

Please ask for: Sir Peter Soulsby  
Direct Line: 0116 454 0001  
Our Ref: 2014/NOV/PS/MH  
Date: 19th November 2014



Welfare Reform Division  
Department for Communities and Local Government  
4th Floor Fry Building  
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London  
SW1P 4DF

Dear Sir/Madam

### **Local Welfare Provision in 2015/16 – Consultation Response**

Thank you for providing me the opportunity to respond to the above. I am responding on behalf of the City Council.

#### **Context for the consultation**

Following the Child Poverty Action Group's judicial review challenge to the Government's decision to cease grant funding for Local Welfare Assistance Schemes, the Government agreed to reconsider its decision to cease funding for local welfare provision. The Consent Order required the DWP, DCLG and the Treasury to:

- Compile the ongoing review of local welfare provision;
- Conduct an 'appropriate' consultation;
- Consider the impact on equality and discrimination; and
- Make a new decision on funding for local welfare provision for 2015/16.

The response below relates to two of the above items i.e. the appropriateness of the consultation and the consideration of the impact on equality and discrimination.

Additionally, I believe that proposals to remove the funding from local government are a clear breach of the new burdens directive, given that the function has been transferred from the DWP. Consequently, it is unacceptable that local government should be asked for views on how to remove it.

#### **The consultation is considered to be not 'appropriate'**

The recent Supreme Court judgement (R vs London Borough of Haringey, 29 October 2014) identifies key considerations on minimum requirements for statutory consultation which can be applied to the consultation at hand. The circumstances for the two cases are similar – views are sought on options put forward on financial arrangements that have a direct bearing on the parties being consulted.

Para 39 of the judgement states:

Meaningful public consultation in this particular decision-making process...requires that the consultees should be provided not only with information about the draft scheme, but also with an outline of the realistic alternatives, and an indication of the main reasons for the authority's adoption of the draft scheme. That follows, in this context, from the general obligation to let consultees know "what the proposal is and why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response".

The options presented in 'Local welfare provision in 2015/16, a consultation document' only include those whereby local authorities assume responsibility for funding local welfare provision. The option of the Government continuing to fund local welfare provision has not been given. This is a realistic alternative as it continues the status quo.

No information is presented in the consultation document giving local authorities reasons for the DWP's proposal of ceasing funding for the scheme and having local authorities pick it up. Therefore, on the basis of the Supreme Court judgement referenced above, this consultation is not 'appropriate' and does not meet the criteria set out in the judgement as to what should be expected in regard to options presented. Consideration must be widened to include all 'realistic' options including that of the current status quo, unless substantiated by specific reasons as to why this is not an option. Therefore, any decision arising from this consultation exercise will not meet the Consent Order referred to above.

### **The DWP has failed to meet its Public Sector Equality Duty**

The proposal to cease grant funding for Local Welfare Assistance Schemes is set within the broader policy context of the Government's welfare reforms and the introduction of the Universal Credit. These are very much dependent on people not in work moving into work, and thereby reducing their reliance upon benefits to supplement their household incomes. Recent evidence has shown that the post recessionary period has not resulted in these outcomes being achieved, and that many households in work have been negatively affected by the implementation of the Government's welfare reforms ('The local impacts of welfare reform; an assessment of cumulative impacts and mitigations, Local Government Association and Centre for Economic and Social Inclusion, August 2013).

Therefore in keeping with the Court of Appeal judgement in the case of *Bracking v Secretary of State for Work and Pensions*, 6 November 2013, if the intended legislative reform is 'stalled or diluted' with subsequent negative impacts on those affected, then the application of the PSED may need to be revisited.

Para 55 ...as the fifth Brown principle explains, the public sector equality duty is a continuing one, and....may well need due consideration and upon after reflection by public bodies developing and implementing the policy....in this case. If the intended legislative reform ....is stalled or diluted....the application of the PSED may need to be revisited in the light of these developments. Similarly, this will need to be the case if the level of Treasury funding...is so austere as to leave no option but to reverse progress already achieved....

These impacts should be revisited by the Department of Works and Pension (DWP) and a thorough assessment of the equality impacts of those potentially affected by the proposal should be undertaken by them.

However, as stated by the DWP's March 2011 Equality Impact Assessment, "at present we do not intend to monitor the impact of the policy as this will cease to be DWP business" (para 29 of the assessment). The assessment continues, stating that "upon the introduction of local support, responsibility will rest with local authorities...." (para 30).

The importance of this as a policy issue cannot be understated. In the DWP's October 2011 Impact Assessment, in the section "What is the problem under consideration? Why is government intervention necessary?" the DWP states that "Government intervention is necessary in order to maximise the impact of funds currently allocated to CLs and CCGs (precursors to local welfare assistance schemes) on the most vulnerable people in society." Therefore, the ongoing monitoring of potential adverse impacts in keeping with the PSED should have been undertaken by the DWP.

The reconsideration of equality impacts as part of their reflection of the original policy's implementation should inform the decision at hand (as stated in the Consent Order referred to above). The key issue for exploration is what mitigating actions would be required to address the implications of failed policy assumptions. If the DWP is to meet its equalities obligations, there should be a clear and robust assessment of likely need among those 'vulnerable' people dependent upon benefits and the resources required to effectively address that need. These should inform what should be considered in terms of future local welfare provision. The right questions have not been asked.

Yours faithfully



Peter Soulsby  
**City Mayor**

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**OFFICE OF THE CITY MAYOR**

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