



Social Security Advisory Committee Occasional Paper No. 8

**Getting Involved: The impact of the Benefits System on  
Encouraging the Participation of Disabled People in Public Life**

December 2009

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This paper was produced in support of advice offered to the Secretary of State in accordance with the Committee's remit (s 170(i) (a) of the SSA 1992 refers). The original text was sent to Ministers in December 2009 and is now being given wider distribution. We are grateful for the assistance of Les Allamby and Brigid Campbell, who prepared the paper for us. However, the views expressed and any conclusions reached in the paper are solely the responsibility of the Committee.

# Getting Involved: The impact of the Benefits System on Encouraging the Participation of Disabled People in Public Life

## Introduction

1 The Social Security Advisory Committee has had a long-standing interest in the question of the use of earnings disregards and other measures within the benefit system to positively encourage claimants back into work and this paper reflects that interest.

2 There is no doubt about the government's desire to improve the participation of disabled people in public life. This commitment, however, is being undermined by social security benefit rules. This paper focuses on one aspect of public participation, namely, the impact of social security rules on the ability of disabled people to take up public appointments or other civic activity on a paid or voluntary basis. It briefly explores the wider concern of the barriers to re-entering paid employment in general. In particular, the report recommends immediate changes to the benefits rules to enable disabled people on particular benefits to participate more fully in public life through taking up public appointments. The report also calls for a wider review of the earnings disregard rules for means-tested benefits to promote civic activity and enhance the gateway for disabled people and others back into work.

## Policy Context

3 A central plank of social security policy is to encourage disabled people both into work and to retain existing employment during ill health or when an impairment is acquired or an existing condition deteriorates or recurs: PSA Delivery Agreement, 15 on Addressing Disadvantage issued by the government in October 2007 set out its vision. Two of the five key priorities of the Delivery Agreement were to:

- tackle barriers which are due to gender, disability or age that limit people's choice and control in their lives and
- increase participation in public life by women, ethnic minorities, disabled people and young people.<sup>1</sup>

4 In addition, the Office for Disability Issues in its Equality Impact Assessment for an Independent Living Strategy emphasised the importance of employment and economic wellbeing to disabled people. The strategy signalled its commitment to 'change the benefit reclaim process, and if required, introduce regulations to address disincentives and enable participation in public and civic life'.<sup>2</sup>

5 In 2006, as part of the desire to investigate the relationship between work and well-being, the Department for Work and Pensions (DWP) commissioned an independent review of scientific evidence on this relationship.<sup>3</sup> The review,

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<sup>1</sup> PSA Delivery Agreement 15: Address the disadvantage that individuals experience because of their gender, race, disability, age, sexual orientation, religion or belief. HM Government October 2007 paragraph 1.2 p3

<sup>2</sup> Independent Living Strategy Equality Impact of Assessment – Independent Living Review Office for Disability Issues (2008) p12

<sup>3</sup> Waddell G and Burton A. K (2006) *Is Work Good for your Health and Well-Being?* TSO

undertaken by Gordon Waddell and A. Kim Burton, found the balance of evidence to show that work is generally good for the health and well-being of most people, subject to a number of important caveats. In particular, beneficial health impacts depend on the nature and quality of the work undertaken and the social context in which the work is carried out.<sup>4</sup>

6 This policy driver is coupled with the desire to promote active citizenship for disabled people and to ensure greater choice, control and power over support services received and the funding of such services. Part 2 of the recent Welfare Reform Act reinforces the commitment made in the earlier White Paper to give disabled adults greater choice and control over the way certain services are provided by public authorities. The Act creates enabling powers to allow regulations to confer new rights for disabled people to have a greater say in the way services are provided.

7 The government also introduced its Disability Equality Duty in December 2006. This legal duty requires public authorities to have due regard to eliminating unlawful discrimination, promoting equality of opportunity and positive attitudes, taking steps to meet disabled peoples' needs and encouraging participation in public life. The duty places specific responsibilities on public authorities to produce disability equality schemes. These schemes are designed to secure the active participation of disabled people in public life. In practice, then, how does the social security system measure up to promoting public participation?

### **The Current Position and Benefit Barriers**

8 One of the key opportunities to getting involved in public life on more than a one-off basis is through the taking up of public appointments. The drive to promote the active participation of disabled people in public life is still not matched by the reality on the ground. People who are disabled constitute only six percent of formal volunteers and occupy around 4.3 per cent of public appointments across Britain. This is barely half the participation rate in these activities across the population as a whole.<sup>5</sup>

9 In October 2007 the Commission for Social Care Inspection published a report of a seminar held on the issue earlier in the year.<sup>6</sup> The report identified four key benefit barriers to the involvement of disabled people in public life namely:

- Most people on means-tested benefits were limited to earnings of £5, £10 or £20 a week before benefit was affected;
- people feared being disallowed Incapacity Benefit if any form of work was taken up;
- expenses reimbursed from public authorities for participation in consultation events and other activities were treated as earnings for benefit purposes. This included travel, the cost of a replacement carer so that a carer could be

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<sup>4</sup> Waddell and Burton (op cit) p30

<sup>5</sup> (2007) *Increasing democratic participation and Active Citizenship; creating an alternative future* Disability Rights Commission

<sup>6</sup> Commission for Social Care Inspection (2007) *Benefit Barriers to Involvement: Finding Solutions*

- involved in an activity and the cost of a personal assistant or support worker to support a disabled person to get to the event and to participate;
- the requirement to apply notional earnings in circumstances when a disabled person was not paid for involvement while other people around the table did receive payment.

10 The report counterpoised the barriers to involvement against the commitment of statutory and independent sector social care and health organisations to involving people who use their services. The report identified the value of disabled people being involved in strategic planning, monitoring, reviewing and providing feedback and in meeting public authorities statutory Disability Equality Duty. Alongside the practical benefit of user experience, statutory health and social care organisations noted that involvement and participation also build trust and legitimacy between those who deliver services and those who use them. The Social Care Institute for Excellence described organisations' attempts to work with the current benefit system as being 'like a Rubik's cube i.e. whenever you find a solution to one barrier, another barrier emerges straight away'.<sup>7</sup>

11 Our review of the current system suggests that the main benefit barriers to taking up public appointments and other involvement in public life are threefold. First, the benefit rules themselves leave individuals either little or no better off financially. The net effect of this is that a disabled person on benefit is less financially rewarded than non-disabled people providing the same public service. Second, the upheaval of losing certain benefits during the life of the public appointment is unhelpful and requires the claimant to reclaim benefits at a later date. Third, the complexity of the rules leaves people concerned that they are not making fully informed decisions and anxious about the financial ramifications. In effect, it is safer and more prudent not to take up a public appointment or get involved in civic life than to risk the loss of, or complications brought about by repeated changes to existing benefits.

12 The arrangements for allowing a claimant to work when on Incapacity Benefit (IB) or Employment and Support Allowance (ESA) illustrate the practicalities of the barriers. The rules which allow claimants on Incapacity Benefit to work have become more flexible and generous. In April 2006 the regulations setting out the arrangements were overhauled and improved. These changes have been replicated for ESA. Nonetheless, the rules remain complex and labyrinthine. In essence, the starting point is the general rule that a claimant cannot work and remain entitled to ESA and IB. This is subject to a number of exemptions.

These exemptions include:

- (i) Specific kinds of work, for example, as a local councillor, a member of the first tier tribunal fulfilling a specific role or the Disability Living Allowance Advisory Board, but only for up to one day or two half days a week, caring for certain relatives and other caring responsibilities in particular prescribed circumstances, domestic work at home and work done as part of specific self-employed training programmes.

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<sup>7</sup> op cit p18

- (ii) Permitted work – this is work of any kind and is provided at two levels; a lower limit, and higher limit.
- The lower limit is earnings of £20 a week or less and applies for an unlimited period and
  - The higher limit is £93 a week providing an average of less than 16 hours a week is worked. This figure is designed to ensure a person can work up to 16 hours at the national minimum wage for people over 21 years of age. This applies for 52 weeks only. A further higher limit period of 52 weeks can apply if a claimant comes off benefit or credits for a continuous period of more than 12 weeks or if at least 52 weeks have passed since the last higher limit period applied.
- (iii) Supported work, providing it does not pay more than £93 a week. This is work supervised by a person who is employed by a public or local authority or voluntary organisation engaged in the provision or procurement of work for disabled people. A claimant can do this type of work for an unlimited period.
- (iv) Work done as part of a treatment programme under medical supervision while in hospital or attending hospital as an outpatient is also exempt, providing it does not pay more than £93 a week.

13 Those claimants on income related Employment Support Allowance, Income Support, income based Jobseeker's Allowance and guarantee credit of Pension Credit can also have their permitted work earnings disregarded for Housing Benefit and Council Tax Benefit. This is because these benefits provide a passport to full entitlement to Housing Benefit and Council Tax Benefit.

14 From April 2010, higher limit permitted work earnings will also be disregarded for Housing Benefit and Council Tax Benefit purposes where the claimant (or partner) is on Incapacity Benefit, contributory ESA, Severe Disablement Allowance or is claiming National Insurance Credits.

15 In addition to the above, earnings disregards are also applied to means-tested benefits. For Housing Benefit, Income Support and income based Jobseeker's Allowance the earnings disregarded for benefit are £5, £10 or £20, depending on circumstances. For Housing Benefit and Council Tax Benefit, a further £25 disregard is also available for lone parents who are not on Income Support, income based JSA or income related ESA. In practice, for most disabled people the earnings disregard will be £20 a week. Save for an increase from £15 to £20 for certain disregards in April 2001, the earnings disregard for means-tested benefits have not been increased since 1988.

16 The lower permitted work disregard for IB and ESA allows fewer than four hours work at the minimum wage before benefit entitlement is disallowed. A similar level of work is allowed for other means-tested benefits before a reduction in benefit begins to apply. Disability Living Allowance will normally be unaffected by

undertaking work or civic activity, unless the nature of the work or activity triggers a re-examination of whether the conditions of entitlement continue to be met.

17 For claimants on Tax Credits, the income received from a public appointment is unlikely to affect entitlement during the tax year the appointment commences. This is because an increase in income in the relevant tax year has to be more than £25,000 above the previous year's income to affect final entitlement to Tax Credits. Any income earned from the public appointment may affect the level of entitlement to Tax Credits in the following tax year.

18 The impact of these rules on public appointments is stark. A disabled person on IB or ESA will lose his or her benefit if taking a public appointment paying more than £4,836 a year. This would apply for example, to someone wishing to become a non-executive director of a health authority or a member of the Equality and Human Rights Commission. Depending on the person's circumstances, there may need to be a recalculation of entitlement to any means-tested benefits. In practice, a complex 'better-off calculation' would need to be undertaken to work out the financial impact of taking up a public appointment. In addition, the person would need to weigh up the consequences of the changes to benefit claims at the point of accepting and completing a public appointment. Furthermore, assuming a public appointment makes payments on a monthly basis, the person will also have to consider the transition associated with weekly or fortnightly benefit payments to a monthly income. In effect, the taking up of a public appointment places formidable barriers in the way of a disabled person who relies on social security entitlement as a significant portion of their income.

19 A public appointment paying between £1,040 and £4,836 a year would allow a disabled person on IB or ESA to face no loss of entitlement or reduction of benefit for up to 52 weeks before entitlement to these benefits is then lost for up to a year. Once again, at this point a complex 'better off calculation' would need to be undertaken to assess the financial impact of continuing with the public appointment. An example of a public appointment falling into this category is the Mental Welfare Commission for Scotland. Only a public appointment paying less than £1,040 a year would leave IB or ESA and other means-tested benefits unaffected throughout the term of the public appointment.

20 For Tax Credits there may be an impact in the tax year after the appointment, with the need for an individual calculation based on whether the claimant's income is above modest annual thresholds and whether any other social security benefits are being claimed. In practice, the impact may not be as dramatic as that facing disabled people on other means tested benefits, nonetheless, a disabled person will not gain the same financial benefit as a non-disabled person involved in the same public appointment.

21 To illustrate the financial impact of taking up a public appointment, two case studies are set out below. The first shows how most of a person's payment for acting as a tribunal representative is offset by increased payments for rent and council tax. The second case study shows that the financial advantage of a public appointment in effect, lasts only for 52 weeks.

### Case Study 1

22 Ahmed is a single man and has a disability which means that he satisfies the relevant test of capacity for work or limited capability for work, but would be neither in an exempt category (Incapacity Benefit/Income Support) nor in the support group (Employment and Support Allowance).

23 Ahmed receives Incapacity Benefit at the long-term rate, having worked for many years until he became ill. With an age addition, his Incapacity Benefit is £96.35. He receives Housing Benefit and Council Tax Benefit. His rent in a housing association flat is £120 a week, and his council tax is £30 a week. He sits one day most weeks as a disability qualified member of the First Tier Tribunal, for which he receives a daily fee of £189.

24 Ahmed's work has no effect on his Incapacity Benefit, since it is classified as exempt work for the purposes of Incapacity Benefit. However, it does impact on his Housing/Council Tax Benefits, as it is counted as income for the purposes of calculating those benefits. The effect is as follows:

#### In a non-working week Ahmed would receive the following:

		Applicable amount £	Income for HB purposes £
Income:	Incapacity Benefit		96.35
Applicable amount:	Single person	64.30	
	Disability premium	<u>7.50</u>	
		91.80	
<b>Excess income</b>			<b><u>4.55</u></b>

Housing Benefit = £120 minus (65% x £4.55) = £117.05

Council Tax Benefit = £30 minus (20% x £4.55) = £29.09

Ahmed has to pay £2.95 rent and 91p council tax and his net income after housing costs is **£92.49**.

#### In a working week Ahmed would receive the following:

		Applicable amount £	Income for HB purposes £
Income:	Fees	189.00	
	Less	<u>20.00</u>	
	Disregard		169.00
	Incapacity Benefit		<u>96.35</u>
Total income for HB purposes			265.35
Applicable amount as above			<u>91.80</u>
<b>Excess income</b>			<b><u>173.55</u></b>

Housing Benefit = £120 minus (65% x £173.55) = £7.20

Council Tax Benefit = £30 minus (20% x £173.55) = nil (excess income too high)

Ahmed has to pay £112.80 rent and £30 council tax and his net income after housing costs is **£142.55**.

25 However, the position is even more complex as Ahmed would start to pay tax and national insurance and, depending on the precise circumstances, he could find himself only £30 to £50 a week better off in the weeks that he is involved in tribunal work. This may be tempered by any problems he has in changes to the administration of his claim.

26 The outcomes for contribution based Employment and Support Allowance would be very similar, though the benefit rate is slightly lower and as a result, entitlement to Housing Benefit and Council Tax Benefit would be slightly higher.

27 The new Housing Benefit disregard would not affect Ahmed as his work is treated as under exempt work rules and is deemed not to be remunerative work, rather than work subject to the permitted work rule. As a result, the April 2010 changes to higher permitted work earnings disregard for Housing Benefit and Council Tax Benefit will not apply to Ahmed.

## **Case Study 2**

28 Belinda is a lone parent with one daughter aged six. She is in receipt of income related Employment and Support Allowance with the work related activity component. This comes to £89.80 a week. She also receives Child Tax Credit of £53.31 a week and Child Benefit of £20 a week. Belinda has rent of £90 a week and Council Tax of £20 a week. This is covered in full as she is receiving income related Employment and Support Allowance.

29 Belinda has just started a public appointment working a half day a week as a member of local health board for the next three years. She is paid £90 for each half day. This is capable of being treated as permitted work for up to 52 weeks.

### **Prior to taking public appointment**

30 Belinda's net income after housing costs is **£163.11** a week (i.e. £89.80 income related Employment and Support Allowance, £20 Child Benefit and £53.31 Child Tax Credit).

### **Public appointment first 52 weeks**

31 Belinda's payment of £90 a week does not affect any of her other social security benefits or Child Tax Credit. This is because the income from the public appointment is ignored and entitlement to income related Employment and Support Allowance passports a claimant automatically to maximum Child Tax Credit. As a result, her net income after housing costs increases from £163.21 to **£253.11** a week.

### **After 52 weeks**

32 Belinda will either have to stop her public appointment or give up her income related Employment and Support Allowance. She can decide to continue the public

appointment. She will not be entitled to Income Support as her income of £70 (i.e. £90 minus £20 earnings disregard) is above her personal allowance of £64.30.

33 Belinda's Child Tax Credit and Child Benefit are not affected by the change in her claim. Her income is below the income threshold for establishing entitlement to maximum Child Tax Credit. She also receives full help with her rent and Council Tax as her income is less than the personal allowances and premiums used to assess entitlement to Housing Benefit.

Belinda's net income after housing costs is:

Child Tax Credit	£53.31
Public appointment	£90.00
Child Benefit	<u>£20.00</u>
	<b><u>£163.31</u></b>

34 After 52 weeks of her public appointment Belinda will be no better off than she would be if giving up the work. In fact, with the loss of access to the discretionary social fund, Belinda will be worse off.

## Concerns

35 Bodies recruiting people for public appointments do not operate uniform payment procedures. Many public appointments pay a daily attendance allowance rather than an annual sum. The impact of such payments, particularly where they are not uniform, can mean a change to benefit entitlement each time a payment is made. In some cases, a claimant will move on or off certain benefits, depending on the level of attendance associated with the public appointment. Examples of public appointments paying daily attendance rates include the Social Security Advisory Committee, the Standing Commission on Carers, the Disability Living Allowance Advisory Board and National Communities Forum.

36 Membership of the Disability Living Allowance Advisory Board does not affect entitlement to IB or ESA but, nonetheless, will have a financial impact if the person is also receiving Housing Benefit or Council Tax Benefit. Other public appointments entail a fixed annual payment for an agreed number of days, plus an additional daily attendance rate for work undertaken over and above the agreed number of days. This raises even more complexity for a disabled person on benefit. An example of this type of public appointment is the Northern Ireland Legal Services Commission.

37 Disabled people face a myriad of personal and financial circumstances. In practice however, many disabled people will not be able to gain the full financial benefit of undertaking a public appointment. The financial impact of taking up a paid public appointment will depend on the individual benefits being claimed and other family, personal and financial circumstances. Nonetheless, it is clear that a disabled person with an income independent of the social security benefit system faces substantially fewer financial and administrative barriers than someone who receives key disability and means-tested benefits when taking up a public appointment or becoming involved in public life. At one level this is arguably little different to the situation facing people without a disability wanting to become involved in public life.

However, the proportion of disabled people with an income independent of social security benefits is substantially lower than for those who are not disabled.

## **The Way Ahead**

38 The DWP is currently looking at the question of how to enhance administrative arrangements and benefit rules to ease the transition to work. This builds on other work done in this area. The Committee welcomes this work and has been actively involved in discussions with officials working on this project. The Committee also welcomes the improvements made to the permitted work rules for IB and their carry over to ESA.

39 Furthermore, the Committee supports the government's commitment to encouraging greater involvement in public life and the principle of enabling disabled people to have greater control over services provided by public authorities. In addition, the regulations taking effect from November 2009 to allow claimants on means-tested benefit to retain payment for involvement in public consultations organised by specific public bodies are also a valuable step forward. We also support the proposals for a £50 earnings disregard for certain groups on means-tested benefits that will be introduced in pilot areas in 2010.

40 Nonetheless, there is a need to reflect on how disabled people can be facilitated to become more effectively involved in public life. Introducing arrangements to allow disabled people to take up public appointments without undue effect on entitlement to benefit would be an important step forward. There are a variety of options available for dealing with the issue. A radical approach would be to exempt all public appointments from being treated as work for the purpose of claiming ESA and IB and to disregard payment for public appointments as earnings for means-tested benefits and Tax Credits. A more incremental option would be to expand the public appointments which are currently exempted from being treated as work and offer a more generous disregard for means-tested benefits where a public appointment is accepted.

41 The Committee can see the merit of the more radical approach in terms of simplicity and clarity. It is keen to emphasise that any improvement needs to be clear and readily understood by those it is seeking to help. There remains strong anecdotal evidence that the impact of the improvements to permitted work rules have been hampered by the complexity of the associated rules and regulations. Any improvements should seek to avoid a concomitant increase in complexity.

42 In the Committee's view, public appointments should be the starting point for the DWP in ensuring that the social security system can enable disabled people to more effectively participate in public life. There should be a wider review to examine how benefit rules can enhance the involvement of disabled people in public and civic life and encourage participation, as envisaged in the Disability Equality Duty. The Committee sees a dual benefit in a broader approach in that, as well as encouraging wider participation in public life, the arrangements would also complement other initiatives to broaden the gateway back into work for disabled people.

## **Summary of Recommendations**

## **Department for Work and Pensions**

- Exempt all public appointments from being treated as work for the purposes of claiming Incapacity Benefit and Employment and Support Allowance.
- Exempt fees paid for public appointments from being treated as earnings for means-tested benefits and Tax Credits.
- Undertake a review to examine how benefit rules can enhance the involvement of disabled people in public and civic life and encourage the participation envisaged by the Statutory Equality Duty.

## **Her Majesty's Revenue and Customs**

- Exempt all fees for public appointments from being treated as earnings for Tax Credit purposes.