



Report

Date: 4 April 2016

Security Level: IN CONFIDENCE

To: Hon Paula Bennett, Minister for Social Housing, Associate Minister of Finance
Hon Anne Tolley, Minister for Social Development

This document contains legal advice and is legally privileged. It should not be disclosed on an information request, without further legal advice.

Addressing an IT issue that affected payment rates of Accommodation Supplement for some clients

Purpose of the report

- 1 This report provides advice on addressing a historical IT issue that affected payment rates of Accommodation Supplement for some clients. Your agreement is sought on an approach to correct historical records for clients affected by this issue.

Recommended actions

It is recommended that you:

- 1 **Note** that this report provides advice on the Accommodation Supplement IT issue which has resulted in either an underpayment or overpayment of Accommodation Supplement for some clients

Yes/No

Yes/No

- 2 **Note** that the Ministry of Social Development has clear information on the clients who were affected as at December 2014 and the associated costs (both Accommodation Supplement expenditure and administration costs) for correcting entitlements but funding for Accommodation Supplement expenditure is required

Yes/No

Yes/No

- 3 **Note** that further analysis is required for clients affected by the Accommodation Supplement IT issue prior to December 2014 and that the Ministry of Social Development will provide you with an update of this analysis and detailed advice on the proposed response to the wider issue by early May 2016

Yes/No

Yes/No

- 4 **Agree** that while all affected clients are to be considered, a balance is needed between the administrative costs of reviewing historical records affected by the IT issue prior to December 2014 and the payment amount an individual will receive

Agree/Disagree

Agree/Disagree

5 **Note** that the above principle in recommendation 4 will inform which client groups the Ministry of Social Development will take a proactive approach for and their relative priority

Yes/No

Yes/No

6 **Note** that regardless of the approach taken, the Ministry of Social Development is still obligated to review any client who seeks a review of decision

Yes/No

Yes/No

7 **Agree** that the Ministry of Social Development work with The Treasury on creating a tagged contingency in Budget 2016 for the expected fiscal costs resulting from the issue (both Accommodation Supplement expenditure and administration costs)

Agree/Disagree

Agree/Disagree

8 **Note** that the tagged contingency in Budget 2016 will cover the estimated \$22m expenditure as a result of Accommodation Supplement underpayments plus any administrative costs required to review historical records

Yes/No

Yes/No

9 **Note** that the approach outlined in this report – undertaking further analysis to inform the response to the issue and creating a tagged contingency – will require Cabinet agreement (after Budget Day on 26 May 2016) to:

- the proposed approach to address the issue
- drawdown funding to meet the expected fiscal costs (both Accommodation Supplement expenditure and administration costs)
- amend the Social Security (Income and Cash Assets Exemptions) Regulations 2011 so that back-payments be made exempt from all forms of cash asset and income tests for benefits for 12 months

Yes/No

Yes/No

10 **Agree** to forward a copy of this report to the Minister of Finance and Associate Minister of Finance (Hon Steven Joyce)

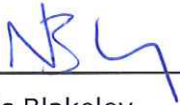
Agree/Disagree

Agree/Disagree

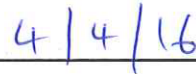
The Minister for Social Development:

11 **Agree** to forward a copy of this report to the Associate Minister for Social Development.

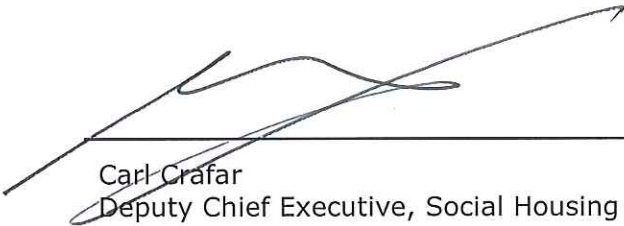
Agree/Disagree



Nic Blakeley
Deputy Chief Executive, Social Policy



Date



Carl Crafar
Deputy Chief Executive, Social Housing



Date

Hon Paula Bennett
Minister for Social Housing, Associate
Minister of Finance

Date

Hon Anne Tolley
Minister for Social Development

Date

In 2014, the Ministry of Social Development identified an IT issue which affected the payment rate of Accommodation Supplement for some clients

- 2 In September 2014, the Ministry of Social Development (MSD) identified an error in the SWIFTT payment system which resulted in an incorrect rate of Accommodation Supplement (AS) being paid to some clients. The SWIFTT payment system is MSD's assessment and payment system which has been used since November 1991.
- 3 On 8 December 2014, a system fix was deployed to prevent the error from occurring. All new AS clients are now receiving the correct AS rate. A number of current and previous AS clients have been underpaid or overpaid since 1991.

Initial advice was provided to the Minister for Social Development on back-payments of historical cases

- 4 As part of the wider Alignment Programme, which looks at misalignment issues in the benefit system, MSD provided advice in March 2016 to the Minister for Social Development on five issues, including the AS IT issue [REP/16/3/200].
- 5 Initial estimates showed that the number of clients that were affected by the error (this does not necessarily mean their AS is incorrect¹) from November 1991 to date are:
 - around 3,526 clients who were receiving AS on December 2014 (previously referred to as Cohorts 1 and 2 in the report in March 2016)
 - as many as 100,000 clients who are no longer in receipt of AS, but did receive it at some time between November 1991 and December 2014 (previously referred to as Cohort 3).
- 6 Of the 3,526 affected clients receiving AS on December 2014 (Cohorts 1 and 2), it was estimated that there were underpayments of \$1.8m.
- 7 By extrapolating the average under-payment of clients affected in December 2014, the cost of back-payments to clients who were underpaid in Cohort 3 was estimated to be around \$79 million.
- 8 The issue was also discussed at the MSD Agency Meeting with the Minister for Social Development on 14 March 2015. It was agreed that MSD would provide further advice on the implications for clients and how to manage a response².

Good information is available on clients who were affected as at December 2014

- 9 Information on the 3,526 clients who were receiving AS when the error was identified on December 2014 is clearer than for clients affected prior to December 2014 because most of the records have been manually checked to determine if there was an underpayment or overpayment.
- 10 Over a 12 month period, reviews to correct an underpayment or overpayment for these clients are estimated to require 10 full-time dedicated staff. MSD could undertake these reviews within existing baselines.
- 11 MSD could begin actively reviewing these clients and pay back-payments once funding for AS expenditure has been approved.

¹ Some clients may be affected by the error but still received the correct rate of AS.

² Further advice on options for a temporary disregard of proceeds from the sale of the family home, if clients intend to repurchase was also sought, and will be provided this week.

Legislative options were considered for those affected prior to December 2014

- 12 The AS issue is related to an error which resulted in some clients receiving an incorrect rate of AS. Legislative options to manage the response are not appropriate as there was no mistake in the legislation or policy intent.
- 13 While legislative options, such as imposing timeframes for clients to review or validating past practice could be considered, it would remove clients' rights to their correct entitlements (where the mistake was through no fault of their own). Legislative change would also be a controversial approach because retrospective validation in this case would comply with principles set out in the Legislation Design and Advisory guidelines.
- 14 The AS issue is also different to the benefit commencement date issue from last year which occurred because the legislation was drafted incorrectly. While there was a retrospective change to legislation, it was to validate the original policy intent and MSD practice.
- 15 A managed approach is considered a more appropriate approach.

MSD has since undertaken detailed analysis on clients who were receiving AS prior to December 2014

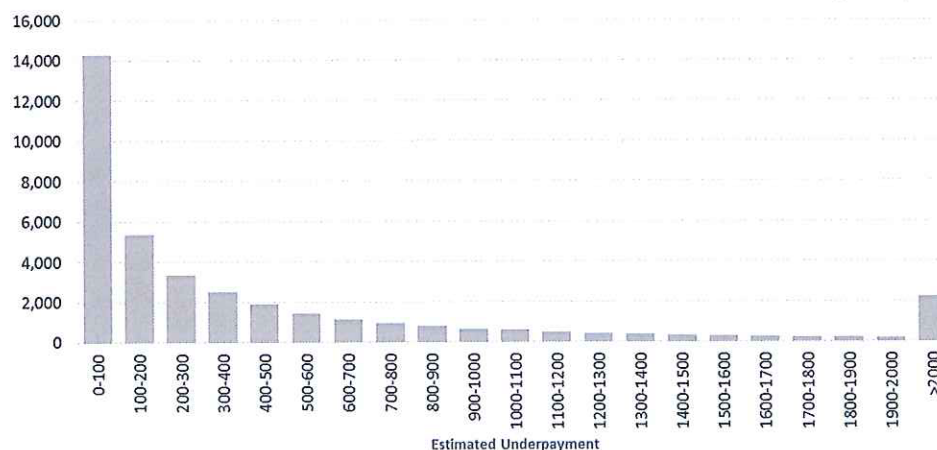
- 16 Detailed analysis on every AS client potentially affected prior to December 2014 has since been undertaken using administrative data (a more accurate analysis than initial estimates). This analysis was required to get better information on the size and scale of all the clients who were affected prior to December 2014.
- 17 This analysis shows that from 1996, approximately:
 - 113,500 clients had some conflict between cost code and AS type (this does not necessarily mean their AS is incorrect)
 - 38,000 underpaid - with total underpayments of approximately \$20m
 - 42,000 overpaid - with total overpayments of approximately \$26m.
- 18 The number of clients affected is slightly higher than initial estimates indicated. However, the estimated cost of underpayments for affected clients is lower than MSD initially estimated.
- 19 A large majority of the clients were underpaid less than \$1,000, as shown in the diagram below.

Estimated Number of Clients Underpaid

For those receiving AS prior to December 2014



Forecasting and Costing Team



Further analysis is still required to inform a wider response to the error

- 20 The analysis undertaken so far provides a better indication of the size and scale of the issue but further analysis is required to get a better understanding of the composition of the clients affected prior to December 2014, the potential AS underpayments and the administrative costs associated with correcting historical records. This work will help inform the response to the issue, including:
- improvements to the accuracy of the AS calculation regarding underpayments and overpayments for individual clients, which includes building off information that we now know about clients affected as at December 2014
 - analysis of the number of clients who are no longer alive
 - analysis of clients where the error appears to have been fixed and a underpayment or overpayment has been created, which means that a historical review is no longer required
 - the number of clients also receiving Special Benefit or Temporary Additional Support, as any dollar of AS underpayment may be offset by a dollar increase in their rate of Special Benefit or Temporary Additional Support (and vice versa) so a client's overall level of financial assistance might not have been impacted
 - analysis on those affected between 1991 and 1996 (because there are limitations with the data available between these periods due to a change in system and therefore this data has not yet been looked at).

A balance is needed between the administrative costs of reviewing historical records and the amount of payment an individual will receive

- 21 Officials recommend a general principle is used to inform how MSD best manage the response to the issue. The proposed principle is that while all affected clients need to be considered, a balance is needed between the administrative costs of reviewing historical records and the payment amount an individual will receive.
- 22 This principle will inform which client groups MSD will take a proactive approach for and the relative priority of these groups, for example:
- high value underpayments are prioritised first
 - underpayments are corrected before overpayments
 - a proactive approach is only taken for those who have an underpayment above a set threshold³ or for those who are not also receiving Special Benefit or Temporary Additional Support
- 23 Due to the complexity of the issue, it is not possible to automatically calculate and pay any underpayment for an individual. MSD is exploring possible IT solutions to reduce some components of the manual work that is required to review records.
- 24 Further analysis will inform how MSD manage the response as the analysis will provide for a better understanding of the nature of the clients affected.

Administrative costs associated with correcting historical records could still be high

- 25 The administrative costs are likely to be significant even after further refinement, due to the size of the number of clients affected and the costs associated with completing a single back-dated review. MSD is also obligated to review any client who seeks a review of decision regardless of the response to the approach.

³ Where clients who were underpaid AS below the threshold would not be proactively reviewed.

MSD recommends that a tagged contingency is created to fund the response to the issue

- 26 Given the potential \$22m of AS expenditure, and additional administrative costs involved, MSD has had initial discussions with the Treasury on the budgetary implications. They have advised the following options:
- creating a tagged contingency in the final Budget Ministers' meeting on 12th April 2016 (recommended by Treasury)
 - appropriating for the best estimate of costs in the final Budget Ministers' meeting on 12th April 2016 (this option is not recommended due to the uncertainty of costs)
 - using the Between Budget Contingency (this is potentially not a feasible option given the amount required to respond to the issue).
- 27 MSD also recommends that a tagged contingency is created. This will balance the current uncertainty over the expected fiscal costs (both AS expenditure and administration costs) with the need to account for the potential expenditure in Budget 2016.
- 28 Once decisions have been made on the approach to respond to the issue and the associated costs involved become clearer, Cabinet approval would be required to drawdown the funding from the tagged contingency. This can only happen after Budget Day on May 26.

Back-payments should be exempted from income and asset tests

- 29 Client's owed back-payments will be paid a lump sum. These lump-sum back-payments, and any income derived from them, would be treated as cash assets and income under current rules. This may affect eligibility or entitlement to some forms of financial assistance. For example, a payment may take a client's assets above the AS asset threshold, meaning they may no longer qualify for AS.
- 30 As the back-payments result from an MSD error, it is unfair to penalise clients for receiving their back-payment as a lump sum. MSD recommends all back-payments made be exempt from all forms of cash asset and income tests for benefits for 12 months.
- 31 This would require an amendment to the Social Security (Income and Cash Assets Exemptions) Regulations 2011, which would need to be made in advance of the back-payments being made. Such an amendment would require Cabinet agreement.

Next steps

- 32 Subject to your agreement, MSD will work with Treasury on creating a tagged contingency in Budget 2016 (at the final Budget Ministers' meeting on 12th April) to fund the expected fiscal costs required to respond to the issue.
- 33 MSD will report back to you by early May 2016 with:
- updated analysis on the composition of the clients affected prior to December 2014, the potential AS underpayments and the administrative costs associated with correcting historical records
 - advice on the proposed approach to the issue, including a communications plan.
- 34 The approach outlined in this report – undertaking further analysis to inform the response to the issue and creating a tagged contingency – will require Cabinet agreement (after Budget Day on 26 May 2016) to:
- the proposed approach to address the issue
 - drawdown funding to meet the expected fiscal costs (both Accommodation Supplement expenditure and administration costs)

- amend the Social Security (Income and Cash Assets Exemptions) Regulations 2011 so that back-payments made be exempt from all forms of cash asset and income tests for benefits for 12 months.