Policy);
<redacted s40(2)(1) Officer 7> (ETC - Constitution and Justice - Justice Policy);
<redacted s40(2)(1) Officer 8> (ETC - Constitution and Justice - Justice Policy);
<redacted s40(2)(1) Officer 9>; <redacted s40(2)(1) Officer 10>; <redacted s40(2)(1)
Officer 11>; <redacted s40(2)(1) Officer 12>; <redacted s40(2)(1) Officer 13>;
<redacted s40(2)(1) Officer 14>; <redacted s40(2)(1) Officer 15>

Subject: RE: Wales Basic Income Scheme Pilot - MOJ contact Exceptional Case
Funding

Hi <redacted s40(2)(1) Officer 1>,

Apologies for the delay getting back to you.

The means assessment would take into account any income received by individuals, including any payments made through the Basic Income for Care Leavers. Given that these payments are made as 'income' rather than one-off payments (which could be considered capital), any payments made would be considered as part of the means test, even if they withdrew. However, I suspect that if they withdrew from the Pilot, the income 'generated' from this would be low and they would therefore still potentially be eligible for legal aid.

Hope this helps.

Very best wishes,

<redacted s40(2)(1) Officer 3>

From: <redacted s40(2)(1) Officer 1>

Sent: 16 May 2023 13:27

To: <redacted s40(2)(1) Officer 2>; <redacted s40(2)(1) Officer 3>

Cc: <redacted s40(2)(1) Officer 5>; <redacted s40(2)(1) Officer 4>; <redacted
s40(2)(1) Officer 6>; <redacted s40(2)(1) Officer 7>; <redacted s40(2)(1) Officer 8>;
<redacted s40(2)(1) Officer 9>; <redacted s40(2)(1) Officer 10>; <redacted s40(2)(1)
Officer 11>; <redacted s40(2)(1) Officer 12>; <redacted s40(2)(1) Officer 13>;
<redacted s40(2)(1) Officer 14>; <redacted s40(2)(1) Officer 15>

Subject: RE: Wales Basic Income Scheme Pilot - MOJ contact Exceptional Case Funding

Hello <redacted s40(2)(1) Officer 2>

Is there any update on when we can expect a response on the query, please?

Thanks

<redacted s40(2)(1) Officer 1>

[Yr Is-adran Trechu Tlodi a Chefnogi Teuluoedd / Tackling Poverty and Supporting Families Division](#)

[Y Grŵp Addysg, Cyfiawnder Cymdeithasol a'r Gymraeg / Education, Social Justice and Welsh Language Group](#)

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[Ffôn/Tel:](#) <redacted s40(2)(1) Officer 1>

[e-bost/e-mail:](#) <redacted s40(2)(1) Officer 1>

<redacted s40(2)(1) Officer 1>

From: <redacted s40(2)(1) Officer 1> (ESJWL - Communities & Tackling Poverty)

Sent: 09 May 2023 11:00

To: <redacted s40(2)(1) Officer 2>; <redacted s40(2)(1) Officer 3>

Cc: <redacted s40(2)(1) Officer 5> (ESJWL - Communities & Tackling Poverty)

; <redacted s40(2)(1) Officer 4> (ESJWL - Communities & Tackling Poverty)

; <redacted s40(2)(1) Officer 6> (ETC - Constitution and Justice - Justice Policy);

<redacted s40(2)(1) Officer 7> (ETC - Constitution and Justice - Justice Policy);

<redacted s40(2)(1) Officer 8> (ETC - Constitution and Justice - Justice Policy);

<redacted s40(2)(1) Officer 9>; <redacted s40(2)(1) Officer 10>; <redacted s40(2)(1) Officer 11>;

<redacted s40(2)(1) Officer 12>; <redacted s40(2)(1) Officer 13>;

<redacted s40(2)(1) Officer 14>; <redacted s40(2)(1) Officer 15>

Subject: RE: Wales Basic Income Scheme Pilot - MOJ contact Exceptional Case Funding

Hi <redacted s40(2)(1) Officer 2>

Sorry to chase, but is there any update following your email below?

Thanks

<redacted s40(2)(1) Officer 1>

[Yr Is-adran Trechu Tlodi a Chefnogi Teuluoedd / Tackling Poverty and Supporting Families Division](#)

[Y Grŵp Addysg, Cyfiawnder Cymdeithasol a'r Gymraeg / Education, Social Justice and Welsh Language Group](#)

[Llywodraeth Cymru/Welsh Government](#)

[Ffôn/Tel:](#) <redacted s40(2)(1) Officer 1>

[e-bost/e-mail:](#) <redacted s40(2)(1) Officer 1>

<redacted s40(2)(1) Officer 1>

From: <redacted s40(2)(1) Officer 2>

Sent: 02 May 2023 14:41

To: <redacted s40(2)(1) Officer 1> (ESJWL - Communities & Tackling Poverty); <redacted s40(2)(1) Officer 3>

Cc: <redacted s40(2)(1) Officer 5> (ESJWL - Communities & Tackling Poverty); <redacted s40(2)(1) Officer 4> (ESJWL - Communities & Tackling Poverty); <redacted s40(2)(1) Officer 6> (ETC - Constitution and Justice - Justice Policy); <redacted s40(2)(1) Officer 7> (ETC - Constitution and Justice - Justice Policy); <redacted s40(2)(1) Officer 8> (ETC - Constitution and Justice - Justice Policy); <redacted s40(2)(1) Officer 9>; <redacted s40(2)(1) Officer 10>; <redacted s40(2)(1) Officer 11>; <redacted s40(2)(1) Officer 12>; <redacted s40(2)(1) Officer 13>; <redacted s40(2)(1) Officer 14>; <redacted s40(2)(1) Officer 15>

Subject: RE: Wales Basic Income Scheme Pilot - MOJ contact Exceptional Case Funding

Hi <redacted s40(2)(1) Officer 1>,

Thanks for your email and for clarifying the question posed in relation to Regulation 17 (deprivation of resources) of the 2013 Civil Legal Aid regs. I have asked colleagues to confirm how this regulation applies, and will come back to you by the end of this week.

Hope you had a good bank holiday weekend.

With best wishes,

<redacted s40(2)(1) Officer 2>

From: <redacted s40(2)(1) Officer 1>

Sent: 25 April 2023 17:24

To: <redacted s40(2)(1) Officer 3>; <redacted s40(2)(1) Officer 2>

Cc: <redacted s40(2)(1) Officer 5>; <redacted s40(2)(1) Officer 4>; <redacted s40(2)(1) Officer 6>; <redacted s40(2)(1) Officer 7>; <redacted s40(2)(1) Officer 8>; <redacted s40(2)(1) Officer 9>; <redacted s40(2)(1) Officer 10>; <redacted s40(2)(1) Officer 11>; <redacted s40(2)(1) Officer 12>

Subject: RE: Wales Basic Income Scheme Pilot - MOJ contact Exceptional Case Funding

Hello <redacted s40(2)(1) Officer 3>; <redacted s40(2)(1) Officer 2>

Following on from our discussion with you on 27 February regarding the Basic Income for Care Leavers in Wales pilot and accessing legal aid, Welsh Ministers wrote to Lord Bellamy, Parliamentary Under Secretary of State for Justice, to seek confirmation of the UK Government's position and whether an approach could be agreed that would enable young people in receipt of the basic income to be able to access legal aid support.

We have now had the response confirming the position. However, the letter to Lord Bellamy also asked for confirmation that any recipient withdrawing from the Basic Income for Care Leavers in Wales pilot will not be treated as having deprived themselves of any resources in any future claim for legal aid. The response did not include clarification on that point. Are you able to confirm what the position is, please? We would be happy to meet again to discuss if that is easier?

Many thanks

<redacted s40(2)(1) Officer 1>

Yr Is-adran Trechu Tlodi a Chefnogi Teuluoedd / Tackling Poverty and Supporting Families Division

Y Grŵp Addysg, Cyfiawnder Cymdeithasol a'r Gymraeg / Education, Social Justice and Welsh Language Group

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<redacted s40(2)(1) Officer 1>