

Discretionary Support Service



At a glance

Discretionary Support was introduced in November 2016 to replace aspects of the Social Fund, which has largely been abolished.

In this briefing, Law Centre (NI) takes stock of the Discretionary Support scheme. As the Department for Communities is obliged to review the scheme within a year of its commencement, Law Centre (NI) makes a number of recommendations designed to improve transparency and effectiveness of the scheme.

Law Centre (NI)

- Promotes social justice and provides specialist legal services to advice organisations and disadvantaged individuals in social security, community care and mental health and employment law
- Provides advice, casework, training, information and policy services
- Provides the Independent Advice, Support & Mediation Service, commissioned by Health & Social Care Board
- Participates as a member of the Department for Communities Operational Forum and Disability Consultative Forum
- Works in partnership with Advice NI and CAB to deliver the Welfare Reform Support Project

Our advice line

- General advice line: Mon- Fri, 9.30- 1pm Tel: 028 9024 4401
- Independent Advice Support and Mediation Service: Mon– Fri, 9-1pm and 2-5 pm Tel: 028 9024 4401
- Independent Welfare Changes Helpline Tel: 0808 802 0020

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1. Introduction

The new scheme of Discretionary Support has proven to be a lifeline for some people in crisis.

The Law Centre (“LCNI”) nevertheless has identified concerns in relation to the design and operation of the Discretionary Support scheme, which results in vulnerable claimants receiving no / inadequate support on some occasions.

This paper is arranged in two parts. Part A sets out the Discretionary Support scheme, explains the underlying policy rationale and compares practices across the devolved administrations. Part B outlines the Law Centre’s concerns about the scheme and provides recommendations for improvements.

PART A

2. What is Discretionary Support?

Discretionary Support was introduced in November 2016 and is a scheme which is unique to Northern Ireland.

Departmental policy

The Department’s policy for Discretionary Support is to ensure a necessary but temporary response to particular and pressing needs facing the most vulnerable. It aims to address the high level risk to their health, safety and /or well being and to assist them to avoid falling further into unmanageable debt and greater dependency.¹

The Discretionary Support Scheme is part of the wider mitigation package agreed by the main political parties in Northern Ireland with the Fresh Start Agreement in 2015.

Discretionary Support is a telephony based service: claims can be made by phone Monday to Friday.² Decisions are issued immediately and awards can be paid quickly, thereby offering a prompt response to crises.

Callers may be offered a Discretionary Support Grant or a Discretionary Support Loan. The conditions of entitlement are broadly similar to the old Community Care Grant and Crisis Loan schemes although one key change is the introduction of an income threshold (see Part B).

¹ Explanatory Memorandum to the Discretionary Support Regulations (NI) 2016 SR 2016 No. 270

² Contact Freephone number 0808 802 0020 Monday – Friday. While this is primarily a telephony service, face-to-face claims are available for vulnerable clients at Jobs & Benefit Offices.

3. Social Fund abolished

Discretionary Support largely replaces the Social Fund, which had been available across the UK. It is no longer possible to apply for a Community Care Grant or a Crisis Loan.³ Budgeting Loans have been incorporated into Discretionary Support and will eventually be replaced by Budgeting Advances under Universal Credit.

The Social Fund was abolished in Great Britain in April 2013.⁴ The government's rationale for abolishing the scheme was that local authorities are better placed to meet local needs. Thus, the government decided to transfer responsibility and funding from central government to local authorities / devolved administrations.

The decision to abolish the Social Fund was controversial.⁵ Critics argued that the money transferred from central government to local authorities was insufficient to meet needs. Critics also noted that the government did not place new legal duties on local authorities to provide for the abolished national schemes. The concern was that people might find themselves facing a crisis situation with nowhere to turn for emergency support.

4. Approach by devolved administrations

In England, local authorities are now responsible for designing and administering new support schemes. Each local authority may therefore introduce its own scheme. The devolved administrations have taken a different approach by adopting national schemes.

Scotland has introduced a Scottish Welfare Fund which is a national scheme providing community grants and crisis funds. The scheme is administered by local authorities, which make decisions based on national guidance.⁶ Wales has introduced a national Discretionary Assistance Fund, which is administered across Wales by a consortium of agencies.⁷ Again, local decision makers rely on national guidance. As in Scotland and Wales, Northern Ireland has developed a national scheme.

It is welcome that in Northern Ireland, the Discretionary Support scheme is underpinned by legislation. The primary legislation is the Welfare Reform (NI) Order 2015 (Articles 135-136) and the relevant regulations are the Discretionary Support Regulations (Northern Ireland) 2016.

³ A Community Care Grant was a non-repayable grant available to people who were leaving care, at risk of having to go into care or to ease exceptional pressures on a family. To be entitled, a person had to be in receipt of a qualifying benefit such as IS, JSA, ESA or Pension Credit. A Crisis Loan was a repayable loan available to cover expenses in an emergency or arising from a disaster. There was no qualifying benefit requirement and this was available to anyone over the age of 16.

⁴ In Great Britain, the Discretionary Social Fund was abolished by virtue of the Welfare Reform Act 2012 and took effect from April 2013.

⁵ For example, see CPAG: <http://www.cpag.org.uk/content/what-replacing-social-fund>

⁶ See Scottish Welfare Fund: <http://www.gov.scot/Topics/People/fairerscotland/scottishwelfarefund>

⁷ The Welsh government has introduced a national Discretionary Assistance Fund, which is administered by Northgate Public Services in partnership with Family Fund Trading and Wrexham County Borough Council. For more information about the Welsh Fund see: <http://gov.wales/topics/people-and-communities/communities/debt/discretionary-assistance-fund/?lang=en>

PART B

5. Operation of Discretionary Support scheme

Discretionary Support is a new scheme and is due to be reviewed and evaluated. LCNI has identified a number of issues relating to the operation of the scheme.

The term 'discretionary support' is somewhat of a misnomer as there is no discretion available to decision makers when applying the eligibility criteria. LCNI strongly recommends that the Department revisits this; indeed the Department's initial thinking on Discretionary Support indicated that decision makers *would be* able to adopt a flexible approach to cases as demonstrated by the following departmental statements:

Department (2012): "The discretionary element allows officers, in circumstances that are presented before them, to make a decision and they have the authority to do that".⁸

Department (2013): "Discretion, by its very nature, is important in the scheme because individual circumstances are very different".⁹

As outlined below, the lack of discretion with regards to applying the eligibility criteria has resulted in at times apparently irrational, and arguably discriminatory, decisions, leaving claimants without much-needed support.

a) Departmental guidance

LCNI calls on the Department to issue guidance outlining the Discretionary Support scheme. While the Department for Communities has released a copy of the Discretionary Support Eligibility Model and the Inbound Call Script used by Discretionary Support call handlers, it has declined to share its guidance with the advice sector. LCNI understands that guidance has been drafted.¹⁰

The Department's reticence to share guidance publically is in stark contrast to the approach taken by the other devolved administrations: both Scotland and Wales explicitly acknowledge the benefits of guidance.

Scottish Government: The aim of the Scottish Welfare Fund Guidance is to provide a framework for decision makers, *in order to promote consistency in decision making*. The Scottish Welfare Fund is a discretionary grant scheme, therefore this guidance does not cover all eventualities. It is intended to support decision makers to meet the underlying objectives of the Fund.¹¹ (italics added)

⁸ DSD evidence to the committee for Social Development, 11 October 2012, Northern Ireland Assembly

⁹ DSD evidence to the committee for Social Development, 23 May 2013, Northern Ireland Assembly

¹⁰ The regulations make explicit reference to guidance. See Discretionary Support Regulations (Northern Ireland) 2016 Regulation 25

¹¹ Scottish Government, 'Scottish Welfare Fund Statutory Guidance' (April 2017)

Welsh Government: To help you further understand the role of decision makers [in relation to the Discretionary Assistance Fund¹²], we have provided the guidance that is used by decision makers to *ensure decisions they make are consistent and fair.* (italics added)

LCNI considers that departmental guidance will improve consistency and transparency in decision making. It will also assist the advice sector to provide clients with accurate information about their entitlements and to advise clients about the prospects of success of any application to the Discretionary Support Scheme.

c) Income threshold

LCNI strongly recommends that the Department reviews the income threshold.

The Discretionary Support eligibility criteria includes an income threshold. This is a new concept: the old Social Fund Community Care Grant and Crisis Loan did not have an income threshold but instead required a person to be in receipt of a means tested benefit. This meant that only benefit claimants could avail of the Social Fund. The voluntary and community sector generally welcomes the removal of the qualifying benefit condition for Discretionary Support as it means that persons in low paid employment or in receipt of contributory benefits can qualify. This makes good sense given the prevalence of in-work poverty.

Rather than being in receipt of a particular benefit, in order to qualify for Discretionary Support, all claimants, whether in or out of work, are subject to an income threshold assessment. The income threshold is based on the national living wage (currently £15,600 per annum):¹³ if a person's income exceeds this threshold, s/he is not eligible to receive Discretionary Support regardless of the compelling or exceptional circumstances s/he faces. The following case studies are based on cases identified through the Law Centre advice line.

Leo is a widowed single parent who cares for five children. A house fire resulted in significant damage to his kitchen. He seeks Discretionary Support to help him cover the cost of new kitchen appliances. The family's income comprises of his Income Support (£3801.20 pa), Child Element of Child Tax Credit (5 x £2780 = £13900pa) and Child Tax Credit Family Element (£545 pa) bringing his total relevant annual income to £18256.20 which exceeds the income threshold.

Leo is not entitled to Discretionary Support despite the fact that a house fire has left his kitchen unusable, leaving him unable to cook for his five children. Leo would be entitled to Discretionary Support if he had four children.

¹² Welsh Government, 'Guidance for Decision Makers: The Discretionary Assistance Fund' (May 2016, V 3)

¹³ The income threshold is set at the equivalent of a year's gross salary of a person over 25 years working 40 hours a week at national living wage (Regulation 15). The income threshold rises each year alongside increases to the national living wage.

Aisling is a victim of domestic violence. She fled with her three children to Women's Aid, which provided refuge accommodation. The Housing Executive has offered Aisling accommodation but it is unfurnished and so is not in a fit state for Aisling to move in to with her children. Aisling applies for Discretionary Support.

Usually a single parent with 3 children in receipt of the maximum amount of benefit would qualify for Discretionary Support.¹⁴

However, both Aisling and her daughter are disabled. Thus, the family also receive disability benefits and premiums. While DLA and PIP are disregarded from the calculation, the additional disability-related payments are not. Therefore, when her disability payment (£2727), the severe disability premium £3247.40), Carer's Allowance (£1443) and the additional tax credit award for her daughter's disability (£4465) is included, her income increases by £11,882. This brings her relevant income to £24568.60, which significantly exceeds the income threshold.

Aisling is not entitled to Discretionary Support, despite being a victim of domestic violence who is facing the prospect of moving into unfurnished accommodation. Aisling would be entitled to Discretionary Support if she or her daughter did not have a disability.

- **Lack of discretion: irrational and discriminatory?**

The Law Centre reiterates its support for the Department's decision to remove the qualifying benefit requirement. However, given that the purpose of the Discretionary Support scheme is to provide financial support to persons in times of financial crisis or need, the *rigid application* of the income threshold would appear to be irrational. Further, as currently designed, the income threshold automatically excludes families of a certain size and/or households where there are family members with disabilities; the Law Centre considers that this cannot be objectively justified and may be discriminatory.

The Law Centre urges the Department to look again at the income threshold. We note that neither the Scottish or Welsh schemes apply an income threshold. In Scotland, decision makers must be satisfied that the claimant is of a low income but this limit is not defined. Instead, the decision maker is required to consider factors that increase vulnerability of an applicant e.g. domestic violence. Eligibility to the Welsh scheme is determined by being in receipt of a qualifying benefit; again, the decision maker is required to sort applicants into three priority groups according to vulnerability. Law Centre considers that *vulnerability* – and not *income* - should be the key determining factor for eligibility.

¹⁴ The household's annual income would be Income Support (£3801.20pa) Child Element of Child Tax Credit (3 x £2780 = £8340) and Family Element of Child Tax Credit (£545pa), which amounts to £12686.20, which is within the income threshold.

The Law Centre has identified other possible approaches for the Department to take that would address the issue:

- a) Create a power for decision makers to grant Discretionary Support even where the income threshold eligibility criteria are not met;
- b) Expand the list of disregards at Schedule 3 to the Regulations to include disability-related and caring-related payments;¹⁵
- c) Amend the basic eligibility condition at Regulation 10 to specify that applicants must either meet the income threshold or be in receipt of a qualifying benefit.

The Department must ensure that the Discretionary Support scheme does not discriminate against households with disabilities and households where there are caring responsibilities (i.e. higher number of children). The potential for discrimination was identified during the 2013 consultation exercise which noted that disabled claimants and lone parents were particularly reliant on the Social Fund.¹⁶ This highlights the need to ensure that the design of Discretionary Support does not have discriminatory effects.

d) Debt level

To qualify for Discretionary Support, a claimant may not have an outstanding debt with the Department of over £1,000. Such debt includes any existing Social Fund debt or debt from Universal Credit Short Term Advances or Budgeting Advances. The £1,000 figure includes any debts owed by the claimant's partner. Under the Social Fund scheme, the maximum debt level was £1,500. By comparison, we see that Discretionary Support has more restrictive criteria.

The Law Centre is aware that the £1,000 debt limit is causing difficulties for potential claimants. The likely impact of the reduced debt level was identified from the outset: data published in 2013 suggested that 20% of Social Fund claimants would lose eligibility due to a lower loan threshold. Such claimants are likely to be women, lone parents and/or have a disability.

The Department's rationale is that Discretionary Support should provide a *temporary* response and that it should not put people into more debt.¹⁷ Law Centre acknowledges this rationale, however, in the context of welfare reform changes, high levels of deprivation and the high prevalence of increasing debt in Northern Ireland,¹⁸ we are concerned that this approach might result in claimants seeking credit from unregulated sources such as loan sharks and pay day loans.

The Law Centre recommends that the Department revisits the prescribed maximum debt level criteria. Different approaches for the Department to consider include to:

¹⁵ In our response to the DSD discretionary support consultation in 2013, we stated that benefits for disability and caring responsibilities should not be considered as disposable income. See Law Centre NI, 'DSD: Discretionary Support Scheme consultation response' (April 2013) accessible on www.lawcentreni.org

¹⁶ See also: Annual Report of the Social Fund 2015/

¹⁷ Explanatory Memorandum to the Discretionary Support Regulations (NI) 2016 SR 2016 No. 270 para 3.3

¹⁸ Step Change Debt Charity 'Debt in Northern Ireland 2014'

- a) Create a power for decision makers to grant discretionary support even where the maximum debt level eligibility criteria is not met;
- b) Consider introducing an exception to the maximum debt level where a claimant has entered into a repayment plan with the assistance of a debt advice organisation;
- c) Ensure that any claimant refused discretionary support due the maximum threshold is referred to a debt advice organisation.

e) Accessing Discretionary Support

In addition to the substantive issues (above), Law Centre has identified some issues with accessing Discretionary Support including: callers waiting a long time to get through to the Discretionary Support telephone service; callers finding that their call gets abruptly terminated without a message; some delays in making payments; and some Jobs & Benefit Officers (incorrectly) informing claimants can only be made through the telephone service. LCNI notes that some but not all Jobs & Benefit Offices have a named contact for Finance Support. LCNI recommends that a named contact is provided at each JBO. In addition, LCNI suggests that claimants should be able to apply online; this would be consistent with the digital focus of Universal Credit.

It appears to us that the Discretionary Support scheme may be oversubscribed. Additional strain on the system might be partly attributed to the fact that it appears that claimants are referred to Discretionary Support during the Mandatory Reconsideration phase for Personal Independence Payment reassessment.

We look forward to these issues being resolved.

6. Summary

In conclusion, Law Centre reiterates its support for Discretionary Support and commends the Department for placing the scheme on a statutory footing.

To improve transparency and effectiveness of the scheme, we recommend that:

- The Department issues the Department Support guidance without further delay;
- The Department introduces flexibility around the eligibility criteria, specifically in relation to the income threshold and the maximum debt level. Vulnerability should be the key determining factor for eligibility.

Law Centre (NI) contact details

Middleton Building

10-12 High Street

Belfast

BT1 2BA

Tel: 028 9024 4401

Email: admin.belfast@lawcentreni.org

Law Centre (NI) online

Website: www.lawcentreni.org

Twitter: [@LawCentreNI](https://twitter.com/LawCentreNI)

Flickr: www.flickr.com/photos/64345345@N04/



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