

Law Centre NI response

Changes to the Discretionary Support Scheme: Equality Impact Assessment

August 2023

Introduction

1. Law Centre NI (LCNI) welcomes the opportunity to respond to the Department for Communities (the Department) **“Changes to the Discretionary Support Scheme - Draft Equality Impact Assessment” Consultation.**
2. LCNI services are available to both the public and to advisers, with a particular focus on specialist support services to the advice sector across Northern Ireland (NI). As a regional law centre, LCNI have an overview of the impact of law, policy, and practice areas across communities in NI.
3. It is recognised that all NI Executive Departments face considerable challenges following the cuts to the NI Budget 2023- 24, announced by the Secretary of State for NI. This consultation considers the equality impact of arguably one of the most significant budget constraints– changes to the Discretionary Support (DS) Scheme.¹
4. LCNI concerns relate to the impact of changes to DS, which have been implemented prior to this consultation, on certain S.75 groups and on the Department’s ability to comply with its legal obligations to uphold human rights. While we do not have the full picture of up to date and robust data on the potential impacts on S. 75 groups, the profile of claimants in NI points to the risk of particular adverse impacts of budget cuts on lone parents, women and children, older people and people with a disability.²
5. The Framework of this response is as follows:
 - **The Independent Review of Discretionary Support**
 - **Impact of changes to Discretionary Support**
 - **Recommendations**

The Independent Review of Discretionary Support

6. The Independent Review of Discretionary Support³ noted that: “DS has a profound impact on recipients and can make the difference between someone living in or escaping from

¹ LCNI response to June’s “Budget 2023/24 - Equality Impact Assessment” Consultation. Available here: [EQIA-Response-08.06.023.pdf \(lawcentreni.org\)](#)

² [NI Benefits Statistics Summary - February 2023 \(communities-ni.gov.uk\)](#)

³ [Independent Review of Discretionary Support \(communities-ni.gov.uk\)](#)

destitution”⁴ The Review found that recipients were ‘meeting needs that go beyond hardship and relate to those fundamental to human survival: food, clothing and a safe home’.⁵

7. The Review concluded that the need for DS is likely to increase because too many individuals are unable to meet their essential needs from the income they receive through social security benefits or employment and so they remain at high risk of destitution.⁶ While there is no up to date data available for the number of people claiming DS in previous years, arguably the economic and social context that we find ourselves today has worsened.

Impact of changes to Discretionary Support

8. In 2022-23, DS grants baseline budget was £13.7m. With additional funding allocated to the Department in November 2022 to support the increased level of demand, the final grant spend in 2022-23 ended up totalling £40.3m. Since the initial EqIA on the draft Departmental budget allocations, there has been an increase in the 2023/24 baseline budget allocation to DS £20m (50% less than total final spend in 2022/23)⁷

9. Whilst the initial increased allocation is welcome, we consider it important that this is recognised as a floor, not a ceiling, and we recommend that the DS budget is prioritised within the budget for additional spending in assessments for reallocation of budgets consequent on monitoring rounds.

10. In relation to “Option 2”⁸ in the Draft EqIA, the Department indicates that this option best meets the policy aim of ensuring the needs of the most vulnerable can continue to be met throughout the financial year in the context of DS budget limits.⁹ Option 2 introduces 2 key policy changes:

- Restrict grant awards to basic needs except in “setting up” home and disaster situations; and
- Extend the repeat item exclusion period to 24 months for both DS grants and loans, which exception again in “setting up” home and disaster situations.

LCNI welcomes that provision is retained for those meeting the “setting up” home and disaster situations criteria but wish to highlight the following key concerns with this option.

1. Legislative authority and Policy Guidance - The Discretionary Support Scheme

11. LCNI is concerned that the policy changes already introduced arguably run contrary to existing legislative authority¹⁰ - Discretionary Support Regulations (Northern Ireland) 2016.¹¹ LCNI strongly encourages the Department to carefully consider the Northern Ireland

⁴ Ibid, (para. 1 p. 11).

⁵ Ibid).

⁶ Ibid

⁷ Ibid Pg 8

⁸ [Changes to the Discretionary Support Scheme \(communities-ni.gov.uk\)](https://www.communities-ni.gov.uk) Pg 9

⁹ Ibid Pg 17

¹⁰ Ibid

¹¹ [The Discretionary Support Regulations \(Northern Ireland\) 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

(Executive Formation etc) Act 2022¹² and accompanying Guidance for Decision Makers in NI Departments.¹³

12. It is fundamental that the Department uphold principles of transparency and good governance, and therefore LCNI urge that decision making guidance, used by those making the decisions on awards for DS, is shared with those advocating for claimants challenging a decision. This is particularly important when considering “basic need”, i.e., while it may be reasonable to say that there are common essential “basic needs” everyone must have, it is not correct to that all “basic needs” for everyone, are the same. Therefore, clear guidance stipulating how the assessment of “basic needs” is being applied.

13. Furthermore, the Department in the EqIA, when discussing the extension of the repeat item exclusion to 24 months, state that a claimant will not “normally” be able to receive DS or the same item more than once in any 24 months. This raises the question of exceptionality, beyond “setting up” home and disaster situations. i.e., will a parent whose child repeatedly soils their mattress and therefore requires another within 24 months, not be allowed to apply for another mattress? Or further, could this be classified as a disaster situation? According to the Regulations,¹⁴ “disaster” means a sudden and calamitous event causing loss of possessions or property; arguably this circumstance could fall under these criteria. Ambiguity is not helpful in such distressing circumstances. Claimants and advocates must have access to the exact criteria that are being applied and the directions given to assessors for application. The sharing of this information goes to the heart of the principle of justice and fairness. Owing to the fact that these policy changes are already in place, LCNI recommends that this guidance is shared with the sector as a matter of priority.

2. Monitoring and review of budget allocation

14. The Department advise that post –implementation (3rd July 2023) they will monitor the DS grants and the impact with a specific focus on S.75 groups. LCNI recommends that the Department outline how robust monitoring will be achieved and that the policy measures applied are to be viewed as an emergency matter, and not the new norm for DS.

3. Loans vs. grants

15. The Independent Review in DS found that recipients can struggle to pay back loans and that grants offer a more effective form of support¹⁵ LCNI strongly recommend that the Department s prioritise grants within DS. This would be particularly important for newcomers to NI, including those with humanitarian protection and with additional urgent needs. Further, there are additional administrative costs associated with loan repayments.

16. In addition, LCNI welcomes the commitment to continuing to provide the same range of grants supports available, however wish to highlight that it is essential that the Universal Credit Contingency Fund (UCCF) is promoted.¹⁶ Reports show these grants have been slow

¹² [Northern Ireland \(Executive Formation etc\) Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

¹³ [Guidance on decision-making for Northern Ireland Departments until an Executive is formed or for the six month period beginning with the day on which the Northern Ireland \(Executive Formation etc\) Act 2022 is passed \(6 December\) \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

¹⁴ [The Discretionary Support Regulations \(Northern Ireland\) 2016 \(legislation.gov.uk\)](https://legislation.gov.uk)

¹⁵ [Independent Review of Discretionary Support \(communities-ni.gov.uk\)](https://communities-ni.gov.uk) Pg 12

¹⁶ [CEC-Full-Member-Briefing-May-2023-.pdf \(lawcentreni.org\)](https://lawcentreni.org)

to take off. In highlighting the underspend, the NI Audit Office¹⁷ suggested difficulties in accessing these payments and/or a lack of awareness of the UCCF.

4. Impact on Particular groups

17. LCNI have concerns regarding particular groups who are likely to be disproportionately impacted by the Department's decision to restrict DS, particularly, those with dependants and women. It is not possible to see how the new restrictions placed on application, will have anything other than significant adverse impact on S. 75 groups and differential impact on claimants equally in need at different points in the financial year. This is acknowledged by the Department. In addition to those groups identified by the Department,¹⁸ LCNI also highlights that children will also be disproportionality affected.

18. Researchers have drawn attention to the risk that proposals to reduce the funds available to DS risk undermining the Department's ability to comply with its human rights obligations.¹⁹ The NI Human Rights Commission (NIHRC) note that where a certain level of severity is reached, a lack of adequate provision of social security or social insurance could fall within scope of obligations under Article 3 of European Convention on Human Rights (ECHR) (prohibition of inhuman or degrading treatment) and Article 8 of ECHR (private and family life).²⁰ The European Court of Human Rights (ECtHR) has established that "a complaint about a wholly insufficient amount of social benefits may, in principle, raise an issue under Article 3".²¹

19. Additionally, the Department's obligations under international instruments UN Convention on the Rights of the Child, including Article 26 (social security) and Article 27 (adequate standard of living) impose positive obligations on the government to take necessary measures to safeguard a right or, more precisely, to adopt reasonable and suitable measures to protect the rights of the individual.²² LCNI do not believe the data presented in the document has been considered adequately in relation to children and thus the full impact not considered. Namely, in Section 4 "Assessment of impacts", pg. 15, the data collected re: persons with dependants or those without, does not account for multiple dependants – therefore, this is not an accurate depiction of dependants that are likely to be impacted. LCNI stress the need for robust and accurate data, particularly when dealing with severe cuts with significant impacts.

Recommendations

20. It is clear from the Departmental EqIA report that tough decisions have been placed before the Department by this budget allocation, which will adversely impact on people in need. NI is amid a Cost-of-Living Crisis which is impacting those on the lowest incomes the hardest.²³ Protection for those in need is essential.

21. Regrettably, these budget pressures also militate against the development of policy in the direction anticipated by the recommendations of the two recent independent reports into DS and Welfare Mitigations. Implementation of the recommendations of both reports would provide better support to people across communities in line with the overarching Draft

¹⁷ [Welfare Reform Report 2019.pdf \(niauditoffice.gov.uk\)](#)

¹⁸ [Changes to the Discretionary Support Scheme \(communities-ni.gov.uk\)](#) Pg 17

¹⁹ Simpson, M. McKeever, G. & Fitzpatrick, C, Response to DfC EqIA, June 2023 (University of Ulster).

²⁰ [Final-NIHRC-Response-to-DfC-EQIA-for-Budget-Allocation-2023-2024.pdf](#) Pg 13

²¹ Ibid

²² [Layout 1 \(unicef.org.uk\)](#)

²³ [going under and without - jrfs cost of living tracker winter 2022 23 \(1\).pdf](#)

Programme for Government commitments and the Department's Strategic Priorities, including to deliver a social security system which supports the reduction of poverty and to continue the promotion of social inclusion.

22. In summary, LCNI recommend the following:

- **That the DS budget is prioritised within the budget for additional spending in assessments for reallocation of budgets consequent on monitoring rounds.**
- **That the Department consider whether the existing policy/eligibility criteria for DS aligns with the Northern Ireland (Executive Formation etc) Act 2022 and the Guidance issued by the Secretary of State in relation to decision-making for NI Departments.**
- **That the decision-making guidance, used by those making the decisions on awards for DS, is shared with those advocating for claimants challenging a decision. This is vital, particularly in cases of exceptionality and ensures principles of justice and fairness are adhered to.**
- **That where DS is granted, this is in the form of a grant, not loan, and that availability of UCCF is promoted.**
- **The need for robust and accurate data, particularly when dealing with severe cuts with significant impacts.**

Thank you for the opportunity to provide this response and we are happy to discuss further.

For further information about this response contact:

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Our impact | Law Centre Northern Ireland (lawcentreni.org)

LCNI convene the Cliff Edge Coalition NI – a group comprising of over 100 civil society organisations committed to upholding social security rights.

[Cliff Edge Coalition | Law Centre Northern Ireland \(lawcentreni.org\)](http://lawcentreni.org)