



Welfare Reform Bill:
Second Reading briefing from CPAG

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Introduction

This briefing contains a summary of CPAG's views on the Welfare Reform Bill, its structure is intended to mirror that of the Bill itself. The rest of this introduction contains some overarching points. More details of CPAG's position on welfare reform is available at www.cpag.org.uk/welfarereform

1. We support the Government in assisting those who wish to work to do so, but the Government's preoccupation with the merits of employment risks making people who are not in paid work feel worthless. Many sick and disabled people work as volunteers, or carers, or run service user groups. More emphasis should be placed on the contribution and participation of disabled people irrespective of their ability to access paid employment. The focus on drawing people into employment and the lack of recognition for other forms of participation may perpetuate entrenched stereotypes.
2. There are a number of aspects to the legislation, including the low level of the basic allowance and benefit sanctions applying to both the work-related activity component and the local housing allowance, which are directly at odds with the Government's commitment to eradicate child poverty. CPAG believe that the Bill should be proofed for its impact upon child poverty. It should also be scrutinised to ensure that it does not undermine the disability equalities agenda.
3. CPAG feels that more emphasis should be put on preventative measures which are needed to pre-empt the onset of ill-health or disability – both of which are closely linked with poverty and deprivation. Welfare reform must be an integral part of Government initiatives to address the underlying social, educational and financial problems that may increase the risk of disability, exacerbate health inequalities and undermine its ability to redress intergenerational cycles of deprivation. CPAG is concerned that these wider issues are not reflected in the legislation in which the more punitive element predominates.
4. The Government emphasises the importance of prevention. However, while the Government accepts that disability is a cause of poverty much less is made of the fact that living on a low income *increases* the risk of disability – although this is startlingly borne out by extensive research on health inequalities. Improving benefit adequacy must be an integral part of any preventative strategy designed to improve the health of the nation.
5. There is little evidence that employers are always prepared to give well remunerated, rewarding jobs to sick and disabled people – particularly people with mental health problems or learning disabilities. It is unjust and inappropriate to expect disabled people to engage in endless work-focused activities if these are unlikely to lead to employment.
6. The Bill's focus upon an individual's 'limited capability for work' on the basis of their ability to carry out 'specified activities' (Clause 8, para 66) retains the emphasis on an individual's personal capabilities and incapacities, taking no account, for example, of parenting responsibilities or the availability of appropriate services. This is at odds with the Government's desire to implement a more holistic approach to service provision generally, and is at odds with the social view of disability embodied in the Disability Discrimination Act.

7. CPAG believes that the Bill's focus upon assessing an individual's capabilities and incapacities is at odds with the Government's desire to implement a more holistic approach to service provision generally, and is at odds with the social view of disability embodied in the Disability Discrimination Act.
8. Many disabled people are parents, and many lone parents are disabled, and both groups may have disabled children. Children with a disabled parent are disproportionately likely to be poor with a risk of income poverty of two in five (against an average risk for all children of 27 per cent). Disabled parents face particular barriers to employment and the welfare reform agenda needs to be better joined up. Parenting and caring responsibilities must be taken into consideration when assessing someone's ability to engage in work-focused activities and/or undertake paid employment. Clearly meeting the needs of disabled parents is crucial if the Government is to meet its target to lift a further million children out of poverty by 2010.
9. CPAG strongly opposes plans to sanction housing benefit for anti-social behaviour and deeply regrets the government's decision to resurrect the idea. The purpose of welfare benefits is to provide a safety net, and they should not be used as a tool for punishment or coercion.

Employment and Support Allowance

Entitlement

10. The intention is to place claimants of the Employment and Support Allowance (ESA) on a 'basic allowance' whilst their capability for work is being assessed. Whilst the rate of the basic allowance is to be prescribed in regulations, the Green Paper made clear that it would be in line with Jobseeker's Allowance (JSA) rates. Three quarters of children in a family receiving JSA are currently left in poverty. We are therefore very concerned about placing sick or disabled people on a 'basic allowance' during the assessment period. If JSA does not protect non-disabled claimants from poverty, the impact upon sick or disabled claimants – who incur significant additional costs – is likely to be much worse. Placing sick or disabled people on JSA rates will actively plunge a particularly vulnerable group of people - and their children - into poverty. This is likely to have an adverse impact upon their health and undermine their ability to engage in work-focused activities or access paid employment. The relationship between ill-health and poverty indicates that a dramatic reduction in income at the onset of disability or ill-health, is likely to exacerbate underlying health problems, and may undermine rehabilitation attempts during the early months.
11. The Bill anticipates that the assessment period may go beyond the anticipated 13 weeks. The capacity of the Department for Work and Pensions (DWP) to deliver the assessment process in this timescale has to be doubted and some delays would appear inevitable. Claimants will be stuck on the basic allowance until the assessment phase has ended, and we are concerned that sick or disabled persons will be left on drastically sub-poverty line levels of benefit for prolonged periods of time.
12. Due to the basic allowance being aligned with JSA rates during the assessment phase, young sick and disabled claimants will receive lower rates of benefit than those over 25, and substantially lower than they would have received if they met the contributions conditions for incapacity benefit (IB). We do not believe this is

just or sensible, younger disabled people may be particularly vulnerable (both in social and health terms) and do not necessarily have lower costs than older adults.

13. The amounts of both the work-related activity component and the support component will be prescribed in regulations. The high levels of poverty among disabled people indicate that at present levels, benefits are not providing an adequate financial safety net. David Piachaud points out in *At Greatest Risk: the children most likely to be poor* 'the safety net provided by the state is still far below its own poverty level. Indeed, the relative levels of the safety net for most families remains lower in 2004/05 than in 1994/95'. Given that many disabled people and their families will continue to be dependent upon benefits, the levels of both components will need to be sufficient to lift them out of poverty.
14. CPAG would like to see regulations made under the Bill that allow for people who pass the Personal Capability Assessment (PCA) to then have either the work-related activity component or the support component backdated to the beginning of their claim for the ESA – to include the period spent on the 'basic allowance'. Not to do so would be to deny them the financial support to which it has been determined they are in need of. To backdate this payment would not only be just but could help families manage the extra costs associated with the onset of disability and to stabilise individuals' medical conditions.
15. The future of the disability premium of income support is unclear, and will be prescribed in regulations. At present severely disabled people have an immediate entitlement to this premium, for example via receipt of other benefits for severe disability. As the premium will be incorporated into the 'main phase' ESA, it will not be available to disabled people during the assessment period, and appears to be the part of the ESA that may be withdrawn under the conditionality provisions. The disability premium is an important contribution to the extra costs of disability, and if a claimant has established an entitlement to it independent of the ESA, then that entitlement should continue, regardless of their position under the ESA regime.
16. We are concerned at the non-availability of dependent and age additions (which currently exist under IB) in the contributory allowance. This further erosion of National Insurance benefits, gained via in-work contributions, undermines the security that can be acquired from working, which is one of the stated aims of the Bill itself. We hope that the amounts of the work-related activity component and the support component are sufficient to ensure that no-one will receive less for their contributions than they would have received under the IB system.

Assessments relating to entitlement

17. The precise rules of assessment will be prescribed in regulations. Research recently published by the DWP (Research Report No 298, 2006) highlights the problems of dividing disabled people into two groups: less severely disabled people who are 'capable of work'; and more severely disabled people who are 'incapable' of work.' It is not clear how the assessment process will differentiate between people who, with the right support, may be able to work in the future, and those who can work now, and mechanisms to transfer between the two elements need to be devised.
18. Even under the current – much more straightforward - system there is a clear need to improve the very poor standard of Decision Making. Statistics show that

IB appeals account for the second highest number of appeals (after DLA) and there is a very high success rate on appeal: nearly 75 per cent of IB appeals, where they had a representative, were found in favour of the claimant.

19. Under the proposed new system Decision Makers will need the expertise, sensitivity and skills to effectively designate a wide spectrum of disabled people with a huge variety of impairments and conditions which have a different impact on different people, as either 'capable' or 'incapable' of work on the basis of evidence from a number of different medical practitioners. We fear that the new system renders poor Decision Making even more punitive, because someone who is wrongly placed onto the work-related activity component when they should be on the support component could face benefit sanctions, thereby increasing the risk of poverty. Much better training will be needed for Decision Makers to enable them to take account of all relevant evidence in deciding entitlement.
20. It is not laid out in the Bill, but made clear in the explanatory notes, that the PCA and the work-focused health-related assessment will take place at the same time. Undergoing the PCA can be a stressful and anxious process for many claimants. It may be very difficult for claimants to engage positively in the work-focused health-related assessment at the same time as undergoing the PCA, and before they know whether or not their claim for the ESA has been successful.
21. We are not convinced that Personal Advisers have the necessary skills and expertise to make complex decisions about an individual's ability to engage in work-focused activities. Although Personal Advisers have a good reputation, the resources and time allocated to training is unlikely to generate specialist advisers with expertise and understanding of – for example - fluctuating conditions, mental health problems or learning disabilities, and/or the way in which these impact on an individual's ability to work. This suggests a greater need for better (and longer) training and improved checks, balances and monitoring of the actions of Personal Advisers. We believe government should ensure that any contractual or target regime does not generate incentives either to reject claims or allocate individuals to the 'work-focused' component. Disabled people themselves are best placed to assess whether or not they are capable of work, and their views and opinions should be taken into consideration.

Conditionality

22. Given that the Government believes that 'one million disabled people are willing and able to work', we do not feel that the Government has made a compelling case for increased compulsion and/or benefit penalties and have a number of concerns about an approach that may plunge the most disadvantaged groups further into poverty. The need for compulsion was not indicated by the Pathways to Work Pilots. Around eight per cent of participants on Pathways to Work were volunteers from existing claimants, and accounted for one in five of the people who moved into work.
23. Claimants are to be subject to sanctions if they are unable to, or fail to, comply with the conditions relating to work-focused health-related assessments, work-focused interviews and work-related activity without having 'good cause'. The level of sanction will be prescribed in regulations, but the Green Paper referred to benefits being reduced in slices down to JSA levels. To do so risks plunging vulnerable people – and their children – into poverty simply because a disabled person feels unable to participate in work-related activity.

24. Benefit sanctions can have a negative impact on health outcomes for children, are directly at odds with the Government's desire to implement preventative strategies and have the greatest impact on the poorest. It is unjustifiable to reduce the resources available to children as a result of sanctioning their sick or disabled parents.
25. We are concerned that the rules determining whether or not a person has 'good cause' for not complying with the conditionality will be confusing and unduly punitive. Rules elsewhere for work-focused interviews allow the normal statutory appeal deadline of one month against a decision that they have failed to attend the interview, but here the claimant not only has to have good cause but they have to show good cause within 5 days. If this provision is retained it may result in difficulties for claimants who wish to appeal on good cause grounds but have not been able to show good cause within that 5 day period. CPAG think that there should be a clear rule that enables claimants to appeal a sanction decision at any time within the one-month time limit without them having to have shown good cause within a 5 day period.
26. We are concerned about the length of time an individual might be expected to engage in work-focused activities if paid employment is not forthcoming. An evaluation of the Pathways to Work Pilot indicates that some participants felt disappointed and frustrated at the lack of support and the difficulties they experienced finding appropriate jobs. We fear that the new system may arouse false expectations about employment opportunities, which may lead to disappointment and disengagement. There is little evidence that employers are always prepared to give well remunerated, rewarding jobs to sick and disabled people – particularly people with mental problems or learning disabilities. According to the Chartered Institute of Personnel and Development, one in five employers will not employ someone with mental health problems, including depression. Engaging in perpetual work-focused activities which do not result in employment is likely to be demoralising and possibly have a negative impact on the claimant's health.
27. CPAG believe that if the Government is promoting a culture of 'rights and responsibilities' then this should also apply to employers. The Government should demand high expectations of employers. The fact that employers continue to discriminate against disabled people is borne out by the statistics reported in *Monitoring poverty and social exclusion 2005*. Employers must accept more responsibility for low levels of employment among disabled people. There should be stronger requirements for employers to make appropriate adjustments to assist employment.
28. The Pathways to Work Pilots increased the number of disabled people leaving incapacity benefits by 8 per cent. However, there is little evidence of the kind of jobs people are accessing via Pathways to Work. People need to be reassured that they will be supported to progress at work, that there are flexible and well paid jobs available, that they will be helped to build up their skills and progress at work. It is imperative that the Government monitors the number of disabled people moving into employment, the sort of jobs different groups of disabled people are accessing, and whether the jobs are sustainable and are drawing people out of poverty.
29. CPAG is concerned about the contracting out of the power, set out in Clause 15, to make decisions regarding the sanctioning of a claimant's benefit. Non-state

providers should not be given this decision-making power. Extending delivery through the private and voluntary sectors raises difficult questions around accountability, and the impact that delivery contracts - and the financial motives these create - will have on the quality of service and on the 'independence' of organisations. We do not accept the voluntary sector exists to deliver state functions. The Work and Pensions Select Committee in its Report on Incapacity Benefits and Pathways to Work (Third Report of Session 2005-06) recommended that "the decision of whether to administer a benefit sanction should rest with a DWP decision-maker rather than a contracted service provider".

Housing Benefit and Council Tax Benefit

Local Housing Allowance

30. The Local Housing Allowance (LHA) replaces the Local Reference Rent (LRR) as a means of restricting the amount of rent that can be met by housing benefit (HB), largely for tenants in the privately rented sector. CPAG has argued the LHA should be considered in the context of wider housing policy. Many of the issues raised by the LHA need to be addressed through housing policy. The Green Paper makes no reference to the involvement or otherwise of the Department for Communities and Local Government.
31. There is no right of appeal against LHA levels and there is no claimant involvement in the levels at which they are set. Concerns have been raised that the broad rental market areas are too widely-drawn, bringing the LHA level down and there is no effective means by which claimants can challenge this. Greater accountability and judicial scrutiny of the operation of the regulations would help to ensure the rules are fairly and consistently applied in different areas.
32. The proposals do not address the unfairness of the Single Room Rent which restricts entitlement for most single claimants under 25 to the rent for a single room in a shared house. As a result, this age group faces higher shortfalls and more restricted access to the housing market than older age groups.
33. The DWP's proposal to change the size criteria is not entirely clear, it seems to be to count only the number of bedrooms claimants need and exclude living rooms. We strongly oppose any further limitations on size criteria, which could result in families living in unacceptably overcrowded accommodation with no communal space for family life. The size criteria are too inflexible and there should be an element of discretion for special needs, for example couples or children who cannot share a bedroom for medical reasons should be allowed an extra room.
34. Tenants on LHA can keep any benefit they receive over and above the amount of rent they have to pay. The DWP proposes that these gains should be capped to remove discrepancies between different areas some of which have more generous LHAs than others, to protect work incentives and remove any incentive to overcrowd. This proposal will reintroduce complexity into the scheme and negate the administrative gains which have been made so far. Whilst there is some evidence that claimants use the money gained from LHA to subsidise low benefit levels, for instance using it to pay off rent arrears caused by previous shortfalls, there does not seem to be any evidence that claimants move into overcrowded accommodation to gain from the LHA; gains seem to reflect existing overcrowding.

35. There does not appear to be any evidence that gains from LHA discourage claimants from moving into work. The HB calculation removes HB at the rate of 65 pence for each £1 earned over the claimant's applicable amount, and it is this aspect of the HB scheme that needs to be tackled if the DWP is keen to encourage claimants into work.

Conditionality

36. CPAG strongly opposes plans to sanction HB for anti-social behaviour and deeply regrets the Government's decision to resurrect the idea. The purpose of welfare benefits is to provide a safety net, and they should not be used as a tool for punishment or coercion. Similar proposals were made in the green paper on housing; "Quality and Choice; a Decent Home for All" published in 2000. They were dropped in the face of widespread opposition. Most of the concerns raised then will still be relevant.
37. Although we accept that anti-social behaviour causes significant problems for many people and victims are often themselves living in poverty, these proposals do nothing to engage with or address the root causes of problematic behaviour. These proposals could result in families with children being made street homeless, or children being taken into care. There is no protection for the children of claimants judged to be anti-social either from social stigma or from the poverty these proposals will cause. There is no requirement in the Bill for the interests of children affected to be considered when sanctions are applied.
38. In a debate on Frank Field MP's Bill to bring in similar measures in 2002 Malcolm Wicks the then Minister said;
- "Consideration also has to be given to dependants, especially children. We should not seek deliberately to make children homeless – and therefore in extremis, taken into care – just to punish their parents. We must ensure that all dependants are fully protected."*
39. The risk that families with children could be made homeless is contrary to the Government's stated aim to eradicate child poverty in a generation.
40. Where anti-social behaviour is beyond the claimant's control because of illness or disability, HB sanctions would not have a deterrent effect.
41. We note that the period of the sanction is up to 5 years (s130B (8) in Clause 28). It is not clear whether there will be any mechanism for review or challenge by the claimant; the only means of review provided for in the Bill is in s130B(6) in Clause 28, which is initiated by the local authority. The Bill's explanatory note at para 24 states that people who are sanctioned would have a right of appeal. But this appears only to relate to the lifting of the sanction and not to the decision to impose a sanction in the first place. This needs to be clarified, as the prospect of sanctions being applied to claimants, with no effective means of challenge is deeply worrying.
42. Homeowners and tenants not in receipt of housing benefit may also behave in ways considered "anti social". There is no justification for picking out HB claimants who behave anti-socially and imposing sanctions on them that do not apply to others who behave in the same way.
43. If, notwithstanding what we anticipate will be strong and widespread objections, these proposals go ahead, we recommend that the scheme should be piloted

before being implemented nationally. Clause 28 allows for pilots to take place and the explanatory notes refer to the “the intention” that pilots take place. This should be made mandatory

Fraud

44. We note that the provision in Clause 46 regarding the “two strikes and you’re out” approach is informed by Lord Grabiner QC’s report *The informal economy*, which recommended a punitive approach to the problem of benefit fraud.
45. We would ask that the Government’s approach to fraud should also be informed by other evidence. For example the recent report *People in low-paid informal work: Need not greed*, funded by the Joseph Rowntree Foundation, highlighted that many people enter informal work simply to alleviate poverty and overcome barriers, often within the benefits system, to formal employment. It recommended a more understanding approach which would make it easier for people to move into formal work. It seems clear from the report’s findings that a punitive and condemnatory approach will not be enough to eradicate informal working.
46. We note that there are no provisions in the Bill to combat the chronic under-claiming of benefits. The under-claiming of benefits leads to many people living on inadequate incomes and should be a priority for any programme of welfare reform.

About CPAG

CPAG promotes action for the prevention and relief of poverty among children and families with children. To achieve this purpose, CPAG aims to raise awareness of the causes, extent, nature and impact of poverty; bring about positive policy changes for families with children in poverty; and enable those eligible for income maintenance to have access to their full entitlement.

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